

**NORTHWEST TERRITORIES
INFORMATION AND PRIVACY
COMMISSIONER**

Review Report 98-06
July 6, 1998
Review File: PC8125

BACKGROUND

The Applicant made a series of applications under the *Access to Information and Privacy Act* (the "ATIPP Act") to the Department of Justice for certain information contained in the records of the Maintenance Enforcement Office. These requests were dated between September 25th, 1997 and December 18th, 1997 as follows:

a. September 25, 1997 - Request for:

- i) any correspondence addressed to the Applicant between November 1, 1993 and May 1, 1994;
- ii) any correspondence addressed to the Applicant between November 1, 1995 and May 1, 1996;
- iii) any correspondence addressed to the Applicant's employer during the same time periods;
- iv) a copy of any telephone bills showing telephone calls to the Applicant by the Maintenance Enforcement Office during the same time periods;
- v) a copy of any fax correspondence dated July 7, 1997 and September 31, 1997 showing the fax number to which the fax was transmitted

b. October 17, 1997 - Request for

- i) a copy of any Garnishee Order sent to the Federal Department of Justice dated January 27, 1994;

- ii) a copy of correspondence to the Applicant dated November 1, 1993 to May 11, 1994;
- iii) proof of telephone calls made to the Applicant during the same time period;
- iv) a copy of any correspondence regarding the Applicant which was sent to Saskatchewan Maintenance Enforcement;

c. December 18, 1997 - Request for:

- i) a copy of any record of telephone calls from the Maintenance Enforcement Office to the Applicant between November 1, 1993 and May 11, 1994;
- ii) a statement from the creditor showing the amount of child support paid from January, 1994 to April, 1994;
- iii) a copy of an affidavit of arrears apparently dated before January 18, 1994;
- iv) a copy of a statement made by the creditor indicating that the Applicant was in arrears of his child support obligations for a period in 1993 or 1994;
- v) a copy of a "debtor report" containing information related to the Applicant's children;
- vi) a copy of a set of instructions to the Maintenance Enforcement Office from the Deputy Minister of Justice referred to in a letter dated June 28th, 1996 from Donald Cooper (Deputy Minister of Justice) to the Applicant.

On February 16th, 1998, the Applicant asked me to review what he considered to be an incomplete response to these requests for information.

It will be noted that the Applicant also made a Request for Correction to Personal Information dated the same date as the Request for Review. I have reviewed the file and it appears quite clear that no correction was required to confirm the information that the Applicant wished to "correct". The "correction" he wishes to make is that his

maintenance payments were current (and were always current) up to and including May 11, 1994. These records were, in fact, corrected within two days of the Applicant's initial contact with the Maintenance Enforcement Office (the "MEO") in May of 1994 so as to confirm that his payments were current as of that date. In order to guarantee that there is no possibility that this might be misinterpreted, however, the MEO has placed a copy of the Request for Correction to Personal Information on the file as a permanent record. This is all that is required under section 45(2) of the Act and I will not deal with this issue further.

In conducting my review, I requested and received from the Department of Justice a copy of each of the Requests for Information, as well as a copy of the reply given to the Applicant. Because of the nature of the complaint, I also attended the office of the Maintenance Enforcement Office to review for myself the entire contents of all of the files held by that office, as well as the Sheriff's Office, with respect to the Applicant.

RECORDS AT ISSUE:

The specific complaint of the Applicant appears to be the failure to provide copies of records prior to May 11, 1994, despite what appear to be references to correspondence and telephone calls prior to that date in subsequent correspondence between the Applicant and the Maintenance Enforcement Office and the Department of Justice. The Applicant is particularly interested in copies of "telephone bills" which would prove that certain long distance telephone calls were or were not made prior to May 11, 1994. He also indicates that he did not receive a copy of a "Garnishee Order" which he feels should be on the file.

DISCUSSION:

The Department of Justice and the Maintenance Enforcement Office (MEO) have given me access to all of their records respecting the Applicant. This includes not only the files in the MEO, but also the files in the Department of Justice itself which

relate exclusively to the Access to Information requests made by the Applicant which are the subject of this review and a file located in the Sheriff's Office.

