

ALBERTA
INFORMATION AND PRIVACY COMMISSIONER

ORDER 2000-006

May 3, 2000

ALBERTA CHILDREN'S SERVICES

Review Number 1713

I. BACKGROUND

[para. 1.] On August 12, 1999, the Applicant applied under the *Freedom of Information and Protection of Privacy Act* (the "Act") for records relating to the Applicant's placement and residency in a child welfare facility (the "Home") for a period of years during the 1950s (the "1999 Request"). The Applicant wrote: "I am requesting my Family and Social Services records while I was in [the Home] ...Questions I need answered if possible are: 1. Who placed me there and for what reason? 2. Why was I there for 4 yrs at such a young age and not with my mother? 3. Any other reasons pertinent to me."

[para. 2.] Although nothing turns on this, for the sake of completeness I note that the Applicant had previously applied for the same information in 1997 under the Act (the "1997 Request"). In response, the Applicant had received a one-page record found in a ledger kept by the Home, as the provincial Department of Family and Social Services, then responsible for provincial child welfare matters, had assumed custody and control of the Home's records when the Home closed during the 1990s. Certain information in the record provided in response to the 1997 Request had been severed under section 16 of the Act. The remaining information disclosed some of the Applicant's personal information, including the Applicant's name, date of birth, religion, the date the Applicant was received by the Home, the date the Applicant was discharged from the Home, and the child welfare workers involved in removing the Applicant to the Home. The Applicant did not request a review of the Public Body's response to the 1997 Request.

[para. 3.] To return to the history of the 1999 Request: on August 25, 1999, Alberta Human Resources and Employment wrote on behalf of Alberta Children's Services (the "Public Body") wrote to the Applicant in response to the Applicant's 1999 Request. The Public Body indicated that a further search for the requested records had been performed. However, the Public Body failed to turn up any records other than the record already produced to the Applicant. The Public Body supplied a second copy of the same record to the Applicant, and again severed information under section 16 of the Act.

[para. 4.] In a letter dated September 30, 1999, the Applicant requested a review of the Public Body's action under section 62 of the Act. On October 7, 1999, I wrote to the Applicant to confirm receipt of the request to review the Public Body's response. Mediation was authorized. In the mediation the Public Body disclosed the name of a child welfare worker involved in the Applicant's removal, but refused to disclose any more severed information. A written inquiry was held on March 22, 2000, in which representations were made in writing by the Applicant and the Public Body.

[para. 5.] This Order proceeds on the basis of the Act as amended on May 19, 1999.

II. RECORD AT ISSUE

[para. 6.] The record at issue is the single page of the Home ledger provided to the Applicant in response to the 1999 Request. The Applicant does not dispute the removal of non-responsive third party personal information from the record. The Applicant disputes only the severing of the third party personal information contained in the single line of the ledger that relates to the Applicant's stay at the Home. In this Order, I will refer to the one line in dispute on that single page as the "Record."

III. ISSUES

[para. 7.] There is one issue in this inquiry:

A. Did the Public Body correctly apply s. 16 of the Act to the Record?

IV. DISCUSSION OF THE ISSUE

A. Did the Public Body correctly apply s. 16 of the Act to the Record?

a) Positions of the Parties

(i) Applicant's Position

[para. 8.] The Applicant says that the Applicant is entitled to obtain the severed information, arguing in effect that the information at issue is the Applicant's personal information. As the Applicant wrote: "[t]his simple request is all about me!" The Applicant made no submission regarding the Public Body's interpretation and application of section 16, or which party bears the burden of proof under the Act.

(ii) Public Body's Position

[para. 9.] The Public Body argues that all of the severed information is third party personal information under sections 1(1)(r) and 1(1)(n) of the Act. It argues that it properly applied the statutory presumption that disclosure would be an unreasonable invasion of third party privacy under either section 16(4)(g)(i) or (ii) of the Act, after reviewing all relevant considerations under s. 16(5) of the Act. The Public Body says that it identified relevant considerations regarding harm under section 16(5)(e),(f) and (h) of the Act that weighed in favour of not disclosing third party personal information. It says that the information at issue was originally supplied in confidence, and that disclosure would likely unfairly expose to harm the reputation and psychological well-being of the third party.

[para. 10.] The Public Body argues that the Applicant failed to present any evidence or argument to show that disclosure would not be an unreasonable violation of third party personal privacy. Therefore, the Public Body was justified in refusing to disclose the severed information to the Applicant.

(b) Analysis

[para. 11.] The Public Body's argument that it can rely on the presumption available under either section 16(4)(g) (i) or (ii) rests upon the view that the information it severed is personal information of a third party under the Act. Therefore, I must first determine if the severed information is personal information of a third party under the Act. If it is, I must then proceed to examine the section 16 arguments.

(i.) Does the Record contain “personal information”?

[para 12.] “Personal information” is defined in section 1(1)(n) of the Act. The relevant provision reads:

1(1) In this Act ...

(n) ‘personal information’ means recorded information about an identifiable individual, including

(i) the individual’s name...

(ii) the individual’s race, national or ethnic origin, colour or religious or political beliefs...

(iii) the individual’s age, sex, marital status or family status...

Under section 1(1)(n) of the Act personal information includes any recorded information about an identifiable individual, including an individual’s name, home address, sex, age, religion, and family status. Having reviewed the unsevered Record, I find that the Record contains personal information.

