

**Ombudsman Investigation of an Allegation
of Improper Search for Information on
Five Individuals on the Part of the
Ministry of Human Resources**

Public Report No. 2

March 1982

OMBUDSMAN OF BRITISH COLUMBIA

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OF IMPROPER SEARCH FOR INFORMATION ON
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INTRODUCTION

On January 5, 1982, the Income Assistance Division of the Ministry of Human Resources sent a telex to all MHR offices. The telex contained the names and addresses of five individuals and the following request: "Any office with recent information on, or contact with the above, please advise: Ministry of Human Resources, Income Assistance Division, phone 387-1486".

Copies of the telex were obtained by the five persons listed in it. Two of them made unsuccessful enquiries with the Ministry official who had authored the telex about the purpose and origins of the list. The five individuals then decided to complain publicly about the impropriety of the list from their point of view. Specifically, they stated to the press that as their only connection to one another was that they had all

participated in a welfare rights demonstration in late November of 1981, the telex must have represented an attempt by the Ministry of Human Resources to investigate them because of their involvement in the demonstration. They considered this to be unfair and an abuse of power on the part of the Ministry.

The February 15th issue of The Province contained an article outlining the concerns of the five individuals under the headline: "Ministry's 'Alert' Angers Welfare Protesters". To quote from the article:

". . . five Lower Mainland people are angry and confused that the Ministry chose to put their names on an internal memo that asked for information about them - memos that are usually reserved for child abuse or welfare fraud investigations."

In effect, the five individuals believed that the Ministry was collecting information about them for an improper purpose. They suspected that the information search had been initiated because of their opposition to recently announced new regulations on income assistance. When the Ministry of Human Resources was confronted with this allegation by the press, it confirmed that the telex had been sent out but MHR representatives declined any further comments, citing confidentiality.

On becoming aware of the controversy I decided to investigate the matter immediately and on my own initiative as permitted by Section 10(1) of the Ombudsman Act. I notified the Ministry of my view that I considered the charge of retaliation and misuse of information as a very serious

allegation that warranted investigation by the Ombudsman. I suggested that if there was any substance to the allegation I might have to make recommendations to the Ministry. Equally, if the allegation could not be substantiated I stated to the Ministry that the MHR official named in the public complaint should not remain under suspicion and "the public should be appropriately reassured that your (MHR) staff does not indulge in such practices".

Improper use of information or improper use of governmental authority is always a most serious issue. Such an allegation cannot be left unattended lest it undermine the public's confidence in the probity of our institutions or officials. Government agencies collect a large amount of information on citizens and play a pervasive role in our lives. Communications technologies have become very sophisticated further enhancing the opportunities for unauthorized and improper use of the information collected by the government about all of us. We are only two years away from Orwell's gloomy prediction "1984", and have become more conscious of the prospect of "Big Brother" watching us.

Canada has developed general statutory principles to protect the citizen's privacy interests in Part IV of the Canadian Human Rights Act and other provinces are currently also considering or preparing statutory protection of privacy rights. We do not have such a statutory code in British Columbia and in its absence I feel a special responsibility to work with government agencies to minimize the potential for error or abuse and to

check existing information practices to ensure that they do not conflict with generally accepted social values supporting the privacy interest of our citizenry.

Before presenting my investigative findings I will review briefly how the Ministry's information search has affected three of the individuals. All five persons on the Ministry's information search telex are known to the media by name and three have been identified by name in news articles reporting on the controversy with their consent. I will refrain from using or publishing their names so as not to contribute further to official invasion of their privacy. They themselves are, of course, free to identify themselves to the media. The newspapers have, quite properly and to their credit, withheld the names of two of the five people who did not wish to see their names published.