The Department of Justice and the MEO advise me that, to the best of their knowledge, they have provided the Applicant with copies of all of the documentation and records which they have on their files which are responsive to the Applicant's Requests for Information. The Applicant, however, feels that the Maintenance Enforcement Office is not providing him with all of the information which he requested. The documentation which he is specifically concerned with can be divided into several subsets:

- A. Records prior to May 11, 1994
- B. Telephone Bills
- C. Fax number for the Federal Department of Justice

A. Records prior to May 11, 1994

The Applicant feels that he has not been provided with all the records relating to his contact with the MEO prior to May 11, 1994. Particularly, he feels that there should be some record of discussions between the Maintenance Enforcement Office and himself prior to that date. It appears from the Request for Review that the Applicant feels that the MEO has treated him unfairly by not maintaining consistent communication with him and by alleging that they have made certain attempts to contact him when, in fact, no such attempts were ever made. Although the reasons for making a request for information are irrelevant to the decision to be made, they do assist in focusing on the nature of the records being requested.

The Applicant states that he called the MEO sometime between April 28, 1994 and May 8th , 1994 on the MEO's toll free line and that during this discussion he was informed that the MEO had been attempting to contact him. He feels that, at the very least, there should be a telephone bill which would confirm that the MEO received this call. He also feels that there should be a record of the other attempts which were

made to contact him.

There appears to have been some confusion with respect to the date the MEO file was opened and this confusion may well be the basis of the whole problem. The mix-up was partially addressed in a letter from the MEO dated December 23, 1997 to the Applicant in response to his December 18th Request for Information. In that letter, it indicates that there were two files with respect to the Applicant in the MEO. The first in time was a file opened under the Reciprocal Enforcement of Maintenance Orders Act (the "first file"). This file appears to have been opened in January, 1994. At that time the information that the MEO had appeared to indicate that the Applicant was living in Saskatchewan.

I am advised by the MEO that, in such a circumstance, the jurisdiction in which the debtor lives takes primary responsibility for collecting the amounts owing to the creditor. The "home jurisdiction" (in this case the Northwest Territories) receives any money collected but is otherwise not significantly involved in the collection of the maintenance order and the file is largely dormant. The nature of the file is, therefore, quite different from an enforcement file, on which there is much more substantive work done on an ongoing basis. There is, therefore, no correspondence on the file between the MEO and the Applicant between November 1, 1993 and May 1, 1994 and I have confirmed this with my review of the file. There are, however, copies of correspondence between the MEO and its Saskatchewan counterpart during this period of time. It appears that these records were provided to the Applicant in response to his December 18th Request for Information. These include:

- a. Letter to Saskatchewan Maintenance Enforcement Program dated January 18, 1994;
- b. Letter to Saskatchewan Maintenance Enforcement Program dated March 14, 1994.
- c. Faxed Message to Saskatchewan Maintenance Enforcement Program dated May 11, 1994 asking that the Saskatchewan file be closed.

Unfortunately, the MEO appears to have overlooked this first file when answering the Applicant's first Request for Information (September 25th). The letter to the Applicant states:

We have searched our records and determined that your file was opened on May 11th, 1994 and consequently we have no records prior to that date.

And further:

We have no record in our files of any phone calls with you during the period of November 1, 1995 to May 1, 1996 and since we did not open our file until May 11, 1994, we would have no record of any phone calls prior to that date.

These statements were clearly wrong. A file was opened in January, 1994 and closed on May 11th, 1994. On this date, a second file was opened. My review of the matter, however, does not suggest that there was any overt attempt to mislead the Applicant or to attempt to circumvent the ATIPP Act. Rather, these statements were based on an honest mistake as to the existence of the first file. This is borne out by the fact that documentation from the earlier file was provided to the Applicant in response to the second Request for Information (October 17th, 1997).

There are two records of telephone calls to the Applicant by the MEO on or before May 11th, 1994. The record of one of these calls, specifically,

- d. A call made to the Applicant on May 11th, 1994 (recorded in the second file);

has been provided to the Applicant in response to his December 18th Request for Information.

