

ORDER 96-001

January 9, 1996

**DEPARTMENT OF JUSTICE
MAINTENANCE ENFORCEMENT**

REVIEW NUMBER 1005

NATURE OF THE REQUEST FOR REVIEW:

On October 1, 1995, the Applicant made a request under *the Freedom of Information and Protection of Privacy Act* for access to records held by the Maintenance Enforcement Division of the Department of Justice pertaining to an action involving the Applicant under the *Maintenance Enforcement Act*. The Applicant provided the Department with signed consent from the former spouse agreeing to the release of his personal information contained in the Department's records.

The Department was willing to return to the Applicant copies of documents which the Applicant provided but refused access to any other records on the particular file, citing section 5(1) of the *Freedom of Information and Protection of Privacy Act* which states:

5(1) The head of a public body must refuse to disclose information to an applicant if the disclosure is prohibited or restricted by another enactment of Alberta.

The "other enactment" referred to by the Department is section 11(3) of the *Maintenance Enforcement Act* which states:

11(3) Information received by the Director under this Act may be used only for the purpose of enforcing a maintenance order and is otherwise confidential.

On November 2, 1995, the Applicant requested a review of the decision of the Department of Justice by the Information and Privacy Commissioner pursuant to section 62 of the *Freedom of Information and Protection of Privacy Act*. I authorized mediation of this matter pursuant to section 65 of the *Act*. The mediation was not successful, necessitating an inquiry under section 66. A notice of inquiry was sent to the Applicant and to the Department of Justice.

Pursuant to section 66(2) and (4) of the *Freedom of Information and Protection of Privacy Act*, I decided that given the nature of this matter, the inquiry would be in private and that representations would be made in writing. Written representations were submitted by both parties.

ISSUE:

The initial issue, and in this case the only issue, is the determination as to the authority of the head of the public body. The question is whether the head of the Department of Justice is required by section 5 of the *Freedom of Information and Protection of Privacy Act* and section 11 of the *Maintenance Enforcement Act* to refuse access. If the answer is "yes" my only recourse under section 68(2) of the *Freedom of Information and Protection of Privacy Act* is to confirm the decision of the head. If the answer is "no", I may either ask the head to reconsider its decision or order that access be given, depending on the head's specific authority in the specific case.

DISCUSSION:

The Applicant argued that the information that is required to be kept confidential under the *Maintenance Enforcement Act* is limited to the personal information listed in subsection 11(1) of that Act: social insurance number and residential telephone number of a debtor, the address or the location of a debtor and the name and address of the employer of a debtor. The Applicant also argued that the confidentiality provision should apply only to information *received* by the Director and not to information generated by the public body.

The Department of Justice argued that even case records generated within the Director's office should be considered to be "received" by the Director. Since records generated by the public body would be based on information received by the Director, everything on the file should be similarly confidential.

The Department of Justice further argued that the Director of Maintenance Enforcement must be allowed the same freedom from review and interference while a case is in progress, as prosecutors and persons in a quasi-judicial capacity. The Department submitted that the Director's records were analogous to the records referred to in section 4(1)(b) and (g) of the *Freedom of Information and Protection of Privacy Act*. A concern was expressed that if access were granted, parties involved could take counter actions to delay or disrupt the Director's initiatives.

In deciding whether section 5 of the *Freedom of Information and Protection of Privacy Act* and section 11 of the *Maintenance Enforcement Act* require the head of the public body to refuse access, it is necessary to consider whether section 11 must necessarily be read to include all records in a maintenance enforcement file.

The purpose of the *Maintenance Enforcement Act* is to allow the Director of Maintenance Enforcement to collect maintenance from a debtor on behalf of a creditor (in this case, the Applicant). Once a matter is referred to the Director, no other person may try to collect the maintenance payments (section 10). The Director of Maintenance Enforcement is thereby placed in an adversarial position with respect to the person who owes the maintenance, from whom the Director is trying to collect. The debtor, for whatever reason, and I have no evidence that this is the case here, may not want to pay and may try to avoid payment. 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 *Maintenance Enforcement Act*.

I therefore conclude that section 11 of the *Maintenance Enforcement Act* must be intended to apply to all records pertaining to an active collection file which are in the possession of the Director. That being so, the Director has correctly concluded that section 5 of the *Freedom of Information and Protection of Privacy Act* requires him to

refuse access. Having concluded that the Director is required to refuse access, section 68 of that Act only allows me to confirm his decision.

The Applicant argued that, by having access to the records, it would be possible to discover inaccuracies in the information contained on the public body's records. Section 35 of the *Freedom of Information and Protection of Privacy Act* allows a person to request corrections to records held by public bodies. Where no correction is made by the public body, the head of that body must still annotate or link the information with the correction that was requested but not made. The Information and Privacy Commissioner may be asked to intervene in the record correction process. That alternative is available to the Applicant and may be pursued by the Applicant if she believes there are inaccuracies with respect to her personal information.

The Department of Justice also commented that since the maintenance enforcement program recovers a significant amount of money which might otherwise have to be expended through various social programs to support maintenance creditors, the maintenance enforcement program should not have to contend with actions which interfere with its process such as access to information requests. Section 6 of the *Freedom of Information and Protection of Privacy Act* very clearly establishes the information rights of all citizens in this province and an applicant's exercise of those rights should not be viewed by a public body as "interference". The expediency of collecting money, even for an important program like maintenance enforcement, is not, in and of itself, grounds to deny access and privacy rights. By October 1997, the Legislature will have to decide which laws will not be subject to the *Freedom of Information and Protection of Privacy Act*. The Legislature is the proper body to weigh the merits of the maintenance enforcement program relative to the principle of access to information.

ORDER:

I find that the head of the Department of Justice is required by section 11 of the *Maintenance Enforcement Act* and section 5 of the *Freedom of Information and Protection of Privacy Act* to refuse access as requested by the Applicant and has properly done so. I confirm the decision of the head to refuse access.

Robert C. Clark
Information and Privacy Commissioner