

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 98-003

February 12, 1998

FAMILY AND SOCIAL SERVICES

Review Number 1347

I. BACKGROUND

[1.] On July 31, 1997, the Applicant applied to Family and Social Services (the "Public Body") for access to the Applicant's personal information in the Applicant's child welfare and foster care records. Because there were approximately 2100 pages of records, many of which were duplicates, the Public Body and the Applicant agreed to narrow the Applicant's request to the following records: child welfare screenings/intakes, child welfare investigations, child welfare social worker progress reviews, psychological/psychiatric assessments/reports, request for Permanent Guardianship Order, Notice of Review reports, Notice of Investigation reports, and original photographs.

[2.] In providing the Applicant with access to the records, the Public Body severed certain information under section 5 (disclosure prohibited or restricted by other legislation) and section 16 (personal information of third parties) of the *Freedom of Information and Protection of Privacy Act* (the "Act"). However, in this inquiry, severing is not at issue.

[3.] The Applicant was of the opinion that the Public Body did not disclose two specific records that the Applicant believed should have been in the records the Applicant requested. The Public Body said it could not locate those records. On September 18, 1997, the Applicant requested that my Office review the matter. Mediation was authorized between the Applicant and the Public Body,

but was not successful. The matter was set down for inquiry on January 29, 1998.

[4.] At the conclusion of the inquiry, I issued an oral Order. The following sets out my written reasons for that Order.

II. RECORDS AT ISSUE

[5.] The records at issue are two “Review of Child’s Progress” reports, which the Applicant alleges are missing from the records. The Applicant believes that those progress reports were completed by a named social worker and placed on the Applicant’s child welfare file sometime between 1983 and 1985.

[6.] From having reviewed all the records provided to the Applicant, the Public Body believes that the named social worker was involved in the Applicant’s file only from April 1985 to August 1985. The Public Body did not know what happened to the social worker after that time. The Applicant says that the social worker moved to British Columbia after August 1985. As the Public Body and the Applicant settled on April 1985 to August 1985 as the time period in which the progress reports, if any, would have been completed, that is the time period discussed in this Order.

[7.] In this Order, I will refer to the two progress reports as “the Records”.

III. ISSUE

[8.] The only issue for this inquiry is the following:

Did the Public Body conduct an adequate search for the Records, such that the Public Body met its duty to assist the Applicant, as provided by section 9(1) of the Act?

[9.] Section 9(1) of the Act reads:

9(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

IV. DISCUSSION OF THE ISSUE

A. Applicant's argument

[10.] The Applicant believes that the Records must exist because of a conversation the Applicant had with the named social worker when the Applicant was 11 or 12 years of age. The Applicant says that, at that time, the social worker showed the records to the Applicant and told the Applicant that the file containing the Records could be accessed when the Applicant turned 18 years of age. The Applicant's evidence is that nothing in particular about the Records sticks out in the Applicant's mind, but what the Applicant was shown was different from other notes the Applicant also saw.

[11.] Since the Public Body did not find the Records, the Applicant concludes that the Public Body did not conduct an adequate search for the Records.

[12.] The Applicant recalls that particular period of time and the conversation with the social worker because the Applicant allegedly was in an abusive foster home. The Applicant says that the social worker was responsible for removing the Applicant from the foster home during that time. The Applicant believes that the social worker was the only person who truly helped the Applicant while the Applicant was in care.

[13.] The Applicant thinks that the Applicant's removal from the foster home occurred in August 1985. However, after reviewing the Public Body's computer screens of the search it conducted, as well as the other records provided to the Applicant, I believe that the removal date may have been late April or early May 1985, at which time the Applicant was made a temporary ward. It appears that the Applicant was placed in another foster home three months after the April or May 1985 removal.

[14.] The Applicant's evidence is also that the Applicant did not have much contact with the social worker after the social worker removed the Applicant from the foster home.

[15.] The Public Body's evidence is that at the relevant time, the Public Body's policy was that a "Review of Child's Progress" be completed every three months. Consequently, the Applicant thinks it unusual that there is no progress report for the April 1985 to August 1985 time period. The Applicant says that if there was any time at which a progress report should have been completed, the Applicant's removal from the foster home was one of those times. In the other records provided to the Applicant, I note two documents relating to this time period: a Notice of Review Report, signed by the named social worker, dated

May 2, 1985; and a letter to that social worker from a physician who examined the Applicant, dated May 3, 1985.

