ISSN 1198-6182

Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 35-1995
March 27, 1995

INQUIRY RE: A Request for Access to Records about an Adult Adoptee held by the Ministry of Social Services

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). The inquiry concluded on December 21, 1994.

On July 12, 1994 the Ministry of Social Services (the Ministry) received a request under the Act from an adult adoptee for a copy of everything in his adoption file, in non-identifying form, including copies of records held by the Adoption Reunion Registry (ARR), that is, correspondence between his birth mother and the ARR regarding his interest in a reunion. On August 9, 1994 the Ministry refused to grant access to the adoption records.

The applicant requested that the Office of the Information and Privacy Commissioner (the Office) review the decision of the Ministry. The ninety-day legislated time limit for the review began on September 28, 1994 and expired on December 27, 1994.

2. Documentation of the inquiry process

Under section 56(3) of the Act, the Office invited representations from the applicant, the Ministry, and the following intervenors: the Adoption Reunion Registry, Parent Finders of Canada, the Adoption Reform Coalition, the TRIAD Society for Truth in Adoption, the Forget Me Not Family Society, and the Adoptive Parents Association for the Adoption Council of Canada. On November 25, 1994 the Office notified the parties and the intervenors that initial submissions were due by December 12, 1994. Reply submissions were due by December 21, 1994.

The applicant prepared his own submissions, with supplementary submissions attached from his adoptive parents. Michael Davies, Barrister and Solicitor with the Legal Services Branch, Ministry of Attorney General, represented the Ministry and the Adoption Reunion Registry. Five of the seven intervenors provided initial submissions: Parent Finders, the TRIAD Society for Truth in Adoption, the Adoption Reform Coalition, Lex Reynolds on behalf of the Adoption Council of Canada, and the Forget Me Not Family Society. All parties and intervenors, except the Forget Me Not Family Society, submitted reply arguments.

The Office provided both parties and the intervenors with a one-page statement of facts (the Portfolio Officer's fact report), which was accepted by the parties as accurate for purposes of conducting the inquiry.

By means of a letter dated February 9, 1995, I asked for further submissions from the Ministry, which replied, on February 22, 1995. On March 8, 1995 the applicant also offered a response to my letter and to the reply of the Ministry.

3. Issue under review at the inquiry

The issue under review is the applicability of section 78(1) of the Act (interim relationship to other Acts) to the records in dispute. Section 78(1) reads:

> The head of a public body must refuse to disclose information to an applicant if the disclosure is prohibited or restricted by or under another Act.

The Ministry refused the applicant access to his adoption records on the basis of the confidentiality restrictions and prohibitions that it says exist in the *Adoption Act*.

Under section 57(1) of the Act, the burden of proof in this inquiry is on the Ministry to demonstrate that the applicant has no right of access to all or part of the documents, on the grounds that disclosure of the information would violate the confidentiality restrictions in the *Adoption Act*.

4. The applicant's case

The applicant is very clear that he is asking for his adoption records in a non-identifying format. He is seeking copies of everything in his adoption record, "minus the identifying information of any third parties -- that is -- my birth parents." His interpretation of section 13.5 of the *Adoption Act* is that it does not prohibit the disclosure of non-identifiable information. Such a release would also not be an unreasonable invasion of any third party's personal privacy under the *Freedom of Information and Protection of Privacy Act*.

The applicant wants an actual copy of a letter allegedly written to the Adoption Reunion Registry by his birth mother, so that he can compare the handwriting to a letter that he claims he received from his birth mother. He is not satisfied with the two summaries of his adoption records prepared for him by this Registry. He wants the actual contents of his adoption records minus so-called identifying information.

In his reply submission the applicant emphasized that he is not trying to find information about himself or his adopting parents, since he already knows that: "I'm trying to find details about my birth parents.... I am seeking copies of my adoption records in a non-identifying format.... There is nothing in the *Adoption Act* and or [sic] Regulations which state I cannot have what I seek."

