



REVIEW REPORT 269-2023

Ministry of Social Services

March 8, 2024

Summary: The Applicant submitted an access to information request to the Ministry of Social Services (Social Services). Social Services denied access in full pursuant to section 74 of *The Child and Family Services Act* (CFSA). Upon receiving Social Services' response, the Applicant requested a review by the Commissioner. The Commissioner found that pursuant to subsection 23(3)(c) of *The Freedom of Information and Protection of Privacy Act* (FOIP), the confidentiality provisions found in section 74 of the CFSA prevail. The Commissioner recommended that if the Applicant makes a request to the Minister of Social Services directly, the Minister exercise his discretion under subsection 74(5.1) of the CFSA, and determine what information he could provide to the Applicant.

I BACKGROUND

[1] On September 13, 2023, the Applicant emailed the Ministry of Social Services (Social Services), and requested the following information:

I'm looking to access information in regards to my son [child's full name] born 2017 [date of birth] Regina sk.

I'm looking for all police, mobile, and social service records on my son that the minister may have.

Please let me know what I need to do to access this information and have it produced.

[2] On September 29, 2023, Social Services responded to the Applicant via email, stating the following:

...The ministry must comply with the requirements of the legislation it falls under, in this case *The Child and Family Services Act* (CFSA). The confidentiality requirements

in the CFSA 74 require the ministry to maintain confidentiality of information collected and records created under the CFSA...

[3] On September 15, 2023, the Applicant submitted an access to information request stating:

I am looking for all police, mobile, and social service records on my son that the minister may have. Any reports made or provided to you folks in regards to [child's first name] be it emails, voice mails or emails.

[4] On November 15, 2023, Social Services again responded to the Applicant's request pursuant to subsection 7(2)(d) of *The Freedom of Information and Protection of Privacy Act* (FOIP). In this letter Social Services denied access to the record, in full, stating the following:

... The records you have requested cannot be released pursuant to *The Freedom of Information and Protection of Privacy Act* (FOIP) as they are subject to *The Child and Family Services Act* (CFSA). Subsection 23(2)(c) of FOIP provides that the confidentiality provisions found in section 74 of the CFSA prevail over FOIP...

[5] On October 18, 2023, the Applicant requested that my office review Social Services' decision.

[6] On November 27, 2023, my office provided notice to the Applicant and Social Services of my office's intention to undertake a review.

[7] On December 28, 2023, my office received a submission from Social Services. The Applicant did not provide a submission.

II RECORDS AT ISSUE

[8] This review will determine whether section 74 of the CFSA fully applies in this matter.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[9] Social Services is a “government institution” pursuant to subsection 2(1)(d)(i) of *The Freedom of Information and Protection of Privacy Act* (FOIP). Therefore, I find I have jurisdiction.

2. Does section 74 of the CFSA apply to the record?

[10] Social Services has advised the Applicant that the confidentiality provisions found in section 74 of the CFSA prevail over FOIP pursuant to subsection 23(3)(c) of FOIP.

[11] Subsection 23(1) of FOIP provides:

23(1) Where a provision of:

(a) any other Act; or

(b) a regulation made pursuant to any other Act;

that restricts or prohibits access by any person to a record or information in the possession or under the control of a government institution conflicts with this Act or the regulations made pursuant to it, the provisions of this Act and the regulations made pursuant to it shall prevail.

[12] “Primacy clauses” are clauses in a statute that define how a statute is interpreted if its provisions are inconsistent with another statute in the same jurisdiction. Primacy means the state or position of being first in order, importance, or authority (*Guide to FOIP*, Chapter 1, “Purposes and Scope of FOIP”, Updated March 7, 2023, [*Guide to FOIP*, Ch. 1], p. 27).

[13] Page 27 of the *Guide to FOIP*, Ch. 1, explains that if engaging subsections 23(1), (2) or (3) of FOIP, the government institution should be able to demonstrate that the record or information in question falls within the statutory provision that is not subject to FOIP. It

should be noted that section 23 of FOIP only applies to portions of Parts II and III of FOIP, which refer to access to records. All the other provisions of FOIP would fully apply such as the protection of privacy provisions in Part IV and the review and appeal provisions in Part VII.

[14] Page 27 of the *Guide to FOIP*, Ch. 1, further explains that subsection 23(3) of FOIP provides a list of provisions where FOIP does not prevail. Additional provisions that FOIP does not prevail over are also prescribed in section 12 of the *The Freedom of Information and Protection of Privacy Regulations* (FOIP Regulations).

