

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

[1] On March 19, 2002, [REDACTED] (the “Applicants”) wrote to the Community Living Division of Saskatchewan Social Services (the “Respondent”) as follows:

“Enclosed is an Access to Information Request Form, related to the above mentioned letter.

In our request to obtain information, as to the origin of all the false accusations in the [REDACTED] report, [REDACTED] sent the letter. In it she states on page 2 (attached for your convenience) that “the information came from several sources,”

She lists several sources, the last being “written reports prepared by Community Living Division (CLD) staff and emails among CLD personnel.

We have all of the other letters and minutes and all that is referred to in the letter. We know none of the information in the report came from these sources. Therefore, we request all copies related to the last item.

We await your reply.”

[2] The Respondent replied by letter dated June 28, 2002 which stated:

“I am writing in response to your request under The Freedom of Information and Protection of Privacy Act, for access to “written reports prepared by Community Living Division staff and emails among [sic] staff” relating to [REDACTED].

Attached are the records referred to. Some documents contained personal information about [REDACTED] and cannot be released without her informed consent which she is incapable of providing. As such, we feel it is necessary to sever some of the information from the attachments. Two of the documents have been severed in their entirety as they contain only personal information about [REDACTED]. This is required pursuant to section 29 of *The Freedom of Information and Protection of Privacy Act*.

If you wish to request a review of this decision you may do so within one year of this notice. To request a review, please complete a “Request for Review” form, which is available at the same location where you applied for

access. Your request should be sent to the Information and Privacy Commissioner, c/o 700–1914 Hamilton Street, Regina, Saskatchewan, S4P 3N6.

I trust this is the information you require.”

[3] On October 24, 2002 I received a Request for Review dated October 15, 2002 from the Applicants as a result of which I wrote to the Respondent on October 25, 2002 the following letter:

“A Request for Review has been filed with me by [REDACTED] and for your information I enclose herewith the yellow copy of the form.

In accordance with the provisions of Section 51 of *The Freedom of Information and Protection of Privacy Act*, I would advise that I intend to proceed with the review that has been requested.

I also enclose a copy of the Applicant’s letter dated October 15, 2002 which accompanied the Request for Review from which they set out in the first paragraph the information that they are attempting to obtain.

I wish to review the records or documents which you have declined to disclose to the Applicant and ask that you please forward me copies of same and I would further advise that this request is made pursuant to the provisions of Section 54 of the Act.

If you have any submissions to make with respect to your refusal to grant access to the records or documents in question I would appreciate receiving them at the time of receiving the documentation requested above.

I look forward to hearing from you.”

[4] By letter dated November 13, 2002, which I received on November 21, 2002, the Respondent replied as follows:

“As requested in your October 25th letter, we have enclosed a copy of the documents we provided to the [REDACTED] as well as a non severed copy. Two of the documents in question were withheld in their entirety and have been identified as such. The [REDACTED] request was for access to “written reports prepared by Community Living Division staff and emails among

Community Living Division staff", related to the [REDACTED] Review Report.

The client, [REDACTED], is not capable of providing informed consent for the release of her personal information and she has no legal guardian who could act in this capacity, so obtaining consent for the release of information was not an option.

In responding to this request, we first attempted to determine which information was solely personal information of [REDACTED] and not likely known to the [REDACTED] [sic]. This information we withheld from access. Secondly, we identified [REDACTED] personal information which would clearly be known to the [REDACTED] [sic] and/or contained situations in which they were directly involved or in some cases, were actually the sources of the information. This information we provided access to. We attempted to provide as much information to the [REDACTED] [sic] as would be reasonable under the circumstances. This can be difficult to determine at times, and we need to err on the side of caution and thereby protect the privacy of the client.

I trust this is the information you require."

[5] On November 21, 2002 I forwarded a copy of the above letter to the Applicants along with the following letter:

"Further to our previous correspondence I enclose herewith copy of letter dated November 13, 2002 which I have received from the Department of Social Services.

In light of the information contained therein would you kindly advise whether or not you now wish me to proceed with the review, and if so, I would also appreciate receiving any further representations you might wish to make as to why you should be entitled access to the information requested.

I shall await to hear from you."