The applicant wants all the documents in his adoption records, as held by the Ministry, including "original birth registrations, orders, judgments, decrees, medical history sheets, reports, adoption orders, and anything else in the Record, all in a non-identifying format." (Reply Submission of the Applicant, p. 4)

5. The Ministry's case

The Ministry provided me with a statement and commentary on the confidentiality and disclosure provisions in the *Adoption Act*, which I will discuss below. (Argument for the Ministry of Social Services, pp. 1-2) The Ministry asks me to uphold its decision not to disclose the records in dispute, "because the confidentiality provisions of the *Adoption Act* override the right of access in the *Freedom of Information and Protection of Privacy Act*." (Argument for the Ministry, p. 4)

The Ministry takes the position that my inquiry "is restricted to a determination of what information and documents can be released, under the Adoption Act.... [which] distinguishes between information that can be released and documents that can be released." (Reply Submission of the Ministry, p. 2)

6. The intervenors' arguments

I have reviewed and carefully considered the submissions of each of the intervenors. I present the most relevant points from each, here and below.

Parent Finders asked me to make an order granting the applicant the non-identifying information he seeks, because the *Adoption Act* "does not contain any confidentiality clause specifically barring disclosure of that information." (Reply Submission of Parent Finders of Canada, p. 3)

The Adoption Council of Canada suggested through its counsel that I have jurisdiction to order disclosure of the requested information in this case, since "the request is for non-identifying information which is not excluded from disclosure." (Reply Submission of Lex Reynolds, p. 2)

7. Discussion

Constitutional issues

A number of intervenors made points about the discriminatory character of various provisions in the *Adoption Act* and argued that these may be contrary to the Canadian Charter of Rights and Freedoms. I have not attempted to resolve these issues, because a constitutional challenge to provisions of the *Adoption Act* was not properly before me in this inquiry under the *Freedom of Information and Protection of Privacy Act*.

What the applicant already knows

The Office of the Information and Privacy Commissioner has verified that on two occasions the applicant has received non-identifying information on himself and his birth relatives from his adoption records, as the result of his requests to the Adoption Reunion Registry. I have reviewed these materials and can confirm that they provide an accurate representation of what is in the original records. Thus the applicant's problem is that he wants the original records with only information severed that might be truly identifiable.

The applicant already knows his original full name at birth. This fact is also known to Parent Finders of Canada. (Submission of Parent Finders of Canada, p. 2) He also claims to know the name of his birth mother. (Submission of the Applicant, March 8, 1995, p. 3)

The chair of the Adoption Reform Coalition indicated in his submission that the applicant is aware that his birth mother wrote a letter to the Adoption Reunion Registry. The claim is that the applicant only wants to read the letter without names and addresses. (Submission of the Adoption Reform Coalition, pp. 1-2)

General arguments for disclosure

I have considerable sympathy with arguments made by the applicant and intervenors on why adoptees want and need access to their adoption records. The relevance of birth and medical history is becoming much better recognized as the decoding of the human genome advances at a rapid pace. See the Panel to Review Adoption Legislation in British Columbia (the Review Panel), Report to the Minister of Social Services (July 1994), p. 32. It is hard to think about "the best interests of the child," the concept believed to underlie the *Adoption Act*, and not be inclined to disclose more information to adoptees about themselves than has previously been done. (Submission of Parent Finders of Canada, pp. 3-4)

I also recognize that the stigma associated with premarital pregnancy, illegitimacy, and infertility has changed dramatically since statutes like the *Adoption Act* were first enacted early in this century. (Submission of Parents Finders of Canada, pp. 3-4) This changing situation is also reflected in the Report to the Minister of Social Services (the Report) in July 1994 by the Review Panel (pp. 25-26).

The Report can be advanced as a rationale for a public interest argument for enhanced disclosure of personal information to adoptees in particular. Its systematic discussion of access to records reflects many of the arguments of the applicant and the intervenors in this case. (See pp. 25-36)

With respect to understanding broad pressures for disclosure of full adoption information to adoptees, I note that the Review Panel for the Minister of Social Services concluded that all adoption records should be made available to adult adoptees in the year 2000. It also recommended that adoptees should immediately "be able to access more detailed information about their time in foster care. This information could, at a minimum, include the names of foster parents and their location." (pp. 28-29) The Review Panel further recommended that:

> Adoptees, once they reach the age of majority, have access to any and all information in their file including the original birth registration. The adoptee should be forewarned if the information is of a sensitive nature. (p. 30)

This recommendation goes far beyond what the applicant in the present case is seeking.

