



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-936

Appeal P-9400795

Ministry of Community and Social Services



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Community and Social Services (the Ministry) received a request for access to information concerning an investigation conducted by (1) a named Children's Aid Society (the C.A.S.) and (2) a Ministry employee, into an incident involving the requester. The requester is employed by the Ministry at a detention centre for young offenders. As a result of this incident, a disciplinary action, in the form of a suspension, was taken against the requester. He has filed a grievance objecting to the suspension he received.

In response to the first part of the request, the Ministry initially issued a decision indicating that no records existed. The Ministry advised the requester to contact the C.A.S. directly as it is not an institution covered by the provisions of the Act. With respect to the second part of the request, the Ministry denied access to the investigation records in their entirety pursuant to the law enforcement exemption in section 14(1)(b) of the Act.

The requester appealed these decisions.

During mediation, the scope of the appeal was limited to the findings of the C.A.S. investigation and the pages of the records related to the Ministry investigation as described in Appendix "A" to this order. The appellant also confirmed that he was not seeking access to the name and address of the recipient of Record 3, or the personal information of another individual where it appears in Record 7. Record 6 also contains some references to this individual. The appellant still maintains that more records should exist which are responsive to both parts of his request. Thus, the issues to be addressed in this order are access to the investigation records and the reasonableness of the Ministry's search for records responsive to both parts of the request.

A Notice of Inquiry was sent to the appellant and the Ministry. As a number of the records appeared to contain the appellant's personal information, the parties were asked to comment on the application of section 49(a) of the Act. Representations were received from both parties.

DISCUSSION:

REASONABLENESS OF SEARCH

In his representations, the appellant has provided information to support his position that records containing the findings of the C.A.S. investigation should be in the custody of the Ministry.

He states that individuals at the Ministry's area office requested that the C.A.S. investigate the incident in which he was involved. As part of that investigation, the C.A.S. investigator interviewed him on October 31, 1994. The appellant advises that the investigator told him that she needed to interview him prior to submitting her report to the Ministry. His submissions go on to explain that:

... After this report was finished the Ministry would have an opportunity to review the finding of the C.A.S. investigation. This report would also have been reviewed at the

Deputy Minister level as this issue was a contentious issue. This report would have been reviewed by [named Ministry employees] and at the Deputy Minister's office.

In its submissions, the Ministry states that it was required to report the incident in question to the C.A.S. pursuant to the Child and Family Services Act. It further states that it was the responsibility of the C.A.S. to investigate the allegations.

The Ministry has also provided a copy of an affidavit sworn by the manager of the Area Office. The affidavit explains that three Ministry employees in this office were questioned about the existence of a copy of the C.A.S. investigation and the internal Ministry investigation documents in their files. They were also asked whether such records might exist anywhere else in the Ministry area office or program area in which the incident occurred. These Ministry employees did not have a copy of the C.A.S. document. The Ministry concludes:

Files were not maintained. This was an independent investigation by the Children's Aid society. The investigation by the Children's Aid Society is the property of the Children's Aid Society and not of the Ministry of Community and Social Services.

As the appellant emphasizes in his submissions, and as confirmed by the Ministry, the only location in which searches for the C.A.S. investigation findings were conducted was the Ministry's area office. Given the nature of the incident and the information provided by the appellant, I am not satisfied that the Ministry's search for this information was reasonable in the circumstances. It appears to me that there are many other Ministry departments and/or offices and individuals who may have a copy of this record in their custody. Accordingly, I am ordering the Ministry to conduct another search for these records.

As far as the records related to the Ministry investigation are concerned, I am satisfied that, based upon all the requests the appellant has submitted and the materials which have either been disclosed to him or denied pursuant to the Act, the Ministry has conducted reasonable searches to locate this information.

LAW ENFORCEMENT/DISCRETION TO DENY ACCESS TO THE REQUESTER'S PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

I have reviewed the records at issue and find that they all contain the personal information of the appellant. In addition, the name and address of the recipient of Record 3, and references to a youth in the detention centre in Records 6 and 7 constitutes the personal information of these individuals. However, as I have noted this information is not at issue in this appeal.

