

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2025-17

April 30, 2025

JUSTICE

Case File Number 026153

Office URL: www.oipc.ab.ca

Summary: An individual (the Applicant) made an access request to Justice and Solicitor General (now Justice) (the Public Body) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to Justice's Maintenance Enforcement Program.

Justice located responsive records but denied access to them based on a confidentiality provision in the *Maintenance Enforcement Act (MEA)* (section 15(1)) in conjunction with section 16(b) of the *Freedom of Information and Protection of Privacy Regulation (FOIP Regulation)*.

The Applicant asked this office to review Justice's decision to withhold the responsive records under the *MEA* and *FOIP Regulation*. Following the review, the Applicant requested an inquiry.

The Adjudicator found that section 15(1) of the *MEA* and 16(b) of the *FOIP Regulation* did not apply and ordered Justice to issue a new decision to the Applicant under the *Act*.

Statutes Cited: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, sections 5, 11, 27, 72, 89; *Freedom of Information and Protection of Privacy Regulation*, Alta. Reg. 200/95, s. 16(b); *Maintenance Enforcement Act*, R.S.A. 2000. c. M-1, section 15(1)

Orders Cited: **AB:** Orders 96-001, 97-012, 99-034, 2000-002, F2005-007; **ON:** Order PO-3546

I. BACKGROUND

Justice's Maintenance Enforcement Program

[para 1] Justice's Maintenance Enforcement Program (MEP) enforces maintenance obligations awarded in court orders and certain agreements by collecting payments from payors (those who are required to pay maintenance) and forwarding them to recipients (those who are awarded maintenance payments).

Request

[para 2] The Applicant made an access request under the *Freedom of Information and Protection of Privacy Act* ("the *Act*") to Justice and Solicitor General (now Justice) for "[MEP] policies and procedures related to enforcement action as well as the statement of finance process" for the period from December 1, 2021 to January 17, 2022.

Decision

[para 3] Justice responded to the Applicant by:

- directing her to publicly available information for the statement of finance, and
- denying access to the remaining information based on a confidentiality provision in the *Maintenance Enforcement Act (MEA)* (section 15(1)) in conjunction with section 16(b) of the *Freedom of Information and Protection of Privacy Regulation (FOIP Regulation)*.

[para 4] The Applicant asked our office to review Justice's decision to withhold information based on the confidentiality provision.

II. RECORDS AT ISSUE

[para 5] Justice provided our office with 292 pages of records. These records consist of policies and procedures that are used by Justice in carrying out its duties under the MEP. Justice explains that it does publish policies and procedures used in its MEP, but that the records at issue consist of internal policies and procedures that are not available to the public.

III. ISSUES IN THE INQUIRY

[para 6] The issue as stated in the Notice of Inquiry is:

Does section 5 of the *Act* (relationship to other Acts) apply to the information in the records?

[para 7] The answer to this issue will determine whether Justice properly interpreted and applied section 16(b) of the *FOIP Regulation* in concert with section 15(1) of the *MEA* when it responded to the Applicant's access request.

IV. DISCUSSION OF ISSUES

Section 5 of the *Act*: Relationship to other Acts

[para 8] Section 5 deals with situations where there may be a conflict or inconsistency between the *Act* and other legislation. In other words, what happens when, for example, a person is entitled to a record under the *Act*, but another statute says the record is confidential?

[para 9] Section 5 reads:

If a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless

(a) another Act, or

(b) a regulation under this Act

expressly provides that the other Act or regulation, or a provision of it, prevails despite this Act.

[para 10] Section 5 is sometimes described as a “paramountcy” provision that determines whether the *Act* applies or some other legislative provision applies instead of the *Act*.

[para 11] Previous orders of this office under the *Act*, such as Orders 2000-002 and F2005-007, have established the approach for analyzing section 5:

- (i) Does the information fall within another statutory provision that expressly provides that the other statute prevails despite the *Act*, or does the *FOIP Regulation* expressly provide that another statute prevails despite the *Act*?
- (ii) If yes, is there an inconsistency or conflict between a provision of the *Act* and the other statutory provision?

[para 12] Previous orders of this office have also said that the terms “inconsistent” or “in conflict with” refer to a situation where two legislative enactments cannot stand together, that is, compliance with one law involves breach of the other; see, for example, Orders 99-034, 2000-002 and F2005-007.

[para 13] If there is an inconsistency or conflict, the other statutory provision governs the disclosure of the information and the *Act* does not apply. If there is no inconsistency or conflict, the *Act* does apply.

The confidentiality provision in the *MEA* and reference to it in the *FOIP Regulation*

[para 14] Section 15(1) of the *MEA* reads:

15(1) Information received by the Director [of Maintenance Enforcement] under [the MEA] may be used only for the purpose of enforcing a maintenance order and is otherwise confidential.

