

NORTHWEST TERRITORIES INFORMATION AND PRIVACY COMMISSIONER

Review Recommendation 03-33

File: 03-186-4
August 20, 2003

BACKGROUND

In April of 2003, the Applicant made a request to the Department of Justice for access to information pursuant to the *Access to Information and Protection of Privacy Act*. The request was for a copy of a file related to the Applicant's claim under the Criminal Injuries Compensation program. In early May, the Department provided the Applicant with some of the documents requested and advised him that they were consulting with the Royal Canadian Mounted Police as to the disclosure of the balance of the file, which had originated with the RCMP and been provided to the Department by the RCMP. On June 5th, the Deputy Minister of Justice wrote to the Applicant and advised him that access to all RCMP information on the file in question would be denied pursuant to section 16(1)(a) of the *Access to Information and Protection of Privacy Act* because "the disclosure could reasonably be expected to impair relationships between the Government of the Northwest Territories and the Government of Canada." The Department had consulted with the RCMP with respect to the possible disclosure of the information requested and had received a response from the RCMP indicating that all material provided to the Government of the Northwest Territories by the RCMP was provided in confidence and should not be disclosed. By letter dated June 19, 2003, the Applicant requested that I review the Department's decision to refuse access to the balance of the file.

The Department of Justice was asked to provide a copy of all of the material in question and further details as to why access had been denied. The Department's response was received on July 24th, 2003 and shared with the Applicant. The Applicant was given the opportunity to respond to the Department's submissions. In his response, the Applicant indicated that without access to the records in question, he would be unable to appeal the decision of the Criminal Injuries Compensation Board to deny him further compensation. He acknowledged that some of the material might have to be edited to

sever sensitive material and had no problem with that.

ISSUE

The issue in this review is whether the Department properly exercised its discretion to deny access to the records in question (the “RCMP documents”) pursuant to section 16(1) (c) of the *Access to Information and Protection of Privacy Act*.

DISCUSSION

Section 16(1)(c) of the Act states as follows:

- 16.** (1) The head of a public body may refuse to disclose information to an applicant where the disclosure could reasonably be expected to
- (c) reveal information received, explicitly or implicitly, in confidence from a government, local authority or organization referred to in paragraph (a) or its agency.

Paragraph (a) refers, among others, to the Government of Canada or a province or the Yukon Territory.

I would make several observations. First of all, as I have had the benefit of being able to see the records in question, I have the benefit that, perhaps, even the R.C.M.P did not have. I note that the records in question are all dated in 1991, more than twelve years ago. From what I can tell from the records received, the criminal offence which resulted in the Applicant’s injuries (which were, apparently quite serious) has completed the court process. Any appeal period has long since passed. At least some of the records, including an Information and Information Sheet, are documents that will have been filed on the Court record and are, therefore, public records.

I also note that a public body relying on this section of the Act must exercise reasonable discretion in deciding whether or not to disclose the information.

Section 3(2)(b) of the Act states quite clearly that the *Access to Information and Protection of Privacy Act* does not in any way limit access to government information or records normally available to the public. As criminal court records are normally available to the public, those parts of the file that appear on the court record should have been provided to the Applicant, despite the fact that the original source of the records on the Department of Justice file was the R.C.M.P.

Having reviewed the letter to the Department from the RCMP, I can't help but feel that there was not much thought given by the RCMP to the facts of the particular case. The letter from the RCMP gave the following reason for its objection to the disclosure of the information:

The RCMP mandate is the detection, prevention and suppression of crime and as such, gathers a great deal of personal information during the performance of its duties. Any subsequent disclosure of this information to any institution of the Northwest Territories government is deemed to be in confidence. Therefore, the RCMP requests that all its information be entirely exempted (from disclosure pursuant to the ATIPP Act) at all times.

The RCMP letter suggested that the applicant should make an application directly to the RCMP under the federal Access to Information Act in order to get the information he was seeking.

This is, frankly, not a terribly helpful approach. It means that the Applicant must have some fairly specific knowledge about what information was provided to the Government of the Northwest Territories with respect to his Criminal Injuries Compensation Claim some twelve years ago. It means that he must start his quest for information afresh, which will take more time. And, frankly, it means that the RCMP are going to have to do twice what they could have/should have only done once. Unfortunately, however, I

have no jurisdiction over the way in which the RCMP, a federal agency, deals with access to information requests.

With respect, it seems to me in this case that the Department of Justice could have done a better job to assist the Applicant to obtain the information he needs. For instance, they could have pointed out to the RCMP that the information requested related to a crime that was committed more than ten years ago and that there had been a charge and conviction entered and that all appeal periods had passed. They could have pointed out that in three short years, the information will be available generally to the public regardless of whether or not the RCMP consent (section 16(3)). They could have provided the RCMP with copies of the documents in question so that they knew precisely the nature of the information being requested when considering the request. Further, they could have obtained the Applicant's permission to provide the RCMP with further details of the request that he had made so that they could have advised the police agency that the Applicant was the victim of a crime and that the reason he was seeking the information was to assist him in dealing with a Criminal Injuries Compensation claim.

Section 16 of the Act provides that the public body "may" refuse to disclose information if it was provided in confidence by another governmental agency. This requires the public body to exercise a discretion. Section 16(2.1) goes on, however, to provide that even if the public body had exercised its discretion in favour of disclosing the information in question, the information could not be released without "the approval of the Commissioner in Executive Council and the written consent of the government, local authority, organization or agency that provided the information". That consent was not given, though it was requested.

It is not for me to say whether or not the public body exercised its discretion well. It is, however, for me to consider whether it is clear that discretion was, in fact, exercised or whether access to the documents in question was denied simply because the information fit into a discretionary exemption. I cannot, in this case, say that the public

body did not exercise its discretion. They have obviously considered the possibility of disclosing the information and went so far as to request consent from the RCMP.

It appears, in this case, that the letter of the law was respected. I feel, however, that more could have been done for the Applicant by the Department.

CONCLUSION AND RECOMMENDATION

In view of the above discussion, it is my conclusion and recommendation that, with the exception of those records which appear on the criminal court file concerning the offence in question, the Department of Justice has exercised its discretion pursuant to section 16(1)(c) of the Access to Information and Protection of Privacy Act and it is not for me to say whether or not the discretion was well exercised.

With respect to those records which do appear on the criminal court record as well as in the file of the Department of Justice, it is my recommendation that those records should be provided to the Applicant as they are already in the public domain and there is, therefore, no confidentiality attached to them.

Each application for information, of course, must be dealt with individually and it makes little sense to try to make general recommendations when dealing with information obtained in confidence from an outside government agency such as the RCMP. However, I do feel that the Applicant in this case could have been better served had the matter been managed a little differently. Section 7 of the *Access to Information and Protection of Privacy Act* puts an onus on public bodies to do everything they can, within reason, to assist an applicant to obtain the information they are seeking. As noted above, I feel that more could have been done in this case. Had the RCMP been given more details about the information that had been requested, the age of the records in question and the purpose of the request, perhaps they would have been more forthcoming and willing to consent to the disclosure of the information in question.

I would also suggest to the Applicant, if he has not yet done so, that he make a specific request directly to the RCMP for the information which they have respecting his case.

Elaine Keenan Bengts
Northwest Territories
Information and Privacy Commissioner