

FILE NO. - 96/027

**REPORT WITH RESPECT TO THE APPLICATION
FOR REVIEW OF [REDACTED] WITH RESPECT TO INFORMATION
REQUESTED FROM LLOYDMINSTER HEALTH DISTRICT
AND BATTLEFORDS HEALTH DISTRICT**

[REDACTED] applied for access to her medical records held by the Lloydminster Health District and the Battlefords Health District. In each case her request was refused and she has filed Requests for Review in each case.

There appears to be some question as to whether the applications were made under *The Freedom of Information and Protection of Privacy Act* or under *The Local Authority Freedom of Information and Protection of Privacy Act* but this question is academic as the provisions dealing with this matter are identical in each Act, both of which provide that:

"A head may refuse to give access to a record if the disclosure could threaten the safety or the physical or mental health of an individual."

This section confers a discretion upon the Head to withhold or refuse access on the basis of a mere possibility of resulting harm, and in that respect is unusual to say the least as the usual threshold in similar legislation is that there should be a reasonable

expectation or probability of harm rather than the mere possibility. I note, for example, that in the draft of the proposed *Health Information Protection Act* that a person has the right to access his or her health records, and that the custodian may refuse if knowledge of the information could **reasonably be expected** to endanger the mental or physical health or safety of the applicant or another person.

Reference may also be had to Section 15 of *The Mental Health Services Act* which provides:

"15(3) Subject to section 16 where a person who holds information concerning a patient that is requested by the patient to be disclosed considers that the disclosure of such information is likely to be injurious to the patient or to a third party, and documents reasons for this belief, he may withhold the information."

Section 16 then provides that an application may be made to a judge of the Court of Queen's Bench for an order that the information be disclosed.

However, the test which I must apply is the test prescribed by *The Freedom of Information and Protection of Privacy Act*, and I find it quite impossible to suggest that the discretion to withhold exercised in this case should be interfered with, since it is only necessary that the Head should consider that the mere possibility of harm may exist. To put the matter somewhat differently, it would be quite impossible for me to say that such a possibility does not exist. However, I should add that I have great

difficulty in seeing how, when a discretion is exercised under Section 20, a Request for Review could ever be successfully made when a discretion is based on a mere possibility.

The result is, in this case, that I am unable to conclude that the Head of the Lloydminster Health District or the Head of the Battlefords Health District has not complied with the Act. In fact the submissions made to me do support the **possibility** of harm ensuing.

It appears to me that the applicant, if so minded, should pursue her remedy under *The Mental Health Services Act*.

Dated at Regina, Saskatchewan this 9th day of October, 1998.

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