[para 15] Section 16(b) of the *FOIP Regulation* states that section 15(1) of the *MEA* prevails over the *Act*.

Issue: Does the information fall within another statutory provision that expressly provides that the other statute prevails despite the *Act*, or does the *FOIP Regulation* expressly provide that another statute prevails despite the *Act*?

[para 16] Justice submits that the information in the records is used for the purpose of enforcing maintenance orders and, therefore, the records constitute information “received by” the Director under the *MEA*.

[para 17] Justice relies on Order 96-001. In that case, the applicant requested access to records in a specific file pertaining to him. The adjudicator stated:

In deciding whether section 5 of the [*Act*] and section 11 [now section 15(1)] of the [*MEA*] require the head of the public body to refuse access, it is necessary to consider whether section [15(1)] must necessarily be read to include all records in a maintenance enforcement file.

[...]

Certainly, if a debtor knew of the contents of the Director’s files, particularly information generated by the Director or his staff as to how payment might be enforced, it could enable the debtor to thwart or otherwise avoid the Director’s efforts at collection. Similarly, if this information was available to any member of the public, it could become known to the debtor. This could frustrate the very purpose of the [*MEA*]. I therefore conclude that section [15(1)] of the [*MEA*] must be intended to apply to all records pertaining to an active collection file which are in the possession of the Director.

[para 18] Here, the Applicant is not seeking records contained in a particular enforcement file but, rather, the policies and procedures used by the Director and their staff in carrying out their duties under the legislation.

[para 19] Similarly, in Orders 97-012 and F2005-007, this office found that section 15(1) of the *MEA* applied to information in an individual’s file held by the Director.

[para 20] In the three cases cited above, the applicant was requesting information from a specific file, and that information was “received by” the Director. In my view, this case is distinguishable from those. The records in this case, consisting of Justice policies and procedures, were generated by, or created by, the Director, rather than *received by* the Director, and were not derived from a specific enforcement file.

[para 21] The Applicant makes this same point, stating:

...The records I requested were **not received by** the Director, rather it was **created by** the Director for the purpose of administering the MEP program. Therefore, it is my opinion that this provision does not apply to my request for access... [Applicant's emphasis]

[para 22] Justice in effect confirms that the records were created by the Director, in the following statement:

The majority of policy decisions applied in the development and approval of [the records] have been based on information received by the Director from legal counsel to determine administrative authority and to comply with legislation and case law that would guide court orders.

[para 23] In other words, the Director would have created the records based on advice and information received from internal Justice staff.

[para 24] The records in question were not received by the Director. Therefore, I find that section 15(1) of the *MEA* and section 16(b) of the *FOIP Regulation* do not apply. Accordingly, there is no conflict or inconsistency between the *Act* and another statutory provision as referred to under section 5 of the *Act*.

[para 25] As a result, I will order Justice to issue a decision to the Applicant under the *Act* either granting access in whole or in part, or withholding the records in whole or in part based on any applicable exemptions in sections 16-29 of the *Act*.

Other matters

[para 26] I note that in its submissions Justice explains the potential harm that it believes could arise from making the records publicly available. In particular, Justice states:

The instructions to staff also specify decisions that can be made based on the Director's discretionary authority to remove enforcement actions or, in the case of payments owing, to make a temporary arrangement for less than the ongoing amount of support. If these procedural steps were disclosed publicly, it would allow payors/debtors to use this information to manipulate the administration of their files to limit or avoid their court-ordered support obligations.

[para 27] My finding that the *Act* applies to these records should not be construed as a finding that the records are not exempt. It may well be that one or more exemptions could apply. I note that in a case under Ontario's access legislation, the Information and Privacy Commissioner of Ontario found that enforcement policies of a body similar to the Director were exempt under the Ontario equivalent to the section 27 privilege exemption under the *Act* [see Ontario IPC Order PO-3546].

[para 28] The Applicant submits that Justice should disclose the records due to the operation of section 89 of the *Act*. That section requires public bodies to make available to the public any “manual, handbook or other guideline used in decision-making processes that affect the public.” That section also states that public bodies may withhold information that it would be authorized to refuse to give access to under the *Act*.

[para 29] My understanding is that Justice already complies with this requirement by publishing online various *MEA* policies and procedures it considers to be non-confidential. The question of whether it is authorized to refuse to disclose the records at issue is a matter that may be dealt with by this office should Justice decide to claim any exemptions in the access decision it will make in response to this Order, and should the Applicant request a review of that decision.

V. ORDER

[para 30] I make this Order under section 72 of the *Act*.

[para 31] I order Justice to issue an access decision to the Applicant under Part 1 of the *Act* in accordance with the time provisions in section 11 of the *Act*. Justice should consider the date it receives this Order as the day of receipt of the request.

[para 32] I order Justice to inform me within 50 days of receiving this Order that it has complied with it.

David Goodis
External Adjudicator
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