[16.] The Applicant says there was much secrecy at that time. The Applicant thinks that if the Public Body had known the circumstances of the Applicant's foster home placement before the removal, that would have been a black mark on the Public Body. The Applicant wonders whether the Records disappeared because the Public Body did not want to look bad. The Applicant thinks that if the Records were damaging, they may have been destroyed or misplaced conveniently.

[17.] The Applicant's witness gave evidence that the witness reported the abuse in the foster home. The witness recalls seeing something the social worker had written on foolscap. The Applicant believes that because there were reports of abuse, something had to have been written down.

B. Public Body's argument

[18.] The Public Body's position is that even though it did not find the Records, it conducted an adequate search for the Records. The Public Body gave evidence about its practice relating to a search for records, and its search procedure in this case.

[19.] The Public Body says that its Information and Privacy Branch's procedure on any records request, including this one, is to first search the name and date of birth of an applicant, using the Child Welfare Information System (a computer system), to determine the extent and location of the records requested. The Public Body provided a copy of the checklist used for this search. The Public Body says that although revised, the checklist and the method of conducting a search have been in place for 12 or 13 years. The Public Body also provided a copy of the computer screens generated by this search. The Public Body says that it maintains a card system as well as a computer system for locating files, and that files are cross-referenced.

[20.] The search revealed the district office that had five volumes of records relating to the Applicant's request. The district office sent those records to the Information and Privacy Branch.

[21.] The Information and Privacy Branch also contacted Record Services to obtain the Central Office records relating to the Applicant. The Public Body says this search was necessary because the Public Body was required to maintain a security back-up file at Central Office. The security back-up file consists of certain child welfare documents required to be kept by the Public Body, such as Review of Child's Progress reports, but not the entire file. Central Office records from 1978 to 1985 were microfilmed and stored at

Record Services. From 1985 onward, Record Services kept a paper file of the required documents.

[22.] The Public Body's evidence is that Record Services located the microfilm of the Applicant's records from 1978 to 1985, and the paper file of the Applicant's records from 1985 onward. Record Services made a copy of every document on the microfilm, and also made a copy of the microfilm itself, then sent the copies of the microfilmed documents, the copy of the microfilm, and its paper file, intact, to the Information and Privacy Branch.

[23.] The Information and Privacy Branch went through all the records from both the district office and Record Services, page by page, searching for what the Applicant requested.

[24.] The Public Body says that prior to this inquiry, a second page by page review was done by another of the Public Body's employees, with particular attention paid to the time frame of the Records. The Public Body found nothing further.

[25.] The Public Body's evidence is that the Records were not in the district office records or the Central Office records obtained from Record Services. The Public Body says that the Central Office records have all the progress reports that were located on the district office records, and no others. The Public Body notes that if the Records existed, it is unlikely they would be missing from both the district office and Central Office records of the Applicant's child welfare file.

[26.] The Public Body says that what is in the Applicant's child welfare file are 10 pages of "contact notes" written by the named social worker. Contact notes are generally written on a blank, lined sheet of paper with the child's name and file number on it. Contact notes document whatever is transpiring in the case, such as appointments and telephone calls, and are used to write the progress reports. The Public Body's evidence is that the Applicant did not request the contact notes. The Public Body says it helps applicants to narrow their requests, thereby reducing the cost of the request, by recommending that applicants request the progress reports, instead of the contact notes, which are handwritten and often hard to read. The Public Body made that recommendation in the Applicant's case, and the Applicant agreed.

[27.] The Public Body's evidence is that for the April 1985 to August 1985 time period, it could find no progress reports on the Applicant's child welfare file. The Public Body says there is a progress report dated February 18, 1985 (for the period July 10, 1984 to February 18, 1985), and another progress report dated April 30, 1986 (for the period November 1985 to May 1986), but not one for the period March 1985 to September 1985.

[28.] As previously noted, the Public Body's policy was that a Review of Child's Progress report be completed every three months. The Public Body says that if its three-month policy had been followed, there should have been a progress report completed by May 18, 1985 and another progress report completed by August 18, 1985. The Applicant says this would account for the two progress reports the Applicant believes are missing from the file.

