

**ALBERTA**  
**INFORMATION AND PRIVACY COMMISSIONER**

**ORDER 96-004**

**April 18, 1996**

**ALBERTA JUSTICE**

**REVIEW NUMBER 1015**

## **BACKGROUND:**

On October 26, 1995, an application was made, under the *Freedom of Information and Protection of Privacy Act* (hereafter referred to as the “Act”), to Alberta Justice (hereafter referred to as the “Public Body”), requesting access to specific caseload notes.

The Public Body denied access to the Applicant, and provided the Applicant with the sections of the Act that it relied on to make this decision.

The request for review was submitted to my office by the Applicant on November 21, 1995. The Applicant sought a review of the Public Body’s decision to deny access. The Applicant and the Public Body were advised that mediation was authorized under section 65 of the Act.

By letter dated February 14, 1995, the Applicant and the Public Body were advised that mediation had not been successful and that an inquiry would be held. Under section 66 of the Act, the inquiry would be conducted in private and both parties were advised that they could submit written representation.

A written representation was submitted by the Public Body on February 27, 1996.

## **RECORDS AT ISSUE:**

The records at issue in this case consist of hand written client contact records and case notes prepared by a probation officer.

## **ISSUES:**

1. Is the information contained in these records “information which could reasonably be expected to harm a law enforcement matter” under section 19(1)(a)?
2. Is the information contained in these records “information which could reasonably be expected to reveal the identity of a confidential source of law enforcement information” under section 19(1)(d)?
3. Is the information contained in these records “information which could reasonably be expected to reveal information in a correctional record supplied, explicitly or implicitly, in confidence” under section 19(1)(k)?

4. Could disclosure of the information contained in these records “reasonably be expected to reveal information supplied, explicitly or implicitly, in confidence by a government, local government body or an organization listed in clause (a) of the Act or its agencies” under section 20(1)(b)? Has consent been given by the government, local government or organization that supplied the information or its agency under section 20(3)?
5. Could disclosure of the information contained in these records “reasonably be expected to expose to civil liability the author of the record or individual who has been quoted or paraphrased in the record” under section 19(2)(a)?
6. Could disclosure of the information contained in these records “reasonably be expected to threaten anyone else’s safety or mental or physical health, or interfere with public safety” under sections 17(1)(a) and (b)?
7. Is the information contained in the records personal information of third parties under section 16?

**DISCUSSION:**

1. **Is the information contained in these records “information which could reasonably be expected to harm a law enforcement matter” under section 19(1)(a)?**

**19(1)** The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

- (a) harm a law enforcement matter.

The Public Body provided limited evidence to suggest that disclosure of this information would harm a law enforcement matter. To discharge the burden of proof, a public body must provide detailed evidence to satisfy the inquiry that there is a “reasonable expectation of probable harm”. Refer to my Order 96-003 for further explanation and direction.

Therefore, due to the lack of evidence as to harm presented before me, I am unable to find that section 19(1)(a) should be applied to the records in this case.

2. **Is the information contained in these records “information which could reasonably be expected to reveal the identity of a confidential source of law enforcement information” under section 19(1)(d)?**

**19(1)** The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

- (d) reveal the identity of a confidential source of law enforcement information.

Disclosure of the record would clearly reveal the sources of the information contained within the record. However, it is not clear that these sources were confidential. One source did ask for confidentiality. However, the Applicant represented to the inquiry that he was told the name of the informant and the alleged contents of the informant's statement. It is, therefore, very difficult for the Public Body to rely on confidentiality as an exemption when the source may no longer be "confidential". With respect to the other sources, there is no indication that the information was given implicitly or explicitly in confidence. Confidentiality cannot be implied unless the Public Body provides information as to the circumstances in which the information was supplied.

Consequently, I do not agree that the information should be denied under section 19(1)(d) of the Act.

**3. Is the information contained in these records "information which could reasonably be expected to reveal information in a correctional record supplied, explicitly or implicitly, in confidence" under section 19(1)(k)?**

**19(1)** The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

- (k) reveal information in a correctional record supplied, explicitly or implicitly, in confidence.