The adoptive parents

The adoptive parents of the applicant made a submission to this inquiry to the effect that they are perfectly willing to allow the Ministry to release "any and all" records in its adoption file to their adopted son.

In line with the principle of informational self-determination that lies at the heart of privacy and data protection laws, and since so much of the information in the Ministry's records concerns the adoptive parents of the applicant, the consent of the adoptive parents is a compelling consideration in reaching my decision.

The Adoption Act

The Ministry's introductory point about the *Adoption Act* is worth close attention:

> Although the Adoption Act contains no express provision to the effect that information obtained pursuant to the administration of the Act is confidential, the language of the Adoption Act indicates a general legislative intention that such information must not be disclosed except as specifically provided by the Act. The Ministry of Social Services has

> always treated adoption information as confidential[,] releasing certain information only in accordance with specific provisions in the Act. (Argument for the Ministry of Social Services, p. 1.)

The Ministry relies upon sections 4(4), 13.5, 13.6, 14, and 15 of the *Adoption Act* as sources of this general legislative intention that information received under the Act must not be disclosed. I must examine each of these provisions separately, and in the context of the entire statute, to determine if "disclosure is prohibited or restricted by or under another Act" within the meaning of section 78 of the *Freedom of Information and Protection of Privacy Act*. If a prohibition or restriction on disclosure does exist, I must examine its scope in relation to the materials at issue in this inquiry.

I will therefore consider in turn the provisions in the *Adoption Act* that the Ministry claims are restrictions or prohibitions of disclosure within the meaning of section 78(1).

Section 4(4): This section reads:

> 4(4) Where an application is made for the adoption of a child, or an application is made under section 8(8) to dispense with the consent of a parent of a child and the identity of the prospective adopting parent is not known to a parent of the child, then
>
> (a) the identity of the prospective adopting parent shall not be disclosed to that parent of the child in any notice or document served on the parent for the purpose of the proceedings,
>
> (b) the identity of the prospective adopting parent shall not, without the leave of the court, be disclosed to that parent in any other manner, and
>
> (c) no person shall reveal publicly in the press or otherwise, the identity of the prospective adopting parent.

This provision deals with the identity of a "prospective" adoptive parent. I agree that paragraphs (b) and (c) are prohibitions on disclosure, but they relate only to revealing the identity of the adoptive parents. The thrust is to avoid disclosure of that information to the natural parent. This provision was clearly enacted for the benefit of the privacy of adoptive parents. It would be surprising to construe it as prohibiting an adoptive parent from disclosing his or her own status as such. In the present case, the adoptive parents are supportive of disclosure. It is hard to see how this section applies, or could have been intended to apply, to the present case.

Section 13.5: Section 13.5 reads:

> 13.5 A person who discloses information from the record except as provided for in section 13.2 to 13.4 commits an offence.

Section 13.1 defines "record" for the purposes of section 13.5:

> 'record' means a record of identification particulars for adult adoptees and birth relatives maintained by the superintendent [of family and child service] for the purposes of section 13.2 [passive registry] or 13.3 [active registry];

The "record" is defined in section 13.1 with reference to "identification particulars," being "the name of a person and other information that identifies the person."

The Ministry interprets section 13.5 as follows: "By making it an offence to disclose information from the record except in the circumstances described in ss. 13.2 to 13.4, the general legislative intent of confidentiality is confirmed." (Argument for the Ministry, p. 2) It is apparent from the definition of "record," however, that section 13.5 covers only identifying particulars maintained for the purposes of the active and passive registries for disclosure of adoption information to adult adoptees. Non-identifying information about the same matters, or the events leading to adoption, is not a "record" as defined under section 13.1 of the *Adoption Act*.

Section 13.5 is a prohibition within the meaning of section 78 but only with respect to disclosure of identifying particulars of adoptees and their birth relatives. Section 13.5 is not a prohibition or restriction on the disclosure of "anonymized" or "non-identifying" information. I see nothing in section 13.5 that would require the reunion registries to disclose only summaries of records, unless that is the only way disclosure can be made in a non-identifying manner. In my view, the latter is not in fact the case.

