

FILE NO. - 93/028

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF [REDACTED] WITH RESPECT TO
INFORMATION REQUESTED FROM SASKATCHEWAN SOCIAL SERVICES**

This report deals with the refusal by the Department of Social Services of Saskatchewan to provide information to [REDACTED] [REDACTED] with respect to three named individuals. The specific information requested as to each was:

- "1. current address and telephone number;
2. date benefits started and the amount of benefits;
3. date of yearly review and breakdown of assets and liabilities from this review;
4. list all outside sources of income and amount; and
5. caseworker's name, telephone number and permission to interview if necessary."

In each case, the Department was advised by the Applicant that the information was requested to assist in the collection of a debt owing to a government institution or a debt owing to the Government of Canada, and in each case the Applicant was advised by the Department by letter that access to the requested information was denied pursuant to Section 29(1) of *The Freedom of Information and Protection of Privacy Act* with the observation that although the Act provides discretionary

authority to release personal information, in each case the information would not be provided on the grounds that this was contrary to Department policy.

The relevant portions of Section 29 are as follows:

"29(1) No government institution shall disclose personal information in its possession or under its control without the consent, given in the prescribed manner, of the individual to whom the information relates except in accordance with this section or section 30.

29(2) Subject to any other Act, personal information in the possession or or under the control of a government institution may be disclosed:

- (f) for the purpose of locating an individual in order to:
 - (i) collect a debt owing to Her Majesty in Right of Saskatchewan or to a government institution by that individual;"

With respect to two of the individuals, the debt appears to be for student loans made by and owing to the Government of Canada and consequently do not appear to come within the above noted exception of any of the other exceptions enumerated in Section 29(2). The third claim, however, is for information to assist in collecting a debt owing to a government institution as defined in the Act, and is therefore within the provisions of Section 29(2)(f)(i). It is apparent that not all of the information requested by the Applicant comes within the exception, but only such information that could be used for the purpose of locating the individual.

With respect to this request, the Applicant was advised by the Department by letter dated September 16, 1993 that:

"Access to the requested information is denied in accordance with Section 29(1) of the Act. The Act provides discretionary authority to release personal information for the purposes of collecting a debt owing to the Province. Social Services policy states that unless the client consents, information will not be released for the purposes of collecting a debt (Social Services file [REDACTED]).

I agree that the authority to release the information is discretionary. The provisions of Section 29(1) that "No government institution shall disclose personal information in its possession ..." are mandatory and place an absolute duty on the Department not to disclose such information. However, Section 29(2) provides that such information "may be disclosed" under any of the conditions enumerated and therefore disclosure becomes discretionary. See for example *Electrohome Ltd. v. Deputy Minister of National Revenue* 1986 2 FC 344 at pp. 353 to 356.

However, the question remains whether the Department has, in fact, exercised its discretion, or properly exercised its discretion, acting as it did on a standing policy that such information will not be disclosed. Simply put, the Department cannot, by adopting a policy of non-disclosure, negate a provision of the Act which provides for disclosure albeit on a discretionary basis.

In order to comply with the Act, the Head of the Department or the authorized Access Officer must make a considered decision as to whether in each case the information requested should be disclosed or not, and in so doing must not be fettered or restricted by a prohibitive policy. The discretion must be exercised by considering relevant factors rationally connected to making the decision so as to arrive at an objective assessment as to whether or not the request for information should be denied or granted. For a recent discussion of these principles see *Heare v. Insurance Corporation of British Columbia* 1989 34 B.C.L.R. 324 (B.C.C.A.).

Accordingly, it is my recommendation that the application for information file [REDACTED] be reconsidered by the Head or the Access Officer of the Department to determine whether or not the information required for the purpose of locating the individuals should be disclosed.

Dated at Regina, Saskatchewan this day of November,
1993.

**Derril G. McLeod, Q.C.,
Commissioner of Information and
Privacy for Saskatchewan**