Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-2679

Appeal PA07-87

Ministry of the Attorney General

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BACKGROUND:

The Office of the Children's Lawyer (the Children's Lawyer) is the branch of the Ministry of the Attorney General (the Ministry) that is responsible for the protection of the civil legal interests of children. The Children's Lawyer handles cases relating to property rights, primarily civil litigation and estate matters.

The Children's Lawyer will also become involved on behalf of a child in custody and access matters under the *Divorce Act* or the *Children's Law Reform Act* when so ordered by the court. The court may request that the Children's Lawyer provide services to a child pursuant to section 89(3.1) or section 112 of the *Courts of Justice Act*, R.S.O. 1990, c. 43. Such services generally consist of legal representation (with or without social work assistance) or a social work investigation and report conducted by a clinical investigator.

To fulfil this mandate, the clinical investigator functions independently of all other parties to the proceedings. In preparing a report, the investigator interviews the parties and the child and will speak to collateral sources before formulating recommendations regarding custody and access, support services and education. A party who disagrees with the facts set out in a report may file a formal dispute of the report. In such circumstances, the clinical investigator may be asked to attend court as a witness for the Children's Lawyer, and may also be cross-examined by the parties.

This particular appeal revolves around a custody and access dispute between the parents of a young child. Upon the request of the judge hearing the matter, the Children's Lawyer agreed to investigate and prepare a report pursuant to section 112 of the *Courts of Justice Act*. A social worker was assigned to act in the role of clinical investigator as the agent of the Children's Lawyer. The report prepared by this agent was served on the parties and filed with the court in September 2006.

NATURE OF THE APPEAL:

In early October 2006, the Ministry of the Attorney General (the Ministry) received a request from the mother of the child under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to "copies of all notes and reports relating to [the requester's] file" with the Children's Lawyer.

The Ministry identified nearly 600 pages as responsive to the request and granted partial access to the information in them. Access to the remaining records, or portions of records, was denied pursuant to section 49(a) (discretion to refuse requester's own information), taken in conjunction with sections 13(1) (advice or recommendations) and 19 (solicitor-client privilege), and sections 21(1) or 49(b) (personal privacy) of the *Act*.

The requester, now the appellant, appealed the decision of the Ministry to this office.

During the course of mediation, the appellant provided additional clarification about the information of interest to her, particularly her concerns about information that had been provided by other individuals during the assessment process. As a result of this clarification, several records were removed from the scope of the appeal. The appellant also conveyed to the mediator

her opinion that additional records responsive to the request should exist. When advised of the appellant's views, the Ministry responded by affirming its position that it had identified all records responsive to the request. As a result, the issue of whether the Ministry conducted an adequate search for records responsive to the request was added as an issue in this appeal.

Shortly before the conclusion of the mediation stage of the appeal, the Ministry issued a revised decision letter, releasing additional records to the appellant. With the disclosure of those particular records, the Ministry advised that it was withdrawing its claim for the application of section 13(1) of the *Act*. Accordingly, it is not necessary to review the possible application of section 49(a), with section 13(1), to the records at issue in this order.

The parties were unable to resolve the remaining issues through mediation. The appeal was transferred to the adjudication stage of the appeal process, where it was assigned to me to conduct an inquiry.

Initially, I sent a Notice of Inquiry to the Ministry, seeking representations on the issues. I also invited the Ministry to comment on the responsiveness of certain documents that had been included with the records submitted to this office early in the appeal process because they appeared to contain information about an unrelated matter. I received representations on the issues from the Ministry. The Ministry also advised that it had reconsidered its decision and would disclose additional records to the appellant. In light of the Ministry's comments about the records drawn to their attention in the Notice of Inquiry, I concluded that they were unrelated to the request and should be removed from consideration in this appeal. Moreover, I also concluded that it was not necessary to proceed with an analysis of the Ministry's claim of the solicitor-client privilege exemption to deny access to a one-page, record because that record both post-dated the request and was also not responsive to it. Accordingly, sections 49(a) and 19 are no longer at issue in this appeal.