(ii.) Would disclosure of the personal information be an unreasonable invasion of a third party’s personal privacy?

[para. 13] Section 1(1)(r) defines a “third party as: “a person, a group of persons or an organization other than an applicant or a public body.”

[para. 14.] The relevant provisions of section 16 read:

16(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy.

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party’s personal privacy if...

(g) the personal information consists of the third party’s name when

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party

[para. 15.] I have previously considered section 16 in other Orders. Section 16(1) is a mandatory (“must”) section of the Act that directs the head of a Public Body to refuse to disclose the personal information of a third party if that disclosure would unreasonably invade the privacy of

that third party. Sections 16(4)(g)(i) and (ii) each create a statutory presumption of unreasonable privacy invasion.

[para. 16.] The information the Public Body severed consists of a third party's name and other personal information of that third party. Disclosure of the third party's name by itself, or in the context of that other severed information, would entail disclosure of personal information of a third party. Therefore I find that the Public Body correctly determined under either of section 16(4)(g)(i) or (ii) that disclosure of the severed information would be presumed to be an unreasonable invasion of a third party's personal privacy under the Act.

(iii.) What relevant circumstances did the Public Body consider under section 16(5)?

[para. 17.] The relevant provisions of section 16(5) read:

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether...

(e) the third party will be exposed unfairly to financial or other harm,
(f) the personal information has been supplied in confidence,

...

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant

[para. 18.] When making a determination if a presumption found in section 16(4) applies, the head of a public body must look to all relevant considerations, including those set out in section 16(5) of the Act. I accept the Public Body's argument under section 16(5) that unilateral disclosure of the severed information could, in the circumstances, unfairly harm the reputation and psychological well being of the third party to whom it pertains. I noted in particular that the Applicant indicated that at least one member of the Applicant's immediate family did not want to talk to the Applicant about the Applicant's stay at the Home.

[para. 19.] In Order 98-007, which concerned the disclosure of child welfare records from the 1930s, I said that it is important to be sensitive to the various harms that could still flow to the lives and reputations of persons who were involved in the child welfare system, particularly where the involvement happened several decades ago. The same reasoning applies here.

[para. 20.] I take notice that in the 1950s in Canada, personal involvement in the child welfare system was often viewed as a shameful thing, to be hidden from public view if possible. This was the case even when a child had to be surrendered to authorities because of poverty or illness, and not as a result of a child's abuse or neglect. I will not presume that the passing of time erases the sense of shame and embarrassment for the people who were involved in the child welfare system decades ago. In my view, the third party here would be exposed unfairly to harm if the personal information at issue was disclosed. I have no evidence that there are any circumstances weighing in favour of disclosing personal information of the third party found in the Record.

[para. 21.] While finding that the Public Body acted correctly in severing the record under section 16, I must note that the Public Body failed to properly state the test for harm under the Act in its submission to me. When addressing the harm element under section 16(5), the Public Body submitted that it "is not in a position where it can assume that no harm would ensue [from disclosure]. 'Harm' could include damage to the reputation, emotional and psychological well-being of the individual to whom it pertains." In Order 96-003, I stated that the proper general test for harm under the Act is whether the party advancing this argument can show that there is a reasonable expectation of harm flowing from the disclosure of the specific information at issue. However, as I indicated, I find that under the proper test the s. 16(5) (e) and (h) harms are established here.

[para. 22.] As the Public Body properly concluded that the relevant circumstances weigh in favour of not disclosing the third party's personal information, the burden of proof shifts to the Applicant to prove that disclosure of the information would not be an unreasonable invasion of third party privacy.

(iv.) Did the Applicant meet the burden of proof under section 67(2)?

[para. 23.] The burden of proof in this inquiry is set out in section 67:

67(1) If the inquiry relates to a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part of the record.

67(2) Despite subsection (1), if the record or part of a record that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

[para. 24.] I have examined the evidence before me and find that the Applicant has not provided anything to support the argument that disclosure of the severed information would be justified under the Act.

[para. 25.] Although I sympathize with the Applicant's anguish about the lack of information regarding a difficult period in the Applicant's childhood, I cannot agree that the Applicant's 1999 Request is, as the Applicant put it, simply about the Applicant. Child welfare cases invariably involve a number of individuals. Each of those individuals has privacy rights that are protected by the Act. The legislation does not permit a public body to release the personal information of third parties without sufficient justification. This principle protects the Applicant as much as those involved in the Applicant's placement in the Home.

(v.) Conclusion under section 16

[para. 26.] I conclude that the Public Body correctly determined that disclosure of the third party's personal information is presumed to be an unreasonable invasion of the third party's personal privacy. Therefore, the Public Body correctly applied section 16 to the record. Because the Applicant has failed to present anything that would support disclosing the severed information, I find that the Applicant has failed to discharge the burden of proof lying on the Applicant under section 67(2) of the Act. Accordingly, I find the Public Body properly refused to disclose the severed information to the Applicant.

V. ORDER

[para. 27.] Under section 68 of the Act, I make the following order:

1. The Public Body correctly applied sections 16((1),(4)(g)(i) and (ii) of the Act to the Record. I therefore uphold the Public Body's decision to refuse the Applicant access to the personal information of third parties contained in that record. I order the head to refuse to disclose the third party personal information in the Record.

Robert C. Clark
Information and Privacy Commissioner