One of the five persons listed in the MHR information search operates a social service which is sponsored by two churches. She has a family with three children. In her daily work she has frequent contact with MHR workers. She was most disconcerted and upset when she learned that MHR had conducted an information search on her. She worried that someone might have maliciously reported her as an abusive parent. She felt she had to explain the problem to the representatives of the two churches that fund the service she operates. The MHR search caused her real anxiety and serious embarrassment. She feels she is under suspicion and under

investigation. She stated to me: "Welfare workers of the parents I work with could be really suspicious of me. My relationship with them might change--both the welfare workers and the parents of the children in the centre"; "I was in a sweat"; "My feeling is that the Ministry has done something incredibly improper". Her husband phoned the MHR Coordinator who had sent out the information request. The MHR official said he was terribly sorry and "What would you like me to do?" "Would a letter of apology be adequate?" The husband wanted an explanation, not an apology because he did not know what MHR was apologizing for. The only explanation they ever got was this: "It's a mistake".

Another one of the five persons on whom MHR conducted an information search is a young social worker (not employed by MHR). He was most concerned about this intrusion into his private life. He felt that using the resources of a government ministry in order to investigate his lawful activities was a flagrant and shameful abuse of power. He thought the MHR's actions, with regard to this incident could be viewed both as harassment and persecution. As a social worker, he felt it important that he be free to speak out with, and on behalf of those who may perceive themselves as powerless in the face of government policies and practices. He asked a colleague who works with MHR to make inquiries with the Ministry about the information search. He was informed: "It's been a mistake. The Ministry is deeply sorry and sends its apology. It's been a case of mistaken identity".

One of the five received social assistance for himself and his young child. He has written to the Minister on several occasions and to the press concerning MHR policy; one of his letters to the editor was printed in a Vancouver daily. He states: "I have been very critical and outspoken in the press and expressed my disapproval of Ministry policy in no uncertain terms. No doubt about it: the Ministry doesn't like me." He is left wondering whether the MHR information search is an attempt at harassment or merely the result of incompetence.

My staff and I interviewed several Ministry of Human Resources officials regarding this matter including the Income Assistance Division Coordinator who sent the telexes requesting information on the five persons; the Deputy Minister; the Minister; the Special Assistant to the Minister; the Deputy Minister's Assistant; a number of district supervisors; and other MHR staff members. Further, we interviewed four of the five persons whose names were on the Ministry list. Pertinent documents were studied.

On February 19, 1982, I sent the preliminary results of my investigation to MHR representatives and gave them an opportunity to respond to my findings of fact, my assessment of the significance of these findings, and the recommendations I proposed to make to MHR in relation to the matter. This material was sent to the Minister of Human Resources; her Special Assistant; the Deputy Minister; and the Income Assistance Division Coordinator who had sent the telex. The Ministry sent a collective response on February 25, 1982. In that response, the MHR did not dispute

my findings of fact but questioned my assessment of the significance of these findings. When I received the Ministry's response I reviewed it and considered it carefully. I could not, however, agree with most of its contents. I reported my conclusions on the investigation to the MHR on March 3, 1982. At the same time, I release this Report pursuant to Section 30(2) of the Ombudsman Act as I considered it to be in the public interest. I will deal with the Ministry's response in greater detail below.

FINDINGS OF FACT

Five fundamental questions of fact are central to this investigation:

- 1) Was an information search on the five individuals conducted by the Ministry?
- 2) Who requested the information?
- 3) Why was the information search initiated?
- 4) How was the information search conducted?
- 5) What use was made of the information collected?

1. WAS AN INFORMATION SEARCH ON THE FIVE INDIVIDUALS CONDUCTED BY MHR?

Yes, an information search was conducted by MHR. In a telex sent to all MHR offices on January 5, 1982, the names and addresses of the five individuals were listed with the following request: "Any office

with recent information on, or contact with the above, please advise Ministry of Human Resources, Income Assistance Division, Phone 387-1486".

2. WHO REQUESTED THE INFORMATION?

The January 5 telex information search was sent by one of the coordinators of the Income Assistance Division. When I asked him why he had conducted the search, he replied that it was in response to a request for information from the Deputy Minister.