It was necessary to resolve issues related to the sharing of the Ministry's representations with the appellant. Once that matter was successfully resolved, I sent a modified Notice of Inquiry to the appellant, along with a copy of the non-confidential representations of the Ministry. I invited the appellant to make submissions on the adequacy of the Ministry's search for responsive records, as well as the Ministry's claim of the personal privacy exemption at section 49(b).

The appellant did not submit representations for my consideration in this appeal.

RECORDS:

There are 58 pages of records, or portions thereof, remaining at issue. These records consist of reports, handwritten notes, facsimile cover sheets, and correspondence.

DISCUSSION:

PERSONAL INFORMATION

For the purpose of deciding whether or not the disclosure of the records would constitute an unjustified invasion of personal privacy under section 49(b) of the *Act*, it is necessary to determine whether they contain personal information and, if so, to whom it belongs. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except where they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name if 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;

The list of examples of personal information under section 2(1) is not exhaustive. Information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225]. However, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

Representations

The Ministry submits that the records contain information about individuals other than the requester which qualifies as personal information for the purposes of the definition in section 2(1) of the *Act*. The Ministry states that the personal information includes names, addresses, birth dates, marital or family status, medical history and financial information.

Analysis and Findings

I have reviewed the records to determine whether they contain personal information and, if so, to whom the information relates. I find that the records, save for the exceptions described below, contain personal information relating to identifiable individuals other than the appellant that satisfies the definition of personal information under paragraphs (a), (b), (d), (e), (g) & (h) of section 2(1).

In addition, I find that some of the records contain information pertaining to the appellant that qualifies as her personal information within the meaning of paragraphs (a), (b), (d), (g) and (h) of the definition in section 2(1) of the *Act*. In particular, I find that the appellant's personal information appears on pages 492, 511-513, 530-552, 554-564, and 566-570.

However, I find that pages 565 and 587 do not contain personal information. Page 565 contains information obtained from one of the collateral sources and relates to that individual practitioner's professional opinion regarding parenting in certain situations. I find that it does not constitute personal information about an identifiable individual. Page 587 consists solely of a facsimile transmission from the same collateral information source. I find that the information on this page is information about that individual in a professional capacity, which does not qualify as his personal information. Since disclosure of this information cannot be an unjustified invasion of another individual's personal privacy, and the Ministry has not claimed any other exemption in relation to it, I will order those pages disclosed.

PERSONAL PRIVACY

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this general right of access.

In circumstances where a record contains both the personal information of the appellant and other individuals, the relevant personal privacy exemption is the exemption at section 49(b). Under section 49(b) of the *Act*, the Ministry has the discretion to deny the appellant access to that information if the Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy. However, the Ministry may choose to disclose a record with mixed personal information upon weighing the appellant's right of access to her own personal information against another individual's right to protection of their privacy.

When, however, the records contain only the personal information of other individuals and not the appellant, section 21(1) prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 21(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy."

General Principles

Sections 21(2), (3) and (4) of the *Act* provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 21(3) lists the types of information whose disclosure is *presumed* to constitute an unjustified invasion of the personal privacy of another individual. Where one of the presumptions in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 21(4) or the "public interest override" at section 23 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. None of the section 21(4) exceptions appear to apply in the circumstances of this appeal. Similarly, the "public interest override" in section 23 has not been raised or argued in this appeal.

If none of the presumptions against disclosure contained in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) of the *Act* as well as all other considerations which are relevant in the circumstances of the case [Order P-99].

In this order, I will review those records which do not contain the appellant's personal information under section 21(1) of the *Act*, initially. I will then review the possible application of section 49(b) to the records in which the appellant's personal information is found, along with

the personal information of other individuals. However, the Ministry's representations on the issue of personal privacy must be canvassed first and these submissions address the possible application of the sections 21(1) and 49(b) exemptions in a unified fashion.