There is, however, also a record of a telephone call from the Applicant to the MEO on May 9th, 1994. This record does not appear to have been provided to the Applicant and there is no apparent reason why it was not. It may be because the Applicant did

not ask for the file notes of the discussion, but for "proof" that the calls were made/ received in the form of telephone bills or that it was simply overlooked. In any event, it is clear that this record is responsive to the Applicant's request and I recommend that, if the Applicant has not been provided with this record, namely,

- e. Telephone record of call from the Applicant received on May 9, 1994;

it should be released to him. This recommendation would be subject to a review of the record to determine whether any parts of it should be properly severed under the exceptions in the Act, which review I leave to the ATIPP Coordinator.

The second file was opened on May 11th, 1994 when it became apparent to the MEO that the Applicant was not residing in Saskatchewan, but was, and had been, in the Northwest Territories the entire time. The correspondence on this file is all subsequent to May 11th, 1994 with the exception of

- f. a letter to the Applicant dated May 11, 1994.

The Applicant appears to have refused delivery of this letter at the time it was sent to him in May of 1994 but it was provided to him in reply to the Applicant's October 17th Request for Information.

The Applicant also complains that he did not receive a copy of

- g. a "Federal Garnishee Order" issued by the MEO in January, 1994 in response to his October 17th Request for Information, but had to obtain that document under the Federal Access to Information legislation. It is clear that he has received that document from the Federal Government, but feels that it should have been provided by the MEO in response to his Request for Information.

For some reason, the MEO, when replying to the Applicant's request for this record, was unable to locate it on the file. It may be because the document was on the first file, but that is not clear. What is clear is that the Garnishee Summons was on the file when I reviewed it. The Applicant has since obtained a copy of this document from the Federal Access to Information Commissioner's Office and the question of whether he is entitled to receive the document is, therefore, moot.

It is not clear why this record was not provided in response to the initial request for it in October. It is also not clear why the Applicant was not referred to the Clerk of the Court for a copy of this record. Section 3(1)(f) of the Act provides that "a record made from information in a registry operated by a public body where public access to the registry is normally permitted is not subject to the Act." Further, section 3(2)(b) provides that the ATIPP Act "does not in any way limit access to government information or records normally available to the public". A Garnishee Summons is a court document open to public scrutiny and was available to the Applicant from that source and at the very least, the Applicant should have been directed to this source of information. The record, however, should also have been on one of the two files in the MEO and consequently should have been provided to the Applicant upon his request. In the absence of the record, the Applicant should have been referred to the appropriate court registry to obtain a copy.

All this having been said, it is clear that the Applicant has now received a copy of this record from another source so there is no need to pursue this matter further.

B. Telephone Bills

The Applicant has asked for telephone records in the form of telephone bills to prove that certain telephone calls were made or received with respect to his files at the MEO. This specific request might be a daunting one if there were a large number of calls over a long period of time. However, it would appear that there were only the two calls referred to above during this period of time, namely one call received from the

Applicant on the MEO's toll free line in May, 1994 and the call to the Applicant on May 11th, 1994, for which the Applicant has already received the relevant information. There will, of course, be no records in the form of "telephone bills" for unsuccessful attempts to contact the Applicant. The Applicant will not, therefore, be able to satisfy himself from these records as to whether or not other attempts to contact him were, in fact, made during these periods of time. That having been said, however, this is no reason not to provide him with what records there might be.

The time periods for which the Applicant is seeking proof of telephone calls are not terribly lengthy (between November 1, 1993 and May 11, 1994 and between November 1, 1995 and May 1, 1996). Assuming that the telephone bills have not yet been destroyed in the normal course of government file management, I see no reason why they cannot be reviewed with a view to providing the Applicant with the information he requests. If, as the file indicates, there were only the two calls, the task should not be a difficult or terribly time consuming one, assuming that the relevant telephone number or numbers can be identified. If the Applicant's telephone number is not clear from the file, or there are a large number of possible telephone numbers, the task becomes more difficult. Provided, therefore,

1. That the records still exist either with the Department of Justice or with some other department; and
2. That the Applicant can provide the specific telephone number(s) for which he seeks records (that is, his telephone number(s))

there is no reason that he should not be given the records he requests. It would, therefore, be my recommendation that the Applicant provide the MEO with a list of the telephone numbers for which he is seeking records on or before August 15th, 1998 and that the MEO provide the Applicant with copies of all telephone bills referring to those numbers (with appropriate severance) by September 15th. This should be restricted to those telephone calls made from within the MEO or made to

the MEO's toll free number.