[29.] However, the Public Body's evidence is also that the practice at that time for completing those progress reports varied from six months to a year because of high child welfare caseloads. The Public Body reasons that if the named social worker had followed the practice, the earliest at which the social worker would have completed a progress report would have been August 1985. The Public Body thinks it likely that the social worker did not complete a progress report during the social worker's five months' involvement with the Applicant's file. The Public Body also points to the Applicant's evidence that the social worker moved to British Columbia after August 1985.

[30.] The Public Body provided me with a summary of the Review of Child's Progress reports on the Applicant's child welfare file. That summary includes 17 progress reports spanning a 10-year period. The interval between those progress reports varies from 2 months to 17 months. From 1984 onward, I note that the average interval between progress reports is greater than 6 months.

[31.] In response to the Applicant's evidence about seeing the named social worker's progress reports, the Public Body says that it has never been the Public Body's policy or practice to show file documents, such as a Review of Child's Progress, to a client.

C. My decision

[32.] The parties spent much time in the inquiry discussing possible reasons why the Records are not on the Applicant's file. The Public Body offered some reasons as to why it was likely that the Records never existed, and the Applicant offered reasons suggesting why the Records might have been removed from the file. In both cases, the reasons are speculative, especially so because this matter occurred nearly 13 years ago.

[33.] I intend to comment briefly on those reasons because they have been raised. However, I want to make it clear that my comments have no bearing on the issue of whether the Public Body conducted an adequate search.

[34.] I do not doubt that the Applicant saw something relating to the Applicant's file during the time period in question. That was a traumatic time of life for the Applicant, and a time in which the Applicant was helped by the

named social worker. Even though the Applicant was only 11 or 12 years of age at the time, it is reasonable that the Applicant would remember some events from that time.

[35.] I have carefully reviewed all the progress reports provided to the Applicant, and note that from February 1985 to November 1985, there is a progress report completed by each of the Applicant's two other social workers, but not the named social worker. However, I also note five gaps relating to the progress reports generally: two time periods in which no progress reports were completed (including the time period involving the named social worker), and three time periods unaccounted for in progress reports that were completed. It would appear that the particular instance of missing information that the Applicant points to is not unique in the Applicant's file.

[36.] In my view, if the Records were ever on the Applicant's file, and if the Records might have been removed, the removal would have had to have occurred before copies of the Records were sent to Central Office and microfilmed or stored as a paper file. Otherwise, the Records that could not be found in the district office file would have been found in the Central Office file.

[37.] However, I am not able to conclude whether the Records ever did exist, nor do I find it necessary to decide that issue in order to decide whether the Public Body conducted an adequate search. A decision concerning an adequate search must be based on the facts relating to how a public body conducted its search in the particular case.

[38.] In this case, the facts are that the Public Body conducted the search for records according to the procedure it has been using to locate records for the past 12 or 13 years. The records relating to the Applicant's file were located in two places: the district office and Record Services. Those records were sent intact to the Public Body's Freedom of Information Branch.

[39.] Then the Public Body went through all those records, page by page, not once, but twice. The Public Body's evidence is that the Records are not on either version of the Applicant's file, nor were the Records likely to have been destroyed by the Public Body under its records retention schedule, which requires that such records be kept for 100 years from the date the file is closed.

[40.] I accept the Public Body's evidence as to the search it conducted, and that it did not find the Records.

V. ORDER

[41.] Therefore, I am satisfied that the Public Body has conducted an adequate search for the Records that were requested by the Applicant, and that the Public Body has thereby met its duty to assist the Applicant under section 9(1) of the Act.

[42.] However, I have requested, and the Public Body agreed, to go back and review the contact notes and any other information that would be relevant to the Applicant during the April 1985 to August 1985 time period, and provide that information, except third parties' personal information, to the Applicant. I have made this request so that the Applicant will know that those areas have been covered. I have also requested that the Public Body do its review in cooperation with this Office's Portfolio Officer responsible for Family and Social Services issues. The Public Body has agreed to my request.

[43.] Consequently, I order that the Public Body provide to the Applicant, within 30 days of the date of my oral Order, the additional records relating to the Applicant's time in care between April 1985 and August 1985, subject to severing.

[44.] I ask that the Public Body notify me, in writing, within that 30-day time period, that the Public Body has complied with this Order.

Robert C. Clark
Information and Privacy Commissioner