I asked the Deputy Minister why he had requested the information and he responded that it was in reply to a request for information from the Minister's Office.

I asked the Minister of Human Resources why a request for information on the five individuals had been made by her office and she replied that her Special Assistant had requested information on the five individuals from the Deputy Minister's office.

I asked the Special Assistant why she had requested information on the five individuals and she said that she "believed" she had received an anonymous piece of information that the five individuals may have been receiving social assistance fraudulently.

The Special Assistant remembers making the request for information. Under oath, she said that she does not remember reading an anonymous letter or communicating by telephone to a person who may have called in with an allegation of fraud. She stated that she remembers that it was an allegation of fraud but she says she does not remember when, how, or by whom she received this allegation. She has no documentation on the incident in terms of notes to file, a copy of an anonymous letter or any other piece of paper that would jog her memory. She believes that she remembers that the allegation was made by one person on all five individuals and that the anonymous person provided both names and complete addresses on all five individuals. To the extent that I can determine the issue, it was the Special Assistant to the Minister of Human Resources who requested the information.

3. WHY WAS THE INFORMATION SEARCH INITIATED?

On November 26, 1981, the Special Assistant sent a memo to the Deputy Minister's office with the following request: "Would you please let me know if the following people are clients of ours"..., followed by the five names and addresses. The Special Assistant says that she requested this information as a result of an anonymous "tip" that was received in the Minister's office alleging welfare fraud on the part of the five individuals.

4. HOW WAS THE INFORMATION SEARCH CONDUCTED?

The following material, presented in chronological order, was gathered during the course of the investigation and represents, to the best of my knowledge, the manner in which the information search was conducted. I must point out that the bits and pieces of information contained in this chronology came from different sources and that, to my knowledge, there is no one document in which all this information is kept.

Nov. 26, 1981: Memo to Deputy Minister's office from Special Assistant to the Minister.

Request: "Would you please let me know if the following people are clients of ours:..."

List of five names with addresses.

Dec. 4, 1981: Memo to the Income Assistance Division from the Deputy Minister.

Request: "Could you advise me please if the following are clients of this Ministry?"

Same list of five names and addresses.

Dec. 14, 1981: 5 telex messages to 5 MHR District Offices corresponding to the addresses of the 5 individuals; each memo requested information on one of the 5 individuals.

3 Requests: "Please advise by telephone if you have any record of above noted at your district office."

2 Requests: "The above noted appears on the fiche as being in receipt at your office. May we please have a brief financial summary?"

Dec. 16, 1981: Response from 2 district offices with information on 2 of the 5 individuals who are clients of MHR. Response from a third district office that the individual named in the telex was not a client in that district.

Jan. 5, 1982: Multi TWX (telex) addressed "to all MHR offices" from the Income Assistance Division.

Request: "Any office with recent information on, or contact with the above, please advise: Ministry of Human Resources, Income Assistance Division, phone 387-1486."

Same list of 5 names and addresses.

Jan. 14, 1982: Memo to Income Assistance Division from the Deputy Minister.

Request: "Further to my memorandum of December 4, 1981, were you able to identify the persons listed and determine if they are in receipt of benefits from the Ministry?"

Jan. 20, 1982: Memo to the Deputy Minister from the co-ordinator who had sent the telexes, Income Assistance Division. This memo presents a 13-line summary and a 3-line summary of the information obtained on two individuals and states the following on three: "No record with District Office or master list."

Jan. 25, 1982: The Jan. 20th memo to the Deputy Minister was sent to the Minister on a pink slip:

From Noble

To Minister

For your information

As requested - Nov. 26/1981

Although the Income Assistance Coordinator does not clearly remember this, it appears that his first response to the Deputy Minister's request of December 4 was to check the master list of all persons

receiving income assistance in the province. I say this because the telexes he sent later (Dec. 14, 1981) to the 5 district offices make specific reference to the master list (fiche) in the case of two individuals who were receiving income assistance.

