



REVIEW REPORT 346-2021

Ministry of Justice and Attorney General

November 22, 2022

Summary: The Applicant submitted an access to information request to the Ministry of Justice and Attorney General (Justice). Upon receiving Justice's response, the Applicant requested a review of the decision. The Commissioner found pursuant to subsection 23(3)(d) of *The Freedom of Information and Protection of Privacy Act*, the confidentiality provisions found in section 14 of the *The Enforcement of Maintenance Orders Act, 1997* prevail and apply to the record and recommended Justice take no further action.

I BACKGROUND

[1] The Applicant made an access to information request to the Ministry of Justice and Attorney General (Justice) on November 17, 2021, requesting access to:

Assistant Director – Family Justice Services Branch – Ministry of Justice

Please forward the portion of the file for Case No: [reference redacted] as it relates to [Company Name] being named in The Notice of Continuing Seizure. 2013 to 2021

[2] By letter dated December 1, 2021, Justice responded to the Applicant's access to information request. Justice's response stated, in part:

...

This is to advise you that the information requested is subject to section 14 of *The Enforcement of Maintenance Orders Act, 1997*. Section 14 of *The Enforcement of Maintenance Orders Act, 1997* is listed in clause 23(3)(d) of *The Freedom of Information and Protection of Privacy Act* (FOIP), which prevails over FOIP. Subsection 14(1) of *The Enforcement of Maintenance Orders Act, 1997* is a confidentiality provision that states that “[n]o person shall disclose any information retained in this office except in accordance with th[e] [sic] Act or regulations”. Section

5 of *The Enforcement of Maintenance Orders Regulations, 2009* sets out who the director may disclose information to and the provision does not provide for disclosure to an applicant for the purpose of an access to information request. Accordingly, access to the records is denied pursuant to section 14 of *The Enforcement of Maintenance Orders Act, 1997*. For your information, I have attached a copy of the above-noted sections of the Acts and Regulations...

[3] By email on December 9, 2021, the Applicant requested that my office review Justice's decision to deny access to the record.

[4] On December 12, 2021, my office notified Justice and the Applicant of my office's intention to undertake a review of this matter and invited both parties to make a submission. My office received a submission from Justice on March 30, 2022. My office did not receive a submission from the Applicant.

II RECORDS AT ISSUE

[5] This review will determine whether section 14 of *The Enforcement of Maintenance Orders Act, 1997* (EMOA) fully applies to the record.

III DISCUSSION OF THE ISSUES

1. Do I have jurisdiction?

[6] Justice 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 to conduct this review.

2. Does section 14 of *The Enforcement of Maintenance Orders Act, 1997* prevail over FOIP?

[7] Justice has advised the Applicant that section 14 of the EMOA is listed in subsection 23(3)(d) of FOIP. Therefore, Justice has asserted section 14 of the EMOA prevails over FOIP.

[8] 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.

[9] In my office's [Review Report 054-2020](#), I provided the analysis regarding the relationship of subsection 23(3) of FOIP and another statute - section 74 of *The Child and Family Services Act* (CFSA) in paragraphs [10] to [16]. In my office's [Review Report 145-2020](#), I summarized that analysis 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.

[10] Section 14 of the EMOA is one of the portions of statutes listed in subsection 23(3) of FOIP. Subsection 23(3)(d) of FOIP provides:

23(3) Subsection (1) does not apply to the following provisions, and those provisions prevail:

...

(d) section 14 of *The Enforcement of Maintenance Orders Act, 1997*;

[11] Section 14 of the EMOA provides:

14(1) No person shall disclose any information retained in the office except in accordance with this Act or the regulations.

(2) The director may disclose information retained in the office to the extent necessary for the enforcement of maintenance orders filed in the office.

- (2.1) The director may disclose information to a person mentioned in clause 13(4)(c) if the court makes an order pursuant to subsection 13(5) for the disclosure of information.
- (3) Where a judge makes an order pursuant to subsection 13(5) or pursuant to any similar provision in any other Act or Act of the Parliament of Canada, the judge may make any order with respect to the confidentiality to be maintained in connection with the information released that the judge considers appropriate.
- [12] Section 14 of the EMOA is explicit that information shall only be disclosed as provided for in the EMOA. Furthermore, the director is not provided discretionary powers to disclose information. They can only disclose information pursuant to the EMOA or if there is a court order to disclose information.
- [13] Section 5 of *The Enforcement of Maintenance Orders Regulations, 2009* (EMOA Regulations) also lists permitted disclosures of information collected in that office – however the list is explicit in terms of whom information can be disclosed to.
- [14] In its submission, Justice asserts, in part:
- Section 14 of the EMOA states that information retained in the office can only be disclosed in accordance with the EMOA or the regulations. The records requested by [Applicant] relate to a specific company being named in a notice of continuing seizure. The notice of continuing seizure is a mechanism used to enforce maintenance orders. As such, these records are retained in the Maintenance Enforcement Office... Therefore, the access request is seeking information retained in the Maintenance Enforcement Office with respect to a payor. As such, the records requested can only be disclosed in accordance with the EMOA or the regulations (subsection 14(1) of the EMOA).
- [15] In addition, Justice has provided my office with evidence that demonstrates that section 14 of the EMOA applies fully to the record.
- [16] Therefore, I find pursuant to subsection 23(3)(d) of FOIP, the confidentiality provisions found in section 14 of the EMOA prevail over FOIP and apply to the record. I recommend Justice take no further action.

IV FINDINGS

[17] I find I have jurisdiction to conduct this review.

[18] I find pursuant to subsection 23(3)(d) of FOIP, the confidentiality provisions found in section 14 of the EMOA prevail over FOIP and apply to the record.

V RECOMMENDATION

[19] I recommend Justice take no further action.

Dated at Regina, in the Province of Saskatchewan, this 22nd day of November, 2022.

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