Representations

The Ministry submits that the presumption against disclosure in section 21(3)(a) applies to the personal information contained in the records as it consists of information related to medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation. In the Ministry's submission, this presumption applies to some of the information sought and obtained from physicians, therapists, the child's father, and family members of the child's father. The Ministry lists most of the records at issue as falling under this presumption. In addition, the Ministry refers specifically to pages 568-570 as containing "notes of interview with [a] physician [that] contain health information of child and father."

With respect the appellant's right to access the personal information of the child, the Ministry takes the position that:

> [e]ven though some of the information relates to the appellant's child, this does not automatically entitle her to obtain the information. In Order P-673 … it was held that in determining whether a parent can have access to information about a child, it is relevant to determine the purpose of the request. Access to the records must be sought on behalf of the child, not to meet the parent's personal objectives. If the release of the information would not serve the best interests of the child, it should not be disclosed. The appellant, in her letter requesting access to the records, claims that she is seeking the file so the information can be corrected and the false information removed from the report. It is in no way clear that she is seeking to make the corrections in the interests of her child.

The Ministry contends that the presumption against disclosure in section 21(3)(d) applies because the interview with the child's father on pages 530 – 544 contains reference to his work and educational history, as well as his mother's work history. The Ministry also submits that financial information about the child's father, as contemplated in the presumption at section 21(3)(f), appears in the same interview notes, and that financial information relating to the agent of the Children's Lawyer appears on pages 573-574.

The Ministry also provided representations on the possible application of the factors in section 21(2) of the *Act*. Regarding considerations that weigh in favour of privacy protection, the Ministry appears to rely primarily on the factor in section 21(2)(f) which relates to "highly sensitive" personal information. Although the factor is not specifically cited, the Ministry refers to the "intimate nature of much of the information," including descriptions of past and present relationships, health and financial information, and personal habits. As I understand the Ministry's submission, the consideration in section 21(2)(f) applies and favours the protection of privacy.

The Ministry also addresses several factors that weigh in favour of disclosure. The Ministry submits that since this matter relates to a private proceeding and there is no indication that the actions of the Children's Lawyer have been publicly called into question, disclosure is not desirable for the purpose of public scrutiny in the sense contemplated by section 21(2)(a). The Ministry also submits that because this custody and access matter is settled, the information is not, therefore, required to prepare for any proceeding or to ensure an impartial hearing for the purposes of section 21(2)(d).

Finally, the Ministry submits that it would not be an "absurd result" to withhold the records at issue. The Ministry states:

> The appellant did not originally supply the information. Although the appellant may be aware of some of the information, because she knows some of the individuals involved, it is not clear which information is within her knowledge and, in any event, disclosure would be inconsistent with the purposes of the exemption, which is to the protect the privacy of individuals with respect to their personal information.

Analysis and Findings

Section 66(c) of the Act

Before discussing my findings, I will first address the Ministry's submissions regarding the appellant's right of access to the personal information of her child. Although the Ministry does not expressly refer to section 66(c) of the *Act*, it is this provision that was addressed in Order P-673, which was cited by the Ministry in its representations. Section 66(c) states:

> Any right or power conferred on an individual by this *Act* may be exercised
>
> > where the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

I have concluded that it is not necessary to review the possible application of section 66(c) of the *Act* in the context of this appeal. As I understand it, the appellant is not purporting to make the access request on her child's behalf. Moreover, the possible relevance of section 66(c) in this appeal appears not to have been raised by any party prior to being addressed, seemingly in a pre-emptive manner, in the Ministry's representations. Accordingly, I need not make a finding on the application of section 66(c), and will not do so in this order.

Personal Information of Other Individuals

In this appeal, the relevant parts of section 21 state:

> (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny; …
>
> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request; …
>
> (f) the personal information is highly sensitive; …
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence;
>
> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation; …
>
> (d) relates to employment or educational history; …
>
> (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

In my findings with respect to the personal information contained in the records, I specified which records contained the appellant's personal information along with that of other individuals. In addition, as I indicated in that portion of the order, pages 522-529, 553, and 571-574 contain only the personal information of others, and not that of the appellant. I will now review the Ministry's claim that the mandatory exemption in section 21(1) applies to these records.