[15] Subsection 23(3)(c) of FOIP states:

23(3) Subsection (1) does not apply to:

...
(c) section 74 of *The Child and Family Services Act*;

[16] Page 31 of the *Guide to FOIP*, Ch. 1, defines “prevail” as a provision of one Act having priority over a conflicting provision in another Act. The ordinary meaning of the word means to be superior in strength or influence.

[17] Page 31 of the *Guide to FOIP*, Ch. 1, further explains that for subsection 23(3) of FOIP, the Legislative Assembly recognized that FOIP and some other provisions would be in conflict and provided the mechanism for resolving that by expressly stating that the provisions listed at subsection 23(3) of FOIP and section 12 of the FOIP Regulations would prevail over FOIP. If engaging subsection 23(3), the government institution should be able to demonstrate that the record or information in question falls within the statutory provision that is not subject to FOIP. It should be noted that section 23 of FOIP only applies to portions of Parts II and III of FOIP which refer to access to records. All the other provisions of FOIP would fully apply such as the protection of privacy provisions in Part IV and the review and appeal provisions in Part VII.

[18] In my office's [Review Report 054-2020](#), I provided the analysis regarding the relationship of subsection 23(3)(c) of FOIP and section 74 of the CFSA in paragraphs [10] to [16]. In my office's Review Reports [145-2020](#) and [269-2021](#), I summarized that analysis in paragraphs [13] and [10] respectively, as follows:

[13] In summary, where there is a conflict in regards to access to information, section 23(1) of FOIP provides that FOIP will be the prevailing statute. However, section 23(3) of FOIP lists the specific statutes (or portions thereof) where the listed statute shall prevail over FOIP. In this particular matter, section 23(3)(c) of FOIP lists section 74 of the CFSA as the prevailing provision where there is a conflict regarding access to records.

[19] I will follow the same approach in this Report. For this current review, Social Services provided my office with an affidavit from its Executive Director, stating:

... on behalf of the Ministry of Social Services, I have undertaken a review of the file and I assert that section 74 of *The Child and Family Services Act* applies fully to the file...

[20] Based on Social Services' affidavit, I find that pursuant to subsection 23(3)(c) of FOIP, the confidentiality provisions found in section 74 of the CFSA prevail in this matter.

[21] During this review, the Applicant informed my office that they share custody of the child with the child's other parent, and that they needed the file in order to take certain matters to court. The Applicant raised concern regarding the wellbeing of their child. The Applicant was also concerned that hiring a legal counsel for this initial process may be very expensive.

[22] I note that subsection 74(5.1) of the CFSA provides:

74(5.1) Information mentioned in subsection (1) may be disclosed if, in the opinion of the **minister**, the benefit of the disclosure of information clearly outweighs any invasion of privacy that could result from the disclosure.

[Emphasis added]

[23] This section gives the Minister the power to provide information, when in their opinion, the benefit of providing it would outweigh any invasion of privacy.

[24] In this instance, as explained by the Applicant, we are dealing with a concern for a child's wellbeing; and the Applicant, who is one of the parents has requested this information. The information is not being released to the public, but to the parent of a child. It is not a broadcasting of the information, but instead is a very narrow disclosure for a specific purpose as explained by the Applicant.

[25] The Minister also has the discretion to determine how much information would be released. The Minister might provide some extracted information, some records, or all the information. I am sure any information the Minister releases would be appreciated by the Applicant. Any information would assist the Applicant in finding the truth and completing this parent's efforts to ensuring their child's wellbeing.

[26] Therefore, I suggest that the Applicant write directly to the Minister of Social Services, requesting he exercise his discretion under subsection 74(5.1) of the CFSA, to determine what information he could provide to the Applicant.

IV FINDINGS

[27] I find I have jurisdiction.

[28] I find pursuant to subsection 23(3)(c) of FOIP, the confidentiality provisions found in section 74 of the CFSA prevail in this matter.

V RECOMMENDATION

[29] I recommend that, if the Applicant makes a request to the Minister of Social Services directly, the Minister exercise his discretion under subsection 74(5.1) of the CFSA, and determine what information he could provide to the Applicant.

Dated at Regina, in the Province of Saskatchewan, this 8th day of March, 2024.

Ronald J. Kruzeniski, Q.C.
Saskatchewan Information and Privacy
Commissioner