In response to the Dec. 14 telex, two district offices contacted the Income Assistance Division on Dec. 16, 1981 with current financial information on two of the five persons on the list. A third district office called to say that the person listed in the telex was not an MHR client in this district. There was apparently no response from the other two district offices.

It would appear that there was no response from any of the more than 150 district offices to the Jan. 5 Multi TWX.

5. WHAT USE WAS MADE OF THE INFORMATION COLLECTED

The Special Assistant to the Minister made the initial request for information. After this request was "processed" through the Deputy Minister's office, the information was passed back, apparently to the Minister. During the course of this investigation, on February 17, 1982, I asked the Minister what action she had taken as a result of the information she received. The Minister replied that she had just

received the information and had not yet read the memo. I asked the Special Assistant what action she had taken as a result of the information contained in the January 25 memo from the Deputy Minister to the Minister. She replied that she had not seen the memo, or discussed it with the Minister or received any direct response from the Deputy Minister's office to her request of November 26.

It would appear that no action concerning the fraud allegation was taken by anyone in MHR as a result of the information search.

INTERPRETATION OF FINDINGS OF FACT

The Minister and other MHR officials informed me that every year the Ministry receives hundreds of "tips", anonymous and otherwise, alleging welfare fraud. In such cases the Ministry must consider if and when investigations are required in the interest of its financial accountability to the Legislative Assembly. The Ministry has developed an Inspectors Program to deal specifically with such allegations and 28 inspectors are presently working for MHR. At the same time, the Ministry is the repository for financial and personal information on thousands of B.C. residents who receive service from this Ministry: income assistance, adoptions, family services, and others.

A Ministry in possession of that kind of highly personal information must have particularly circumspect information practices. Information searches on individuals must be conducted only for legitimate reasons.

I find it most extraordinary that, in the Minister's office, no record is kept of allegations of welfare fraud. I am informed that anonymous letters are routinely destroyed even though the allegations contained in them become the basis for an extensive information search by Ministry officials. I consider such a practice to be completely inappropriate.

The Document Disposal Act, R.S.B.C. 1979, c. 95 states:

"3(1) No document shall be destroyed except on the written recommendation of a committee to be known as the Public Documents Committee ..."

The term "document" includes letters and papers.

The Ministry of Human Resources receives a number of anonymous allegations of child abuse as well as welfare fraud. No doubt some of those allegations are frivolous or vexatious and after investigation have been found to have no substance. After such a conclusion has been reached, it seems reasonable that the original allegation, whether it is made by letter or memorandum of a phone call, be destroyed. However, up to the time that such a decision is made, that letter or memorandum is a very important document, for it justifies the intervention of the Ministry.

It is evidence of the reason for the Ministry's investigation and as such should not be destroyed, except in circumstances where after investigation the complaint is not substantiated by fact.

In the current case, the Minister's Assistant informs me that the letter (if there was one) would have been destroyed before a decision had been reached and an investigation concluded. I am advised that this may be contrary to the intent of the Document Disposal Act.

The initial request for information was: are these individuals MHR clients? Assuming this was a legitimate and proper request based on a documented allegation of fraud, that question could have been answered in 30 minutes by consulting the master list of all MHR income recipients. In fact, this initial step was taken by the Income Assistance Branch and the answer was: 2 are clients, 3 are not. At this point, both the Deputy Minister's query and the Special Assistant's query could have been (according to the master list) answered as follows: "As of 3 weeks ago, 2 are clients, 3 are not". Why then were these additional steps taken of

- a) asking specifically for detailed information from the 5 District Offices;
- b) sending out a general request for "information on or contact with" these 5 individuals to all MHR offices?

