

**NUNAVUT
INFORMATION AND PRIVACY COMMISSIONER**

Review Recommendation 07-35
November 27, 2007
Review File: 07-216-5

A. BACKGROUND

By letter dated June 11th, 2007, the Applicant requested documentation from the Department of Health and Social Services, specifically the following:

- a) with respect to a letter written by Robert Genge dated May 31, 2002 ("the May 31st letter") and addressed to the Applicant, a copy of the "copy" that was sent to Allette Pryce, an employee of the Department of Health and Social Services

- b) the "original record" of a written report of a meeting held on December 13th, 2002 with respect to a child welfare issue which was then sent to the Department of Health and Social Services

The request relates to records arising out of events which occurred in 2002. At the relevant time, Robert Genge was an employee of a public body in Nunavut and Allette Pryce was an employee of the Department of Health and Social Services.

The public body responded to the Applicant's Request for Information indicating that they could find no records responsive to the request, resulting in the Applicant's request to this office to review that response.

In his Request for Review, the Applicant provided copies of various records including a copy of the letter referred to in the first part of his Request for Information which indicates that a copy of the letter was sent to Allette Pryce, among others.

In its response to my request for an explanation, the department indicated that they did extensive searches but could find no responsive records. They indicated that they could find no record of any file pertaining to the request for information. In their response to me, they also noted that if such a record existed, it would be unavailable to the Applicant in any event because it was a record created under Nunavut's *Child and Family Services Act*, which cannot be disclosed to any person except in accordance with the specific provisions of that act, notwithstanding the *Access to Information and Protection of Privacy Act*

The Applicant was provided with a copy of the public body's response and given the opportunity to provide further submissions but no further submissions were received.

B. ISSUES

In my opinion, the issues in this case are twofold:

1. Did the public body comply with section 7(1) of the Act which requires a public body to "make every reasonable effort to assist an applicant and to respond to an applicant openly, accurately, completely and without delay"?
2. Is the Applicant entitled to receive the records in the possession of the department which relate to a child welfare matter?

C. DISCUSSION

It is to be noted that after responding to the Applicant's Request for Information and my request for input on the Request for Review, the public body in fact located the child welfare file in question as a result of ongoing searches sparked by other Requests for Information made by the Applicant. The specific records responsive to this particular Request for Information are all located in a file created pursuant to the *Child and Family Services Act* and the public body takes the position that they are prohibited from

disclosing any such records by reason of section 71 of that Act. It may be that in this particular case copies of the records being requested exist in other places. In fact, the Applicant has provided both the public body and myself with copies he has obtained from other sources. The Applicant, however, has requested the specific copies on this specific file and those are not accessible.

With respect to the first question, the public body indicated to me the steps it had taken to find any records that might have been responsive to the Applicant's requests for information. They indicated to me that a total of approximately 6 hours had been spent in the initial search for the records requested by the Applicant. Their search included the records within the Department of Education as well as the Department of Human Resources. A search was also done of the Records Centre in Iqaluit and an electronic records search was undertaken. None of these searches produced results with the information first provided by the Applicant. The file in question came to light only later with additional information which was eventually received from the Applicant. They confirmed that the file in question was, in fact, a child welfare file.

I am satisfied that the public body made every reasonable effort to locate the documents requested by the Applicant. Unfortunately, the Applicant had simply not provided all of the relevant information in the first instance which might have pointed them in the right direction. This is not a reflection on the Applicant, but simply points out the fact that the more information which is made available to a public body when making a request for information, the more likely it is that the responsive documents can be identified quickly and accurately. Government is a large organization and personnel changes frequently. Those who were around in 2002 and who might more readily have been able to understand the context of the Applicant's request so as to direct the search in a certain direction may no longer be around five years later. Even if they are around, it may not be the same people doing the searches and dealing with the request. I am satisfied that the public body put genuine effort into its attempts to discover the records requested.

The records requested by the Applicant in this case relate to a child welfare issue. For such records, the *Child and Family Services Act* takes precedence over any access provisions outlined in the *Access to Information and Protection of Privacy Act*. In fact, the public body is prohibited by legislative enactment from disclosing this information except in the very narrow circumstances outlined in that Act. The Applicant's request does not meet the criteria for disclosure.

D. CONCLUSION AND RECOMMENDATIONS

As noted above, it is my opinion that the public body in this instance made a genuine good faith attempt to locate the records requested by the Applicant.

That having been said, I do have some concerns that the records referred to in the Applicant's request were not discovered in the first attempt by the public body. In this case, the failure to locate the records does not appear to be a result of the lack of effort on the part of ATIPP Co-Ordinators. It appears, however, that there may be a problem here in the record keeping system itself. It seems to me that the file in question should have been discovered with the information initially provided by the Applicant. His request included names of some of the parties involved, as well as the name of an employee of the public body who had conduct of the file, or at least who was involved with the file while it was active. It is not clear from the public body's response what new information enabled them to discover the records. If, however, it was a matter of departmental employees not following proper records management protocols in terms of ensuring that files are properly indexed and recorded, that should be addressed.

Without more information about why the file was not discovered at the first instance, however, it is difficult for me to comment further or make any specific recommendations.

Insofar as the Applicant's entitlement to receive the records in question, I am satisfied that the public body properly interpreted the provisions of the *Child and Family Services*

Act in indicating that, notwithstanding that the records might exist, disclosure of those records would be prohibited.

In the circumstances, the only recommendation I would make is that the public body investigate why the records in question did not surface during the first attempt to find them and to take such steps as are necessary to ensure that, if similar requests are made in the future, the records can be identified and dealt with in accordance with the Act. Any gaps or problems with the records management system should be addressed as soon as possible. Good records management practices are, of course, integral to the ability of any organization to be able to locate and recover records, particularly as those records become more dated.

Elaine Keenan Bengts
Information and Privacy Commissioner