The information contained on pages 522-529, 553, and 571-572 is mainly comprised of the personal information of the child, the child's father, his family, and his partner, obtained directly from them, or from professionals whose assistance was sought for the court-ordered assessment. Based on my own review of the information and the Ministry's submissions with respect to the application of the presumptions in sections 21(3)(a), (d) and (f) of the *Act*, I find the

presumptions against disclosure relied upon by the Ministry apply and the pages are exempt under section 21(1) as their disclosure would result in a presumed unjustified invasion of the personal privacy of the individuals mentioned.

In addition, pages 573 and 574 contain only the personal information of the agent of the Children's Lawyer who conducted the assessment. This particular information meets the requirements of the presumption in section 21(3)(f) in that it relates to her finances or income, as contemplated by that provision. As such, I find that these pages are exempt under section 21(1) because their disclosure is presumed to constitute an unjustified invasion of privacy under section 21(3)(f).

In sum, I find that the disclosure of the personal information contained in the records specified above would constitute an unjustified invasion of personal privacy of the individuals to whom it relates and that it is exempt under the mandatory exemption in section 21(1) of the *Act*.

Personal Information of the Appellant and Other Individuals

In this section, I will review the Ministry's reliance on section 49(b) in reference to pages 492, 511-513, 530-552, 554-564, and 566-570.

First, I note that the Ministry has claimed that pages 568-570 are exempt because they contain the personal information of the child and the child's father. This record consists of the notes made during the Children's Lawyer agent's interview with the appellant's family physician. On my own reading of this record, the Ministry's characterization of this record as containing the child's father's personal information is incorrect. I find that the personal information on pages 568-570 is primarily that of the appellant, with a small portion that relates to the child. Since the disclosure of the appellant's own personal information to her cannot be an unjustified invasion of another individual's personal privacy, I will order that it be disclosed to her. I will address the disclosure of the child's personal information in this particular record in the context of the absurd result principle below.

In addition, pages 564-566 consist of the agent's notes of an interview with a physician to whom the child and the appellant were referred by the appellant's family physician. Previously, I found that a large portion of these notes do not contain personal information; I ordered the disclosure of the information consisting of this physician's professional views on access-related issues for children of the age of the child in this matter. Furthermore, I also find that other information in this particular record constitutes the appellant's own personal information and it should similarly be disclosed to her.

However, this does not conclude my analysis since the record contains the mixed personal information of the physician and the appellant. I find that none of the presumptions against disclosure in section 21(3) discussed above apply to this information. In my view, however, the factor in section 21(2)(f) is a relevant consideration. Both the information and the context in

which it was offered to the Children's Lawyer agent are inherently sensitive. Moreover, there is some indication that the relationship between the appellant and this physician was difficult.

The same concerns about the sensitive context and content are present with respect to the remainder of personal information of other individuals contained in the rest of these records: pages 492, 511-513 (information related to contacting professionals involved with the child's father); pages 530-544 (interview with the child's father); pages 545-552 (interview with child's paternal grandmother); pages 554-556 (interview with home daycare provider); pages 557-563 (interview with partner of child's father); and page 567 (correspondence to the child's father). As I understand the situation, the emotional intensity, and adversarial nature, of the relationship between the appellant and the child's father extended to varying degrees to those close to him. In my view, this renders the personal information of all of these other individuals highly sensitive as well.

In the circumstances, I find that the disclosure of this personal information could reasonably be expected to cause significant personal distress to the individuals to whom it relates in the sense contemplated by section 21(2)(f) [Order PO-2518]. This factor weighs in favour of the protection of privacy and I find that it should be accorded considerable weight.

Furthermore, I also find that the factor in section 21(2)(h) weighs in favour of protecting the privacy of individuals other than the appellant as regards their personal information. In my view, the context and the surrounding circumstances of this matter are such that a reasonable person would expect that information supplied by these individuals would be subject to a degree of confidentiality [PO-1910]. However, I acknowledge that some degree of disclosure of personal information is to be expected in the actual report prepared by the Children's Lawyer. In the balance, I find that this factor carries moderate weight in favour of protecting the privacy of the other identifiable individuals.