This last procedure strikes me as particularly reprehensible, unwarranted and indeed improper. It was unnecessary for purposes of finding the answer to the question in the memo. Information on two of the five individuals was already, at the time of sending the telex, in the hands of the Income Assistance Division. And, finally, and most importantly, it appears to me that it is quite improper to extend a general invitation to 150 MHR offices to provide any and all information on particular named individuals without any justification for such a broad request. There must be a specific reason for a search and information requested must be relevant to that reason. When asked why he took these additional steps, the coordinator said he wanted to be "thorough" in his response to the Deputy Minister. Although this may explain his actions it does not justify them. At the same time I must point out that the Deputy Minister's office has not, to my knowledge, issued explicit instructions to the Income Assistance Division on how to respond to these kinds of requests for information. That leaves the door open to widely different interpretations of what constitutes an appropriate response.

Another unusual incident related to the Multi telex is that although all MHR offices were supposed to receive it, it appears that many District offices in the Vancouver area did not receive it. The MHR states that there is a general problem with the Telex Centre and telexes often seem not to reach their destination. However, to my knowledge, this problem does not normally affect the Vancouver offices. Yet, I received no satisfactory explanation of the fact that the telex was not received by many Vancouver District offices.

Finally, it appears to me that the five individuals listed in the memo have been treated unfairly by MHR subsequent to their becoming aware of being on an information search list. Prior to the press reports on the matter, two people had called the coordinator of the Income Assistance Division, demanding an explanation for the distribution of the list and the reason why their names were on it. They were told a "mistake" had been made. When pressed for an explanation of the "mistake" they were told that, for reasons of confidentiality, no further information could be released to them. This assertion appears to me to be quite untrue. There is no "confidentiality" problem in giving information about how the Ministry handles allegations of fraud, particularly when the persons involved are not even MHR clients. They had, I believe, a right to be informed that several mistakes had been made, and what they were; they had a right, I believe, to be given that information in writing; and they had a right, I believe, to a formal and official apology from MHR.

I can readily understand why the five individuals felt--after being refused a satisfactory explanation by MHR--that they were the victims of an improper search. I have interviewed four of the five and they informed me that they cannot find any connection between each other apart from their participation at the November 21 rally. They are alarmed that they might have been singled out for scrutiny because of their participation in that rally. They will be even more concerned when they learn from this Report that the information search was initiated by the Minister's office and within five days of their participation in that rally.

THE MINISTRY'S POSITION

As noted earlier I sent my preliminary findings to the MHR on February 19th and received a Ministry response on February 25th. Briefly, the Ministry's position was:

- 1) the information search was initiated because the Minister's office received an anonymous allegation of fraud;
- 2) there was nothing improper about the information search;
- 3) the MHR officials involved had acted properly and fairly;
- 4) the procedures used were usual and reasonable under the circumstances;
- 5) the Ministry emphasizes its obligation to investigate all allegations of fraud;
- 6) the Ministry is very concerned with the fact that one of its officials must have been breaching Section 6 of the GAIN Act and his/her oath of office by disclosing to the five individuals the substance of the January 5 telex;
- 7) the Ministry is "most surprised that [my] report did not deal with this most serious and clearly illegal breach of confidentiality".

COMMENTS ON THE MINISTRY'S POSITION

The most difficult question of fact in this entire investigation revolves around the question: was there or was there not an allegation of fraud?

If there was an allegation of fraud the initiation of an information search in the Minister's office has some legitimate basis even though the way the search was handled still leaves the Ministry open to criticism. If there was no allegation of fraud the Minister's office needs to give an explanation why they wanted to know whether the 5 were Ministry clients.

The Ministry wants me to accept as fact that the information search was precipitated by an anonymous allegation of welfare fraud received in the Minister's office. The Ministry insists that I accept that as fact

- a) because the Minister's Special Assistant asserted as much under oath and/or
- b) because there is no concrete evidence to the contrary.