C. Fax number for the Federal Department of Justice

In answer to the Applicant's first two Requests for Information, he received copies of certain fax transmissions to the Federal Department of Justice. On those copies, the fax number for the recipient was severed from the document. It is the position of the MEO and the Department of Justice (NWT) that this information is confidential Third Party Information. The particular fax number is for Federal Department of Justice, Support Programs. The Federal Department of Justice is a "Third Party" under the definition of the ATIPP Act. As such, if the number is not otherwise available to the general public, it is "personal information" protected under the ATIPP Act.

In a letter to the Applicant dated September 23rd, 1997, the MEO advises that

I called and spoke to the manager of the support programs for the Department of Justice in Ottawa and he indicated to me that the FAX number that we use on our faxes to their office is not to be given out.

Further, in a letter from Donald Cooper, Deputy Minister of Justice on October 14th, 1997 to the Applicant, he states that the FAX number has been severed from the documents provided pursuant to 16 of the ATIPP Act. He notes that:

Under section 16 of the Act, the head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to impair relations between the Government of the Northwest Territories and the Government of Canada. Moreover, such information must not be disclosed without the approval of the Commissioner in Executive Council. We have determined that it would impair relations with the Government of Canada if we disclosed the phone number on the faxes in question.

The Applicant, on the other hand, indicates that he himself called the Federal Department of Justice and was told that they only have one FAX number and that the

person he spoke to had no knowledge of any policy restricting the release of that number. He further indicates that he has received that number directly from the Federal Department of Justice.

As the Applicant appears to have obtained the information he seeks from another source, the issue, as well, appears to be moot and for this reason, I do not intend to comment broadly on the matter. I would say, however, that if this issue were still open, I would have invited the comments of the Federal Department of Justice as a Third Party to obtain their input on the issue.

SUMMARY AND RECOMMENDATION:

The Applicant feels that the Department of Justice and the MEO have been avoiding providing him with the documentation he has requested in order to "cover up" their improper handling of the file. He feels that he has been lied to by various individuals in the MEO and the Department of Justice.

It is clear that the relationship between the Applicant and the MEO has been a difficult one from its inception. It is not the function of this office, however, to reveal improprieties within the government or to punish departments or agencies for the way in which it handles certain issues or clients. The only function of this office in reviewing a decision to release or not to release information is to ensure that the *Access to Information and Protection of Privacy Act* is correctly applied and to assist Applicants in obtaining the information which they desire provided that it is not excluded from disclosure under the Act.

In this case, it does appear there is one record which was overlooked in the review of the file, and that would be the record of the telephone call from the Applicant on May 9th, 1994 (Record "e"). It is my recommendation that this record be provided to the Applicant as soon as possible.

Further, it would appear that there has been an insufficient attempt to provide the Applicant with copies of the telephone bills which would show long distance calls charged to the MEO in contacting the Applicant during the periods from November 1, 1993 to May 11, 1994 and from November 1, 1995 to May 1, 1996 (including any telephone company records of calls made to the MEO by the Applicant on the MEO's toll free number). It is therefore, my further recommendation that, provided that the records still exist (i.e. they have not been destroyed in accordance with the government's normal file management process) and that the Applicant provides the MEO with a list of the telephone numbers that he had or that might have been used to contact him on or before August 15th, 1998, the Applicant be provided with copies of all telephone bills referring to those numbers (with appropriate severance of other third party information) by September 15th. The review should be restricted to those calls made from within the MEO or received on the MEO's toll free number.

It would appear that the Applicant has received all other documentation and records which he sought, either through the Access Request process or through other means and there is no need to review these items further.

Elaine Keenan Bengts
Information and Privacy Commissioner