Section 13.6: This section reads:

> 13.6(1) Subject to subsection (2), the superintendent may,
>
> (a) where, before the adoption of a child, a relationship that the superintendent considers to be important for the child's development has been established between the child and a relative, foster parent or other person,
>
> (i) disclose to the person with whom the relationship is established any information in the superintendent's records identifying the adoptive parents of the child, and
>
> (ii) disclose to the adoptive parents of the child any information in the superintendent's records identifying those persons,

(c) where disclosure of information from the superintendent's records identifying the adoptive parents, the natural parents or the adoptive or natural relatives of a child is necessary for the child to receive a benefit, disclose that information, and

(d) where the superintendent considers that the health or safety of an adopted child or a child to be adopted requires the disclosure to a person of information from the superintendent's records identifying the adoptive parents, the natural parents or the adoptive or natural relatives of the child, disclose that information to that person.

(2) The superintendent may disclose information under subsection (1) only where the superintendent considers that the disclosure of the information is in the best interests of a adopted person and the person is a child at the time the information is disclosed.

The Ministry says that this section would have no meaning if the *Adoption Act* is not construed as manifesting a general intention for the adoption files of the Ministry to remain secret. I disagree because, once again, section 13.6 deals exclusively with identifying information. For this reason, section 13.6 can work alongside a regime for the disclosure of non-identifying information, which is exactly the purpose of the Adoption Reunion Registries.

Section 14: This section reads:

Anonymity

14 In adoption applications filed after September 1, 1968 and adoption orders under them, the child shall at all times be referred to by birth registration numbers only, and the name of the child as registered at birth and the names of the natural parents shall not appear in these documents, except where it is necessary to make application to dispense with the requirements of section 5 with respect to a certified copy or extract of the record of the birth of the child.

Once again, this provision concerns identifying information. It is not a restriction on the disclosure of non-identifying information.

Section 15: This section reads:

15(1) An application or a document filed in the registry of the court in connection with an application, and an adoption order are not

> subject to search. No person other than the Attorney General or a person authorized by him in writing, may have access to them; but the court, on an application of which at least 5 days' notice has been given to the Attorney General and to the superintendent [of family and child service] and on good cause shown to the satisfaction of the court, may permit
>
> (a) the registrar to deliver to the applicant one or more certified copies of an adoption order;
>
> (b) the applicant to inspect those documents specified in the order and the registrar to deliver to the applicant one or more certified copies of the documents; or
>
> (c) the applicant to inspect all documents filed in connection with an adoption order, including the order and application for it, and the registrar to deliver to the applicant one or more certified copies of any or all of those documents.
>
> (2) Nothing in subsection (1) prevents a registrar from certifying as a copy of an adoption order a document prepared and delivered to him by the adopting parent or an adopted child named in the adoption order, if in fact the document is a copy of the order.
>
> (3) Where an adoption order is made and the registrar has complied with the provisions of section 13 the Director of Vital Statistics shall preserve in his office all the documents filed with him in connection with it. The documents shall be available for inspection or extract only to officers of the Crown in the discharge of their official duties, or to a person authorized by the Attorney General in writing. The court, on an application of which at least 5 days' notice has been given to the Director of Vital Statistics and to the superintendent, and on good cause shown to the satisfaction of the court, may permit the applicant to inspect the documents.

Section 15 of the *Adoption Act* requires a court order for disclosure of the adoption records filed in a court in connection with an adoption. The Ministry interpreted this section as indicating "the legislative intent of maintaining confidentiality unless a court specifically determines that 'good cause' has been shown...." In its initial submissions, the Ministry reconciled the restrictive effect of section 15 with the disclosure provided for in section 13.6 by reasoning that "the Superintendent may release information pursuant to s. 13.6 but persons seeking copies of documents [must] be referred to the court pursuant to s.15." In its supplementary submissions, however, the Ministry made the following statement:

> Section 15 does not apply to searches of files in the Ministry's custody. Section 15 permits a court application for access to documents filed in the court registry in relation to the adoption order. In no way does this section empower the court to order access to Ministry files. (Supplementary Submissions of the Ministry, February 22, 1995; emphasis added)

The Ministry provided several cases on section 15, but they are concerned with applications to the courts for access to adoption records held in court files. Those cases are of little assistance in this inquiry, because the applicant is not asking for a court to order disclosure of his adoption records held in court files. He is making an application to a public body for anonymized records under the *Freedom of Information and Protection of Privacy Act* and, on the Ministry's own submissions, section 15 does not empower the court to order access to Ministry files. For the same reasons, I find it difficult to understand how section 15 can be relevant to the matter before me.