After examining the record, I agree with the public body that section 19(1)(k) would apply. There is no problem here with the issue of breached confidence because in this instance the information was "supplied...in confidence" as opposed to coming from a "confidential source". This may be seen as a strict interpretation of the Act. However, such an interpretation is necessary to give protection to the source of the information.

**4. Could disclosure of the information contained in these records "reasonably be expected to reveal information supplied, explicitly or implicitly, in confidence by a government, local government body or an organization listed in clause (a) of the Act or its agencies" under section 20(1)(b)? Has consent been given by the government, local government or organization that supplied the information or its agency under section 20(3)?**

**20(1)** The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

- (a) harm relations between the Government of Alberta or its agencies and any of the following or their agencies:
  - (i) the Government of Canada or a province or territory of Canada,
  - (ii) a local government body,
  - (iii) the government of a foreign state, or
  - (iv) an international organization of states,or
- (b) reveal information supplied, explicitly or implicitly, in confidence by a government, local government body or an organization listed in clause (a) or its agencies.

**20(3)** The head of a public body may disclose information referred to in subsection (1)(b) only with the consent of the government, local government body, or organization that supplies the information, or its agency.

The information in the record was supplied by an organization listed in clause (a) of the Act and was supplied in confidence. Section 20(3) of the Act applies since the Public Body has not received consent to disclose. Accordingly, I uphold the decision of the Public Body not to disclose the record under sections 20(1)(b) and 20(3) of the Act.

**5. Could disclosure of the information contained in these records “reasonably be expected to expose to civil liability the author of the record or individual who has been quoted or paraphrased in the record” under section 19(2)(a)?**

**19(2)** The head of a public body may refuse to disclose information to an applicant if the information

- (a) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or an individual who has been quoted or paraphrased in the record.

To rely on this section of the Act the Public Body must provide a detailed explanation of how this section applies including how disclosure is connected to the civil liability. The Public Body has not provided much analysis and therefore I cannot agree that the section applies to these records.

**6. Could disclosure of the information contained in these records “reasonably be expected to threaten anyone else’s safety or mental or physical health, or interfere with public safety” under sections 17(1)(a) and (b)?**

**17(1)** The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

- (a) threaten anyone else’s safety or mental or physical health,  
or
- (b) interfere with public safety.

The evidence provided by the Public Body did not show that a threat to public safety or anyone else’s safety is reasonably expected by the disclosure of the information. Where “threats” are involved the public body must look at the same type of criteria as the harm test (refer to Order 96-003). Detailed evidence must be provided to show that the threat and disclosure of the information are connected and that there is a probability that the threat will occur if the information is disclosed.

I do not agree with the Public Body that sections 17(1)(a) and (b) should apply to deny the Applicant access.

**7. Is the information contained in the records personal information of third parties under section 16?**

**16(1)** The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy.

(2) A disclosure of personal information is presumed to be an unreasonable invasion of a third party’s personal privacy if

- (d) the personal information relates to employment or educational history
- (g) the personal information consists of the third party’s name when
  - (i) it appears with other personal information about the third party, or
  - (ii) the disclosure of the name itself would reveal personal information about the third party

Although the public body did not provide the specific section number under which they relied, it is obvious that sections 16(1) and (2) would apply to this record. Contained within the record are individuals' names and employment histories. This information should be severed under sections 16(2)(d) and (g).

I, therefore, uphold the decision of the Public Body to rely on section 16 of the Act to sever the personal information of third parties.

**ORDER:**

I confirm the decision of the head to refuse access to the entire record.

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Robert C. Clark  
Information and Privacy Commissioner

**POST SCRIPT:**

Notwithstanding the fact that under the Act it is not necessary to determine the purpose for which the Applicant is requesting access, it is often in the Applicant's best interest if such information is provided. In the present case, the Applicant was requesting access to information he believed was false. Under section 35 of the Act the Applicant may request the head of a public body to correct the information. If no correction is made then under section 35(2) the head of the public body must at least annotate or link the information with the correction that was requested.

I urge the Applicant to apply for such a correction. This is only a suggestion, and is therefore contained within the postscript.