



Information and Privacy
Commissioner/Ontario

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

ORDER P-1350

Appeal P_9600376

Ministry of Community and Social Services



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NATURE OF THE APPEAL:

The Ministry of Community and Social Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the contents of any files in the Ministry's custody regarding a named private adoption agency (the agency) and its two principals (the principals). The request was made on behalf of the principals (the requesters) by their counsel. Counsel stated that the agency is involved in facilitating foreign adoptions and indicated that he believed that information about the requesters and/or the agency can be found in that part of the Ministry which is involved in regulating the adoption process in Ontario.

The Ministry located records responsive to this request and provided partial access to them. The Ministry denied access, in full or in part, to the remaining records on the basis of the following exemptions under the Act:

- relations with other governments - section 15
- solicitor-client privilege - section 19
- invasion of privacy - section 21(1).

The requesters (now the appellants) appealed this decision.

During mediation, the appellants indicated that they were not pursuing those portions of the records which severed only the names of individuals.

This office provided a Notice of Inquiry to the appellants and the Ministry. Because the records appeared to contain the personal information of the appellants, the Appeals Officer raised the application of sections 49(a) (discretion to refuse requester's own information) and 49(b) (invasion of privacy). Both parties submitted representations in response to this Notice.

In their representations, the appellants indicate that they are no longer pursuing access to any records or parts of records the disclosure of which would constitute an unjustified invasion of privacy. Further, the appellants clarify that the focus of their interest in the records is on communications made to foreign authorities, and in particular, to Russia. In this regard, the appellants state that the focus is not on documentation **received from** foreign governments but rather documents **sent to** them. However, because other records may contain information which would reveal the content of these communications, the appellants indicate that they continue to pursue all records for which section 15 has been claimed.

As a result of the appellants' clarifications, the records at issue in this appeal have been significantly narrowed, and consist of the following:

- the severed portions of three interoffice memoranda from the Co_ordinator, Crown Ward and Adoption Services Unit (the Co_ordinator), dated July 26, 1996, July 22, 1996 and January 25, 1996, respectively (Records 7, 8 - 9 and 17);

- facsimiles and letters to and from the National Adoption Desk (the NAD), Human Resources Development Canada (Records 23, 24, 25 - 27, 47, 48, 49, 56 - 66 and 67);
- a Ministry memorandum regarding a meeting on November 4, 1988 between the Ministry and officials of the Government of Canada and another foreign government, dated November 8, 1988 (Records 95 - 96);
- notes regarding the issues to be discussed at the November 4, 1988 meeting (Record 97);
- notes made by Ministry staff at the November 4, 1988 meeting (Records 98 - 99);
- notes of a telephone call between a Ministry employee and an official of a foreign government, dated September 28, 1988 (Record 106);
- a Briefing Note (undated) regarding one of the appellants (the severed portion of Record 115, and Record 116).

As a result of the appellants' clarification, the remaining issues to be determined are whether the records at issue are exempt under sections 15 and 49(a) of the Act.

DISCUSSION:

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/RELATIONS WITH OTHER GOVERNMENTS

Under the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. In reviewing the records, I find that they all contain references to the appellants and this information qualifies as their personal information.

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. Section 49(a) reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, **15**, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information. [emphasis added]

The Ministry claims that all of the records at issue are exempt under sections 15(a) and/or (b). These provisions provide:

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

- (a) prejudice the conduct of intergovernmental relations by the Government of Ontario or an institution;
- (b) reveal information received in confidence from another government or its agencies by an institution;

and shall not disclose any such record without the prior approval of the Executive Council.

In their representations, the appellants refer to a letter dated July 22, 1996 from the Co-ordinator to their counsel which they attached to their submissions. They indicate that this letter confirms that "the Ministry has at no time composed or transmitted any letter etc. to Russian authorities that even mentions [the agency or the appellants]". The appellants submit that by writing this letter, the Ministry has waived its right to "protection" [under the Act] with respect to any communications with the Russian authorities. Moreover, the appellants assert that only by reviewing the communications in the records can the Co-ordinator's statement be "proven correct".

I have reviewed all of the records at issue and the letter written by the Co-ordinator. In my view, the assertions made in this letter have no relevance with respect to whether or not section 15 applies to the records at issue.

The appellants also indicate that the Ministry's role with respect to adoptions finalized in foreign jurisdictions is minimal. As such, the appellants assert that there is little in the way of direct governmental relations between the Ministry and foreign governments in this regard. Given this restricted role, the appellants argue that disclosure of communications between the Ministry and foreign authorities could not prejudice intergovernmental relations.

In its representations, the Ministry provides some background information regarding international adoptions. It has attached an excerpt from its International Adoption Booklet (the Booklet) in order to place the circumstances of this appeal in context. The Booklet describes the Ministry's role in international adoptions and its relationship with the NAD and other governments in the adoption process. In addition, it details issues and concerns that prospective adoptive parents should be aware of before initiating adoption procedures. In my view, this context is important and I will, therefore, describe this background information in detail.

The Ministry indicates that its Adoption Unit is responsible for various functions with respect to international adoptions, but that the extent of its involvement depends on whether the adoption is finalized inside or outside of the province. By law (the Child and Family Services Act), international adoptions finalized in Ontario must be handled by individuals or agencies licensed by the province and it is an offence for anyone not licensed to accept payments with respect to such cases.