This position raises two important issues:

- 1) What standard of proof must I as Ombudsman employ before I come to conclusions about an investigation under Section 22 of the Ombudsman Act? In response I must state that I cannot accept the proposition implied in the Ministry's position that I may form an opinion under Section 22 of the Ombudsman Act only if I can prove beyond a reasonable doubt that there was no allegation of fraud. Such a standard of proof is appropriate in criminal proceedings before the courts but quite inappropriate in Ombudsman investigations. My concern must always be to weigh the

information before me carefully and to give all affected persons the opportunity to make representations to me which could affect my view of the facts.

2) The second issue raised by the Ministry's position is this: are there any reasons which would lead me to question either the veracity of the Minister's Assistant or the accuracy of her statement under oath? I have no reason to question her veracity. I must, however, raise several considerations which might lead me to question the accuracy or correctness of her recollection.

a) Two days before testifying under oath (that there was indeed an allegation of fraud) the Minister's Special Assistant had difficulty stating or recalling firmly that there was an allegation of fraud. She arrived at her conclusion (that an allegation of fraud precipitated her request to the Deputy Minister) by deduction: if she wrote that memo (November 26) to the Deputy Minister it must have been because there was an allegation of fraud. If there is no record of the allegation in existence I fully appreciate the difficulty this person had with the problem of recall. But neither can I then place a lot of reliance on her recall.

b) An allegation of fraud is not a joking matter. Such a serious charge may lead to criminal prosecution and, on conviction, to fines and/or imprisonment. I am amazed at the assertion by the Minister and her Special Assistant that anonymous letters containing allegations of fraud, as well as "tips" and notes of anonymous phone calls are routinely destroyed as soon as the Assistant has phoned the Deputy Minister's office or signed a note to that office asking whether a person is a Ministry client. I would have to consider that a most unusual practice in any public office and possibly a practice that contravenes the Document Disposal Act. Above all it does not appear consistent with the Ministry's stated purpose, namely to pursue all allegations of welfare fraud vigorously. Surely, the details of such a fraud allegation are necessary for a proper investigation.

Common sense, if not good office procedures, suggest that if an allegation of fraud is received in the Minister's office the matter ought to be passed to the Ministry as follows:

'We have received an anonymous letter (phone call) alleging welfare fraud on the part of the following five individuals. If any of the above-noted are in receipt of income assistance please refer the allegation to the Ministry Inspector for action. Copy of the allegation is attached.'

If necessary the writer would add a caution:

'Please protect the identity of our informant.'

- c) To my knowledge, at no time, from November 1981 to February 1982, was any allegation of fraud about any one of the five people reported to any of the Ministry Inspectors as it should have been by virtue of instructions in the Ministry's Policy Manual. As early as December 14th, 1981, the Ministry was aware that two of the five were indeed on income assistance and the Ministry coordinator had detailed financial information on the two. Yet there is no sign that any allegations of fraud were referred to any of the Ministry Inspectors during the two months before the matter became a public issue. MHR policy is:

"ALL CASES, including those reported anonymously, pertaining to alleged or suspected fraud or client initiated overpayments committed by an applicant or recipient of Income Assistance benefits MUST be reported to the Ministry Inspector." (my underlining) (MHR Policy Manual, 1.81)

- d) It is unusual, if not unique to this case, that as many as five people who are not related to each other are listed with their complete addresses in one and the same information search telex. My staff have looked at many other information requests on MHR telexes and have not found another request like this. The question remains how an informant alleging welfare fraud could possibly get these five people associated in his mind.

The Special Assistant has said, under oath, that she remembers an allegation of fraud was made about these five individuals.

Despite the Special Assistant's recollection of an allegation of fraud, she has absolutely no recollection of the context in which this allegation was transmitted to her: no recollection of ever actually receiving the allegation; or of reading an anonymous letter; or of speaking on the telephone to an anonymous caller about this matter; or of the date the allegation was received.