As regards the factors favouring disclosure in section 21(2)(a) and (d), which were raised by the Ministry, I accept that public scrutiny and "fair hearing" rights are not relevant factors weighing in favour of the disclosure on the facts of this appeal before me. The appellant has not provided submissions to support their possible relevance, or the relevance of other factors weighing in favour of her access to the personal information of other individuals appearing in these records. Accordingly, I find that there are no factors weighing in favour of the disclosure of the personal information of other individuals.

Having balanced the competing interests of the appellant's right to disclosure of information against the privacy rights of other individuals, I find that the disclosure of those portions of 492, 511-513, 530-552, 554-564, and 567-568 which contain personal information which is "highly sensitive" or "supplied in confidence" would constitute an unjustified invasion of the personal privacy of individuals other than the appellant.

Accordingly, subject to the possible application of the absurd result principle and my review of the Ministry's exercise of discretion, I find that the discretionary exemption in section 49(b)

applies to the personal information of other individuals in the records. Pursuant to the provisions of this order, I will be providing the Ministry with a copy of the records that specifically highlights my findings in this regard.

ABSURD RESULT

Whether or not the factors or circumstances in section 21(2) or the presumptions in section 21(3) apply, where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under either section 49(b) or section 21(1), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323].

The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444, M-451]

- the requester was present when the information was provided to the institution [Orders M-444, P-1414]

- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO-1755]

In this section, I am concerned with the small amount of the child's personal information appearing on page 568, which is part of the record detailing the Children's Lawyer agent's interview with the family physician of the appellant and the child. I have carefully considered the few details of the child's personal information appearing on page 568 and, in my view, this information is clearly within the appellant's knowledge in that it was likely gathered from the appellant, or in her presence. Accordingly, I reject the Ministry's position that disclosure of this information would result in an unjustified invasion of another individual's personal privacy under section 49(b), whether or not any of the presumptions in section 21(3) apply.

Under the circumstances, I find that refusing to disclose this specific information about the child to the appellant would lead to an absurd result [Orders PO-1679 and MO-1755]. Therefore, I will order the Ministry to disclose this information, along with the remainder of the information on pages 568-570 that I have already found to fall outside the application of section 49(b) and have ordered disclosed to the appellant.

EXERCISE OF DISCRETION

In situations where an institution has the discretion under the *Act* to disclose information even though it may qualify for exemption, this office may review the institution's decision to exercise its discretion to deny access. In this situation, this office may determine whether the institution erred in exercising its discretion, and whether it considered irrelevant factors or failed to consider

relevant ones. The adjudicator, in reviewing the exercise of discretion by an institution may not, however, substitute his or her own discretion for that of the institution.

As previously noted, 49(b) is a discretionary exemption and I have upheld the Ministry's decision to apply it to deny access to pages 492, 511-513, 530-552, 554-564, and 566-567. I must now review the Ministry's exercise of discretion in doing so. To be clear, my review of the Ministry's exercise of discretion is restricted to the pages that I have not ordered disclosed pursuant to the absurd result principle discussed in the preceding section of this order.

In providing submissions on the issue of its exercise of discretion, the Ministry refers to the purposes of the *Act* and the balancing of access and privacy rights. The Ministry states:

> The parents in this case were involved in a difficult custody and access dispute involving their child. The Children's Lawyer has balanced the appellant's right to access information, with the right to privacy of the other individuals involved in the case and the importance of having their information dealt with in a discrete and sensitive manner. In order to be able to deal effectively with families involved in custody and access litigation, people must feel able to disclose information about a case to the individual handling the matter, without the possibility that a requester can find out all of the details which have been provided …

In another segment of its representations, the Ministry states that a party who disagrees with facts set out in a report prepared by the Children's Lawyer may file a formal dispute of the report. The Ministry's submissions indicate that neither party filed a formal dispute of the report after it was served and filed.