Many of the records also contain information related to individuals in their employment capacities. This is not the personal information of these Ministry employees. Thus, it is only the personal information of the appellant that is at issue in this appeal.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(a) of the Act, the institution has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. One of these exemptions is that contained in section 14 of the Act.

In its decision, the Ministry claimed that all the records are exempt pursuant to section 14(1)(b) of the Act as they fall within the definition of "law enforcement" and relate to an ongoing grievance proceeding which has not yet been resolved.

Section 14(1)(b) of the Act states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

In order for a record to qualify for exemption under section 14(1)(b), the record must relate to a "law enforcement" proceeding which is defined in section 2(1) of the Act as follows:

"law enforcement" means,

- (a) policing;
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b).

It has been established in a number of previous orders that the definition of "law enforcement" found in this section does not extend to internal disciplinary matters (Orders 170, 182 and P-377). In this case, all of the records relate to the grievance filed by the appellant objecting to the disciplinary measures imposed by the Ministry as a result of the incident which occurred while the appellant was engaged in his employment responsibilities. The records consist of documentation recording notes taken at meetings after the grievance was filed and the Ministry's decision on whether the grievance should be accepted or denied. There is no suggestion of any conduct which may be "unlawful" in the sense that it may constitute conduct that is proscribed by a statute or a regulation. Nor has the Ministry provided me with any information indicating the nature of the proceedings before a court or tribunal which could subsequently occur.

Accordingly, I find that the definition of "law enforcement" has not been satisfied. Therefore, the Ministry

may not rely on section 14(1)(b) of the Act to exempt the records from disclosure. As this section does not apply to the records, I need not consider the application of section 49(a) of the Act.

ORDER:

1. I order the Ministry to disclose all the records to the appellant with the exception of the name and address of the recipient of Record 3 and the personal information of the other individual where it appears in Records 6 and 7.
2. I order the Ministry to conduct a search for any records containing the results of the C.A.S. investigation into the incident involving the appellant. This search should include, but not be limited to, any records and files located at the detention centre at which the appellant is employed as well as the Deputy Minister's office and the offices of any other Ministry employees or officials who are responsible for dealing with "contentious" issues.
3. I order the Ministry to advise the appellant in writing of the results of the searches referred to in Provision 2 within thirty (30) days of the date of this order.
4. In the event that the Ministry locates additional responsive records as a result of the searches referred to in Provision 2, I order the Ministry to render a final decision on access to the records in accordance with the provisions of sections 26 and 29 of the Act, treating the date of this order as the date of the request, without recourse to a time extension under section 27.
5. I order the Ministry to provide me with a copy of the correspondence referred to in Provisions 3 and 4 (if applicable), within thirty-five (35) days after the date of this order. This should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto Ontario, M5S 2V1.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ June 6, 1995

APPENDIX "A"

INDEX OF RECORDS AT ISSUE

Appeal Number P-9400795

RECORD NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED	DECISION ON RECORD
1 (pages 4-6)	Stage II Grievance meeting Report, dated November 29, 1994	14(1)(b)	Disclose in full
2 (pages 11-12)	Report dated November 29, 1994 on Management Position re: Stage II Grievance	14(1)(b)	Disclose in full
3 (page 17)	Letter dated September 19, 1994 from Family Court Clinic regarding incident	14(1)(b)	Disclose in part
4 (pages 39-42)	Facsimile cover page, dated November 1, 1994, from Ministry counsel, with attached legal opinion, to Ministry Human Resources Co-ordinator re: conflict of interest	14(1)(b)	Disclose in full
5 (pages 47-51)	Undated Handwritten Notes re: Stage II Grievance Meeting	14(1)(b)	Disclose in full
6 (pages 65-70)	Handwritten notes of meeting with appellant, dated October 7, 1994	14(1)(b)	Disclose in part
7 (pages 71-75)	Handwritten notes of meeting with appellant, dated October 3, 1994	14(1)(b)	Disclose in part