

FILE NO. - 98/006  
[REDACTED]

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

[REDACTED] applied to the Department of Social Services for disclosure of certain documents in the possession of Children's Choice Child Care Co-op in Prince Albert.

The documents specified were as follows:

- [REDACTED] - Child's Health and Social Resume
- [REDACTED] - Child's Medical Certificate
- [REDACTED] - Social Resume"

It is a requirement of the Department of Social Services that these forms be completed by the Daycare Centre and the parent when a child is enrolled in a daycare centre.

The forms in question relate to such a child, namely [REDACTED] who is the [REDACTED] of the Applicant, and with respect to which child the Applicant has lawful custody pursuant to a Judgment of the Queen's Bench dated [REDACTED]

The documents were prepared by the mother of the child when she had custody. The Applicant attempted to obtain copies of the documents from the Daycare Centre relying

on the fact that he had obtained lawful custody of the child. The Daycare Centre refused to disclose the document and the Applicant then made an application for disclosure to the Department of Social Services on the basis that, in his submission, the Department of Social Services, while it did not have the documents in its actual possession, has the right to demand production of the documents to the Department by the Daycare Centre.

The forms in question are forms which are provided to Daycare Centres and parents by the Department of Social Services, but it is not a requirement that these forms be completed and provided to the Department, rather it is required that they be completed and kept by the daycare centre, and indeed it is not suggested by the Applicant that the Department has copies of the completed forms.

As a result of his application for disclosure of the forms the Applicant was advised by the Department by letter dated January 21, 1998 that:

"Your application for access was received by this office on January 6, 1998. This letter is to advise you that the completed forms you have requested are not in the custody of the department.

The department creates and prints these forms for use by the Child Day Care Centres in order to ensure compliance with the regulations and provide consistent documentation. However, it is not a requirement to file any copy of these forms with the department and the completed forms are kept by the centre."

The foregoing would, of course, be a complete answer to the request for disclosure unless the Daycare Centre in question was an agency of the Department, or the Department had a right, or was entitled to obtain copies or to be provided with copies of the completed forms by the Daycare Centre.

Following a request for review I have reviewed the matter with the Department and have been advised as follows:

"The department does not have the authority to request the document from the child care centre. The department developed the Health and Social Resume form that centres are required to use but does not require that these documents be filed with the department. The form is used by the child care only.

It is the opinion of the Department of Justice that a document is only within the possession or under the control of a government institution within the meaning of section 5 of The Freedom of Information and Protection of Privacy Act if the government has a copy of the document or has the ability to request the document pursuant to an existing statutory provision. A government institution does not have the authority to request a document for the purpose of satisfying an FOI request. A document would be considered "in the control of a government institution" if an agency is acting as an agent of the government and is performing a function that would ordinarily be performed by the government.

In this case, a child care centre is an independent agency and is not an agent of the crown. The only relationship with the crown is the licensing of the centre."

I am satisfied that the foregoing is a correct account of the situation which exists here.

I can find no basis for concluding that the Department has the right to possession or control of these records.

As the custodial parent, the Applicant may well be entitled, as a matter of law, to access to health records of his child, but this right of access, if it exists, can only be exercised in a Court of appropriate jurisdiction. This matter does not come within the jurisdiction conferred on me by *The Freedom of Information and Protection of Privacy Act*, and accordingly I have no power to deal with it as I am satisfied that the Department does not have custody or control of these records.

Dated at Regina, Saskatchewan this                      day of July, 1998.

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