Based on my own review of the information remaining withheld under section 49(b), I agree with Ministry that the nature and sensitivity of the information are relevant factors which must be considered in the exercise of discretion. In my view, it is also relevant that no formal dispute of the Children's Lawyer report was filed. In the circumstances, I find that the Ministry has properly exercised its discretion in withholding the personal information of other individuals, and I will not interfere with it on appeal.

REASONABLE SEARCH

In appeals, such as this one, that involve a claim that additional responsive records exist, the issue to be decided is whether the Ministry has conducted a reasonable search for the records as required by section 24 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the Ministry's search will be upheld. If I am not satisfied, further searches may be ordered.

The *Act* does not require the Ministry to prove with absolute certainty that further records do not exist. However, the Ministry must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. A reasonable search is one in which

an experienced employee expends a reasonable effort to locate records which are reasonably related to the request [Orders M-282, P-458, M-909, PO-1744 and PO-1920].

Furthermore, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

Representations

The Ministry's submissions on the search conducted to identify and locate records which were responsive to the appellant's request describe the usual composition of a Children's Lawyer file. The Ministry states:

> Files that are handled by clinical and legal agents in personal rights cases consist of two parts: an in-house file which contains items such as initial documentation, correspondence between the agent and supervisor, supervision notes, and may include information regarding the agent's accounts, and the agent's file which contains items such as interview notes, reports received, and correspondence with collateral sources of information. All records in relation to a personal rights case would be in these two files.

The Ministry submits that upon notification of this access request, the agent sent her file to the Children's Lawyer where it and the in-house file were photocopied in their entirety. The Ministry adds that no part of this file has been destroyed.

As noted previously, the appellant did not submit representations.

Analysis and Findings

In appeals involving a claim that additional records exist, the issue to be decided is whether an institution has conducted a reasonable search for responsive records as required by section 24 of the *Act*. Furthermore, although requesters are rarely in a position to indicate precisely which records an institution has not identified, a reasonable basis for concluding that additional records might exist must still be provided.

In the present appeal, the Ministry's representations are brief, but nonetheless convey that an established process was followed to identify and locate records responsive to the appellant's request. On the other hand, the appellant has not provided any basis for her belief that additional records beyond those identified should exist.

Therefore, having considered the representations of the Ministry, as well as the general circumstances of this appeal, I am satisfied that the Ministry has provided sufficient evidence to show that it made a reasonable effort to identify and locate records responsive to the request. In

the circumstances, I find that the Ministry's search for records responsive to the request was reasonable.

Additional Note: Correction of a Record under the *Act*

In her discussions with staff from this office, the appellant indicated that she was seeking access to the records to uncover and correct erroneous information that she believes made its way into the Children's Lawyer report. It may be helpful to the appellant to know that an entitlement to request correction of a record under the *Act* presupposes that access to it has been granted in the first place.

In addition, it should be noted that section 47(2) of the *Act* provides for a request for correction by an individual to whom access to their own personal information has been granted in accordance with section 47(1).

Sections 47(2)(a) and (b) read:

> Every individual who is given access under subsection (1) to personal information is entitled to,
>
> (a) request correction of the personal information where the individual believes there is an error or omission therein;
>
> (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made;

In other words, the framework of the *Act* requires that the appellant's entitlement to access her own personal information in the records be established before the question of correction of that information can be raised or addressed.

ORDER:

1. I uphold the Ministry's decision to deny access to the following information:

    a. the severed portions of pages 492, 511-513;
    b. pages 522-563 and 571-574 in their entirety; and
    c. the portions of pages 564 and 567 which are highlighted in orange on the copy of those particular pages that I am providing to the Ministry with this order.

    These records, or portions of records, should **not** be disclosed to the appellant.

2. I order the Ministry to disclose to the appellant by July 10, 2008, but not earlier than July 4, 2008, the following records or parts of records:

    a. the unsevered portions of pages 564 and 567; and
    b. pages 565, 566, 568-570 and 587 in their entirety.

3. In order to verify compliance with the terms of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

4. I uphold the Ministry's search for responsive records and dismiss this part of the appeal.

Original signed by: June 5, 2008
Daphne Loukidelis
Adjudicator