The disclosure of non-identifying information under the *Adoption Act*

There is a precedent for the disclosure of non-identifying information under the *Adoption Act*. The applicant pointed out, for example, that section 3(2)(b) of the Adoption Reunion Regulation No. 2 (B.C. Reg. 290/91, O.C. 1323/91) permits the remission of fees in cases where:

> (b) the superintendent's services under section 13.3 of the Adoption Act in the matter include only a search of the records or the giving of non-identifying information. (Reply Submission of the Applicant, p. 3)

In its Report to the Minister of Social Services in July 1994, the Panel to Review Adoption Legislation in British Columbia specified that:

> Non-identifying information includes such things as:
> - the reason that the adoption occurred;
> - the medical history of the birth parents;
> - any other information about the birth parents of a genetic, cultural, vocational or personal nature; and
> - the family make-up of the adopting family. (Report, p. 27)

The Review Panel presented this description as non-controversial, especially in comparison to the debate over the release of identifying information.

The Review Panel's description of the service provided by the relatively-new Adoption Reunion Registry (ARR) also notes that "non-identifying background information" is provided to adoptees. (Report, p. 34) This Registry currently provides significant information in a summary form, as it has done for this applicant on two occasions (see below). This applicant now wants the actual records in severed form.

I see no legal reason under the *Adoption Act,* or the *Freedom of Information and Protection of Privacy Act,* why that cannot be done by the Ministry, for the records in its possession, in the present case. It is not without significance that Part 2 of the latter Act speaks to rights of access to "records" upon which information is recorded, not just to the information itself.

Section 13.1 of the *Adoption Act* also defines "identification particulars" to mean "the name of a person and other information that identifies the person." I read that as meaning that considerable sensitivity must be used in severing information to be disclosed so as not to result in residual disclosure, a problem familiar to the statistical and research communities.

The records in dispute

Without revealing their contents, the records that the applicant wishes to access can be described as follows.

There is a brief exchange of correspondence between a family service agency that operates the Adoption Reunion Registry and the applicant's birth mother, and the same agency and the applicant. It would be simple to render these few pages non-identifiable. I accept the position of the Ministry that the applicant should only receive this information in a typed and severed format, since the actual handwriting of his mother would be an identifying characteristic. She, for her part, has clearly exercised her right of informational self-determination by deciding that she does not want contact with her natural child.

A second group of 33 hand-numbered pages are identified as AD/C/66. It contains the records of the adoption of the applicant by his adoptive parents. It includes a copy of the original birth certificate of the applicant, which reveals the age of the birth mother (already disclosed), where she was born (country only disclosed), and her occupation (already disclosed) and workplace at the time of birth. A good deal of this information, as I have noted, has been disclosed to the applicant by the Adoption Reunion Registry. Much of the remaining material is boilerplate from court records that could be released, minus identifying particulars about the birth mother. Correspondence between the Child Welfare authorities in Victoria and the lawyer for the adoptive parents is similarly innocuous.

The adoption home study of the adoptive parents (pp. 17-20) contains a good deal of personal information about them, but they have consented to its disclosure to the applicant, and it is difficult to conclude, based on the principle of informational self-determination, that it should be withheld. One page (p. 20) of this home study concerns the applicant, his natural mother, and his natural father; this could readily be severed to preserve anonymity. There are two additional pages (pp. 27-28) that also contain background information on the natural parents, prepared by a social worker, that will have to be severed as well.

The third group of records consists of 35 pages, plus a duplicate of the adoption home study described above. It is largely material from the files of the agency that conducted the overall adoption home study. It contains intimate information based on separate interviews with the adoptive parents and their recollections of their own childhoods and families. There is also information about the applicant's early years in his adoptive household. The same information about the birth parents described above is present at pages 28 to 30 of this file. There is also routine correspondence about the process of adoption through the courts that is fully discloseable. As noted above, the adoptive parents have consented to the disclosure of their records to their adopted son.

In my judgment, and subject to my earlier observations about various specific sections, the *Adoption Act* does not restrict or prohibit in any global sense the disclosure of adoption information or records in non-identifying form. Section 78(1) of the *Freedom of Information and Protection of Privacy Act* thus has no application in the present case.