This complete lack of recollection prompted me to search for other sources of information about the allegation. But, I found that no one in the Minister's Office had any recollection of receiving this particular allegation; there is no memo to file on it; no record of a telephone call about it; no anonymous letter on the matter; in fact, absolutely no written record or individual recollection of the allegation whatsoever.

Under the circumstances, I have to ask if there was an allegation of fraud. I have to consider the possibility that the Special Assistant may have erred in her recollection of such an allegation.

For these reasons, I cannot conclude that there was an allegation of fraud against these five individuals. And, therefore, I cannot confirm that the information search was initiated for a proper purpose.

In the absence of any records on the matter, which I consider unusual and inappropriate, and considering the critical memory lapses of some of the key persons involved I cannot establish what purpose there may have been for the collection of this information. What else might have precipitated the information search I do not know.

Apart from the question of whether there was an adequate reason for precipitating an information search on the five persons I questioned the appropriateness and propriety of the manner in which MHR conducted its information search. I summed up above (on p. 19) in points 2-4 the Ministry's position that there was nothing improper about the information search, that MHR staff had acted properly and fairly and that MHR procedures were reasonable. My conclusion had been, briefly, that continuation of the information search and its broadening were unwarranted, reprehensible and improper.

The Ministry's position is essentially that there is nothing wrong with the search as conducted. All we have here, according to the Ministry, is an eager beaver civil servant anxious to do a good job for his Deputy Minister. The eager beaver theory might explain the action taken by the MHR official and I have no grounds to think that there were other reasons to explain his conduct. However, his eagerness to please his Deputy Minister does not justify his trespass into the privacy of citizens by flashing their names on telexes into 150 MHR offices throughout the entire province. I am very concerned that such eager beaver civil servants are

not imbued with any sensitivity to or respect for the privacy interests of citizens. I am even more concerned that senior officials in this Ministry do not appear to realize or appreciate how offensive this conduct is and, worst of all, that they appear inordinately preoccupied with the fact that another eager beaver public servant disclosed the memo to the victims of the information search. Throughout the entire search no one to whom the request was addressed ever seems to have asked: why do we want or need this information? Do we have a right or justification to conduct such an information search?

I will deal briefly with the Ministry's position as expressed in points 6 and 7 above. I must first question whether the information was made public or whether it was only disclosed to those persons to whom the information pertained. A release of such information to the public at large or the media would have been a breach of confidentiality as it would embarrass the five individuals. But that is not the problem here.

Whose confidentiality is being protected by Section 6 of the GAIN Act?

Surely it is the person to whom the information pertains. The MHR policy manual regarding such confidentiality provisions is illuminating:

"To respect each client's right to have information concerning him or her treated in strictest confidence, and where the sharing of specific information is required for the administration of policies related to income assistance or social services, that such sharing protects each client's right to maintain dignity and the respect of others."

The confidentiality protected by Section 6(1) is qualified in that it would allow disclosure to a person legally entitled to information. Can it be said that a person who is the subject of information is not legally entitled to that information? I think not. Under Section 6(2) it would appear that the five individuals involved could consent to release of the information pertaining to themselves. What I think Section 6(2) attempts to do is give to a person some proprietary interest in information obtained on him.

An argument could be made that as the five persons may have been legally entitled to the information by virtue of Section 6(2) of the Act, disclosure to them was not a breach of confidentiality under 6(1).

We should also note that the central right created in the Canadian privacy legislation is the right of an individual to know what information the government holds on him or her in its information banks, and a right to correct any inaccuracies in the government-held information.

CONCLUSIONS AND RECOMMENDATIONS

I have now concluded that:

1. The MHR has conducted an information search on five individuals and I cannot determine conclusively whether that search was initiated for a proper or an improper purpose.