[6] The Applicants have provided health and home care to the individual in question for many years and I believe it is important to point out that my investigation revealed that they are still

providing such care to her and that they are to be commended for their dedication to the health and well being of this person

[7] My review of the records to which access has been denied or portions deleted indicate that they consist of the following:

1. A 3 page fax entitled "Community Therapist Referral" dated May 10 '96 and signed by [REDACTED], Social Services Program Worker II.
2. A 7 page document entitled "Community Therapist Report" dated Oct. 1996 and signed by [REDACTED] - Community Therapist III.
3. A 3 page letter dated October 17, 1996 from [REDACTED] to [REDACTED], Special Education Teacher, [REDACTED] High School.

[8] The first of the above documents contained several deletions whereas the remaining two were withheld in their entirety.

[9] The Respondent's position is that the records in question are governed by the provisions of Section 29(1) of The Freedom of Information and Protection of Privacy Act and cannot be released as the individual in question does not have the mental capacity to consent to the release of her personal information and has no legal guardian who could consent on her behalf.

[10] Section 29(1) reads 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.

[11] Section 30 of the Act is not applicable as it deals with personal information of deceased persons. Section 24 of the Act defines personal information as follows:

“24(1) Subject to subsection (2), “personal information” means personal information about an identifiable individual that is recorded in any form, and includes:

- (a) information that relates to the race, creed, religion, colour, sex, sexual orientation, family status or marital status, disability, age, nationality, ancestry or place of origin of the individual;
- (b) information that relates to the education or the criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved;
- (c) information that relates to health care that has been received by the individual or to the health history of the individual;
- (d) any identifying number, symbol or other particular assigned to the individual;
- (e) the home or business address, home or business telephone number, fingerprints or blood type of the individual;
- (f) the personal opinions or views of the individual except where they are about another individual;
- (g) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to the correspondence that would reveal the content of the original correspondence, except where the correspondence contains the views or opinions of the individual with respect to another individual;
- (h) the views or opinions of another individual with respect to the individual;
- (i) information that was obtained on a tax return or gathered for the purpose of collecting a tax;
- (j) information that describes an individual’s finances, assets, liabilities, net worth, bank balance, financial history or activities or credit worthiness; or
- (k) the name of the individual where:
 - (i) it appears with other personal information that relates to the individual; or
 - (ii) the disclosure of the name itself would reveal personal information about the individual.”

[12] My review of the records in question indicates that they fall clearly within the scope of Section 24(1)(c) in that they contain information that relates to health care that has been received by the individual or to the health history of the individual in question.

[13] Sections 29(1) prevents disclosure of personal information except as provided in Section 29(2) which lists the instances where personal information may be disclosed. Of relevance to this issue are Subsections 2(a), (m) and (o) which read as follows:

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

(a) for the purpose for which the information was obtained or compiled by the government institution or for a use that is consistent with that purpose;

...

(m) where necessary to protect the mental or physical health or safety of any individual”

...

(o) for any purpose where, in the opinion of the head:

(i) the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure; or

(ii) disclosure would clearly benefit the individual to whom the information relates;”


[14] The three documents in question were created for the purpose of assessing and recommending treatments for the individual in question. As stated above, the first document is a referral for an assessment; the second document is a report assessing the individual and making recommendations for her care; and the third document is a letter to her teacher outlining certain recommendations contained in the report. The primary purpose of these documents is to determine how best the individual’s caregivers, teachers and health care practitioners can attend to her needs. If these documents containing the recommendations are not available to the Applicants, who are responsible for the day-to-day care of the individual, the recommendations cannot be properly implemented and the individual may therefore not receive the benefit of the recommended actions. Therefore, I believe that disclosing these documents to the Applicants would be very clearly for the purpose for which the information was obtained and compiled and for a use that is entirely consistent with that purpose. Section 29(2)(a) therefore applies and the documents should be disclosed accordingly.

[15] Similarly, since the documents provide recommendations for the necessary treatment of the individual and the protection of her health and safety, section 29(2)(m) should apply. One of the recommendations is that treatment be consistent between home and school settings, it is necessary

that the caregivers be given access to these documents and the recommended treatments in order to ensure that consistency is achieved.

[16] Furthermore, I find that section 29(2)(o) is also applicable because the benefit to the individual in releasing these documents to her caregivers obviously outweighs any invasion of her privacy that disclosure might create. It is therefore my recommendation that the Respondent provide the Applicants with access to all three of these documents without any excisions or deletions.

[17] Dated at Regina, in the Province of Saskatchewan, this 4th day of December, 2002.



RICHARD P. RENDEK, Q.C.
Acting Commissioner of Information
and Privacy for Saskatchewan