The Ministry's "policy" has been, upon request from an adoptee and with respect only to the records of an adoption in its custody, to have a social worker summarize the birth parents' medical and social histories and, after ensuring that all identifying information is deleted, provide the applicant with a summary, as it did in the present case. (Supplementary Submission of the Ministry, February 22, 1995, p. 2) I see no legal reason, under the *Adoption Act*, why an applicant cannot have the adoption records held by the Ministry in a severed, rather than summary, form.

Guidelines for severing the records

Having concluded that section 78 of the Act does not restrict or prohibit the disclosure requested in this case, I reviewed the records to determine what constituted identifying particulars about the applicant's birth parents that would have to be removed from the records in order to satisfy the applicant's request for copies of the records in non-identifying form.

I also considered and rejected the applicability of section 22 of the Act to the information about the birth parents in non-identifying form. Section 22 refers to the disclosure of personal information about identifiable individuals. However, with the birth parents' identifying particulars removed, the remaining information cannot be linked to identifiable individuals, and its disclosure will not constitute an unreasonable invasion of the birth parents' privacy, as contemplated by section 22 of the Act.

To assist me in this process of severing, I also compared the adoption records to the summaries prepared by the Adoption Reunion Registry to verify how much information the applicant has already received about himself, his birth parents, and their relatives. The summaries contain information on the birth parents' age at the time of the adoption, country of birth, appearance, religion, occupation, and reason for placement of

the applicant for adoption. I decided that the same information in the Ministry's adoption records could be released to the applicant in response to his request for records in non-identifying form.

Similarly, I determined that other information which appears in the summaries about relatives of the birth parents (e.g., their appearance, occupations, and date and cause of death) could also be released in the Ministry's adoption records. I concluded that it was sufficient to remove the names, home, and work addresses of the birth parents and the name of the hospital in which the applicant was born in order to anonymize the information about the birth parents.

In the present case, I have determined that the applicant's surname at birth should not be disclosed to him, even though he and others (by their direct admissions to me), claim to already know it. Thus, I would recognize his birth mother's right to privacy.

Regarding the applicant's request for a copy of his birth mother's handwritten letter refusing direct contact with him, the applicant wants to compare it to the handwriting in a letter from his birth mother, which he claims to have in his possession, perhaps in order to determine the authenticity of the current veto letter. However, the applicant requested non-identifying information from his adoption records and, in my view, release of the letter in its original handwritten form, even without the signature, would possibly provide the applicant with identifying particulars about his birth mother. I therefore prepared for release a typed version of the letter with the birth mother's signature removed. I also silently corrected any spelling errors that may have been present in the original.

With regard to the adoption home study, which was prepared to assess the adoptive parents' suitability to adopt a child, I decided that most of it could be disclosed. The home study contains information on the adoptive parents, their natural child, their relatives, their health and financial situation, their accommodation, and other details of their lives. It also contains social workers' opinions of the adoptive parents' suitability to adopt and accounts of other children they considered for adoption before they chose the applicant.

The adoptive parents provided almost all of the information in the home study to the social workers who reported to the Ministry. The adoptive parents have consented in writing to its release to the applicant. Moreover, the applicant is almost certainly already aware of the information by virtue of contact with his adoptive parents over many years. Thus, with minor exceptions, I do not consider that its release to him would constitute an unreasonable invasion of the privacy of these people, as defined in section 22 of the Act (the section which requires public bodies to refuse to disclose the personal information of third parties, where disclosure would constitute an unreasonable invasion of their privacy). The only exceptions are the identities of prospective adoptees, who were children in the care of the Ministry at that time and their foster parents. I have removed the identifying information about these people, since it is sensitive information about

their involvement with the Ministry. Its disclosure would therefore, in my view, constitute an unreasonable invasion of their privacy.

With regard to the remaining records related to the adoption, I found their contents to be innocuous and entirely releasable to the applicant.

8. Order

Under section 58(2)(a) of the Act, I order the Ministry of Social Services to disclose the records in dispute to the applicant in non-identifying form. I have prepared a severed copy of these records for release by the Ministry.

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David H. Flaherty
Commissioner

March 27, 1995