2. In expanding the initial query on whether the 5 individuals were Ministry clients to a search for any information on the five individuals, the Ministry has acted improperly.
3. In sending a telex on these five individuals to every MHR office requesting general, unspecified information on them, the MHR has acted in an oppressive manner, and has used arbitrary, unfair and unreasonable procedures.
4. The MHR failed to give adequate and appropriate reasons to the individuals listed in the information search when they requested an explanation.
5. By failing to keep or produce records and documents upon which inquiries about possible allegations of fraud are based, the MHR has acted improperly.
6. By failing to develop a policy on how to respond to the potentially legitimate request by MHR officials for information about individuals, the MHR has allowed unreasonable and unfair practices to develop in the Ministry.

I realize that my inability to reach a conclusion about the justification for initiating the information search is not satisfactory and leaves many questions still unanswered. The five individuals still do not know, as I

do not know, how it was that their five names first got onto a list which precipitated an information search. The Ministry of Human Resources insists that it was a routine anonymous allegation of fraud that triggered the search. However, it is a fact that I have been unable to uncover any record of any kind that would explain why these five individuals were identified as the subject of an information search and my investigation raised serious questions about the appropriateness and propriety of the information search, questions to which the Ministry has not given me satisfactory answers. Even if I accepted as fact that an allegation of fraud existed I must conclude that the Ministry at all levels did not handle that allegation properly. In my view, both the Minister's Office and Income Assistance Division set into motion unreasonable and arbitrary procedures.

The Minister's Office should have sent the allegation to the Inspectors responsible for investigating such matters. That is, in fact, the established procedure as outlined in the MHR's policy manual. There is no reason for the Minister's Office to become directly involved in the investigation of allegations of fraud, particularly when an MHR program has been developed specifically for that purpose.

The Income Assistance Division erred, in my view, in two serious ways. First, by enlarging upon the initial request ("are these 5 individuals clients?") to a much broader search ("any office with recent information

on, or contact with the above, please advise..."). And, second, by including in this broader search, 2 of the 5 individuals about whom current information had already been requested, received and noted.

The MHR has agreed to my proposed recommendation that the Ministry develop a set of written policies and procedures on the question of information searches on individuals. Again, at my request, these policies and procedures will apply to all Ministry offices, including the Minister's Office, and will be developed on a priority basis. I expect that this new set of policies and procedures will be developed in consultation with staff at all levels of the Ministry; that it will deal explicitly with the question of anonymous allegations of fraud; that it will ensure for the future full documentation of allegations; and that it will explain the function, in such matters, of the Inspectors Program.

I had also considered recommending that the Minister of Human Resources send a letter of explanation and apology to each of the five individuals on the list. The Ministry has informed me that the Minister would be prepared to send a letter to each of the five individuals but only to apologize on behalf of the MHR employee who must have breached confidentiality in making public the January 5 telex.

I have informed the Minister that I consider this response inadequate. In my opinion, the Minister owes these five individuals an explanation for

the search and for any errors that occurred in the course of this information search and an apology for the unreasonable and arbitrary procedures that were used.

I have therefore recommended that: the Minister of Human Resources send an official letter of explanation and apology to each of the five individuals listed in the information search; and that this letter include an explanation of the errors that occurred in the course of this information search and an apology for the unreasonable and arbitrary procedures that were used.

In concluding I would like to state firmly that in my view the Ministry had no business investigating those three of the five individuals who were not on income assistance. For the Ministry to continue searching for any information on them after the Ministry had already ascertained that they were not MHR clients must be considered offensive and quite unjustifiable conduct. Apprehension about misuse of power by public officials has a chilling effect on people's exercise of their political freedom and public authorities must therefore refrain from any activity that can be interpreted or misunderstood as an official attempt to influence a citizen's private or public activities, except where duly authorized by law.

I missed, in particular, among Ministry officials any honest or serious concern with or sensitivity to the general and important value our society places on respect for a citizen's privacy. I expect the Ministry will be more circumspect in the future. The recommendation I made, which the Ministry accepted, should ensure that proper and better care is taken in the future.