However, regarding international adoptions finalized outside of the province, Ontario legislation does not currently require that adoption facilitators, such as the appellant, be licensed and the Ministry has no authority to regulate them. The Ministry advises that the Hague Convention on Intercountry Adoption (1993) will be implemented in Canada on April 1, 1997. As a result, provinces ratifying the Convention will be required to license and regulate international adoption agencies. The Ministry indicates that policy review regarding the implications of the Convention are currently underway in Ontario.

The Ministry notes that, although it currently has no authority over out of province adoptions, it does receive complaints about such facilitators from the public, adoption professionals and other governments. The concerns regarding the difficulties in monitoring and potential for abuse in international adoptions are reflected in the Booklet published by the Ministry, which cautions prospective adoptive parents as follows:

Adoptive applicants should be aware that it may be difficult for the Ministry to hold independent facilitators accountable for any mistakes which are made in the adoption process if the adoptions are completed abroad. While the Ministry receives complaints about some independent facilitators, there may be little or no action possible to correct the problem unless the facilitator has broken federal or provincial laws...

The Ministry indicates that it has agreements with other governments for the sharing of information regarding international adoptions, and stresses the importance of maintaining records of complaints, details of investigations and discussions in confidence. The Ministry expresses concern that disclosure of the information in the records would jeopardise the agreements it has with other governments for the sharing of confidential information concerning international adoptions. The Ministry concludes:

In a sensitive and complicated field such as international adoption, involving the potential for fraud and misrepresentation, and the victimization of children and adoptive parents, it is vital for government child welfare authorities to retain and share information of a confidential nature ...

With this background information in mind, I will now consider whether the exemption in section 15 applies to the records and parts of records at issue.

I will first consider the application of section 15(b) to the severed portions of Records 7, 8 - 9, 17, and Records 23 - 27, 47 - 49, 65 - 67, 106 and 115 - 116.

For a record to qualify for exemption under this section, the Ministry must establish that:

1. the records reveal information received from another government or its agencies; **and**
2. the information was received by an institution; **and**
3. the information was received in confidence.

[Order 210]

The Ministry submits that the severed portions of Records 7, 8 - 9 and 17, which are Ministry generated documents, contain discussions which would reveal confidential information provided to the federal government from several other foreign governments. The Ministry adds that the federal government provided this information in turn to the Ministry.

The Ministry indicates that Records 23 - 27 and 47 - 49 are written communications of a confidential nature, from the NAD to the Ministry, which contain confidential information from Canadian Embassies abroad and directly from other foreign governments. Record 65 - 67 consists of a confidential communication from the NAD to a foreign government, a copy of which was then sent to the Ministry. The Booklet describes the NAD as a "federal agency which establishes and co-ordinates intercountry adoption placements". The Booklet notes that international adoptions processed through the NAD have similar safeguards for the public as Ontario adoptions.

The Ministry states that Record 106 contains the minutes of a telephone conversation between a Ministry employee and a representative of a foreign government. The Ministry submits that disclosure of this record would reveal confidential information provided by the representative.

Finally, Record 115 - 116 is a briefing note which outlines information received by the Ministry from a Canadian Embassy located in a foreign country.

Having reviewed the records and representations, in my view, the Ministry has provided sufficient evidence to establish that:

- Records 23 - 27, 47 - 49 and 65 - 67 were all prepared either by the federal government or one of its agencies (the NAD or a Canadian Embassy) or other foreign governments, and received by Ministry officials on a confidential basis. Accordingly, I find that the requirements of section 15(b) of the Act have been satisfied, and these records qualify for exemption under this section.
- The severed portions of Records 7, 8 - 9, 17, and Records 106 and 115 - 116 are records prepared by Ministry officials. Applying the same reasoning outlined above with respect to the first group of records, I find that disclosure of these records and portions of records would reveal exempt information. Therefore, the severed portions of Records 7, 8 - 9, 17, and Records 106 and 115 - 116 also qualify for exemption under section 15(b) of the Act.

With respect to section 15(a) of the Act, in order for a record to qualify for exemption under this section, the Ministry must establish that:

1. the relations must be intergovernmental, that is relations between an institution and another government or its agencies; and

2. disclosure of the records could give rise to a reasonable expectation of prejudice to the conduct of intergovernmental relations.

[Order P-908]

The Ministry claims that this section applies to a number of the records at issue in this appeal. However, as I have found that all of the records except Records 95 - 99 qualify for exemption under section 15(b), I will consider the application of this section to Records 95 - 99 only.

The Ministry's representations indicate that the records concern relations between the Ontario government, the federal government and other foreign governments. I agree, and find that the first requirement of the section 15(a) exemption claim has been established.

The Ministry states that these records contain information relating to a meeting between the Ministry and other governments at which proposed policy for establishing intergovernmental protocols was discussed. The Ministry submits that disclosure of these deliberations or records which would reveal the subject matter of the deliberations could reasonably be expected to prejudice the future conduct of relations between these different governmental bodies.

Having reviewed these representations and the records, I find that the Ministry has provided sufficient evidence to establish that disclosure of Records 95 - 99 could give rise to a reasonable expectation of prejudice to the conduct of intergovernmental relations. Therefore, I find that these records qualify for exemption under section 15(a) of the Act.

I have found that all of the records and parts of records at issue qualify for exemption under section 15. Accordingly, they are all exempt under section 49(a) of the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

February 24, 1997