

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 97-012

November 20, 1997

ALBERTA JUSTICE, MAINTENANCE ENFORCEMENT

Review Number 1275

Background:

[1.] On March 4, 1997, the Applicant made a request under the *Freedom of Information and Protection of Privacy Act* (the "Act") for access to the Applicant's file held by the Director of Maintenance Enforcement Division of Alberta Justice (the "Public Body").

[2.] The Applicant is a "debtor" pursuant to the *Maintenance Enforcement Act*, R.S.A. 1980, c. M-0.5. In the Applicant's request for review, the Applicant stated that the request was made to ensure that all information on the file was accurate. The Applicant stated that the information on the file relating to the Applicant's telephone numbers was either inaccurate or incomplete.

[3.] The Public Body refused the Applicant's request on the basis of section 11(3) of the *Maintenance Enforcement Act* and section 5(1) (disclosure prohibited or restricted by another enactment) of the Act.

[4.] Mediation between the Applicant and the Public Body was authorized under section 65 of the Act but was unsuccessful. Under section 66(4) of the Act, both parties' written submissions were considered at the written inquiry held on June 24, 1997.

Records at Issue:

[5.] The records consist of information received by the Director of Maintenance Enforcement, or generated internally based on the received information. The records are used for the purpose of enforcing maintenance enforcement orders.

Issue:

[6.] Is the Public Body required by section 5(1) of the Act and section 11(3) of the *Maintenance Enforcement Act* to refuse access to the Applicant's request?

Discussion:

[7.] Section 5(1) of the Act reads:

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

[8.] Section 11(3) of the *Maintenance Enforcement Act* reads:

(3) Information received by the Director under this Act may be used only for the purpose of enforcing a maintenance order and is otherwise confidential.

[9.] Section 5(1) provides that a public body must not disclose information if that disclosure is prohibited or restricted by another statute. In Order 96-001, I dealt with this issue and whether section 11(3) restricts disclosure. I stated:

...section 11 of the Maintenance Enforcement Act must be intended to apply to all records pertaining to an active collection file which are in the possession of the Director. That being so, the Director has correctly concluded that section 5 of the Freedom of Information and Protection of Privacy Act requires him to refuse access. Having concluded that the Director is required to refuse access, section 68 of that Act only allows me to confirm his decision.

[10.] The Applicant has not provided any evidence to show that the Applicant's situation is distinguishable from the facts set out in Order 96-001. Consequently, I find that my comments, as stated in Order 96-001, are applicable to this request for review. The Public Body properly refused access to the records requested by the Applicant.

[11.] The Applicant has indicated that the purpose in making the request for access to the Maintenance Enforcement file is to ensure that the information is accurate and complete. The Applicant also stated that the Applicant requested the Public Body to send to the Applicant an application form which could be completed to ensure that the Public Body had accurate information on the file.

[12.] The Public Body stated in its written submission, that the proper procedure for the Applicant would be to make a request for a correction of its personal information under section 35 of the Act.

[13.] Section 35 of the Act gives an Applicant a right to request correction of the Applicant's personal information in the custody and control of a public body. I also dealt with this issue in Order 96-001 and stated:

The Applicant argued that, by having access to the records, it would be possible to discover inaccuracies in the information contained on the public body's records. Section 35 of the Freedom of Information and Protection of Privacy Act allows a person to request corrections to records held by public bodies. Where no correction is made by the public body, the head of that body must still annotate or link the information with the correction that was requested but not made. The Information and Privacy Commissioner may be asked to intervene in the record correction process. That alternative is available to the Applicant and may be pursued by the Applicant if she believes there are inaccuracies with respect to her personal information.

[14.] While I sympathize with the Applicant that it is difficult to know what to correct when one does not know what is on the file, section 35 of the Act is the only recourse for the parties to this inquiry. In such a situation, an applicant may provide clarification or correction on any personal information which the applicant thinks may be on the file. If the Applicant wishes to have a certain telephone number included or changed in the Maintenance Enforcement file, section 35 allows the Applicant to add it to the file.

[15.] When it is apparent that a correction under section 35 would respond to an applicant's concerns, as part of a public body's duty to assist, the public body should advise the applicant as soon as possible about section 35. Often such advice may eliminate the need for the parties to proceed any further in the request process.

Order:

[16.] Under section 68(2)(c) I find that the head of the Public Body correctly applied section 5(1) of the Act (disclosure prohibited or restricted by another enactment) to the records at issue. For this reason, I uphold the decision of head of the Public Body to refuse access to the records at issue.

Robert C. Clark
Information and Privacy Commissioner

Post Script:

Since the hearing of this inquiry, section 5(1) of the Act has been repealed and Alberta Regulation 200/95 to the Act has been amended. Section 15(1)(g) of the Regulation now provides that section 11(3) of the *Maintenance Enforcement Act* prevails despite the *Freedom of Information and Protection of Privacy Act*. The amendment would not affect my decision if this inquiry occurred now.