

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 236-1998  
May 15, 1998**

**INQUIRY RE: The adequacy of the search by the City of Prince George for records responsive to a request for records by Babine Investments**

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**1. Description of the review**

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on January 30, 1998 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review by Babine Investments (the applicant) of the adequacy of the City of Prince George's search for records in response to an access request made by the applicant on July 25, 1997.

**2. Documentation of the inquiry process**

On July 25, 1997 Babine Investments (the applicant) made a request for all records pertaining to certain commercial properties, including any records of meetings, conversations, telephone messages, etc., concerning the same properties. The City responded on August 20, 1997 by disclosing a number of records. Some information from those records was withheld under sections 12(3)(b) and 14 of the Act.

On September 15, 1997 the applicant requested a review of the City's decision to sever information and requested a review of the adequacy of the City's search for responsive records.

Through mediation, the applicant decided not to pursue the issue of the information severed by the City under sections 12(3)(b) and 14. However, believing further records existed which were not disclosed, the applicant proceeded to a written inquiry on the issue of the adequacy of the search under section 6 of the Act.

**3. Issue under review and the burden of proof**

The issue under review is whether the City conducted an adequate search for the requested records. Section 57 of the Act, which establishes the burden of proof on parties in an inquiry, is silent with respect to a request for review about the duty to assist under section 6 of the Act. As I decided in Order No. 110-1996, June 5, 1996, the burden of proof in these cases rests with the public body. The relevant section of the Act is as follows:

***Duty to assist***

- 6(1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

**4. The records in dispute**

The applicant believes the following records exist which were not provided:

- records of written notes, diary entries, telephone messages, etc.
- notes of a “without prejudice” meeting, which took place on June 3, 1997.
- records providing evidence that the meeting took place or notes of matters the City agreed to follow up on, i.e. notes, diary entries, telephone messages, correspondence, travel arrangements, etc.
- notes of any of the meetings which took place between the owners of the commercial property and the City of Prince George.
- notes, memos, telephone messages that prove that a City employee actually contacted the applicant.

**5. The applicant’s case**

The above list accurately reflects the records that the applicant is seeking and that he has reason to believe should exist. There is no utility in rehearsing its reasons for such beliefs. (See the Submission of the Applicant, pp. 2-4)

The applicant did not make a reply submission.

**6. The City of Prince George’s case**

The City made a detailed submission about the search that it conducted for records responsive to the request of the applicant, which I discuss below. The City maintains that it cannot produce copies of records which do not exist.

## 7. Discussion

I note, for the record, that this is one of a series of decisions that I have made involving the same applicant and public body. Readers can acquire background information in Order No. 162-1997, May 9, 1997; Order No. 182-1997, August 13, 1997; and Order No. 203-1997, December 12, 1997.

The City indicates to my satisfaction that it was well aware of what the applicant was asking for and the broad parameters of his request. Because of this applicant's history of pursuing requests for my review, the City's widely-distributed letter to its own staff emphasized that "[i]t is imperative that a thorough and complete search for records be conducted...."

The City submits that:

There is no reason to believe that their [city staff's] search for records responsive to the request would not have resulted in the location and retrieval of those records if they existed.... The City cannot produce for the applicant copies of records which do not exist....

I accept the City's assertion that in searching for, locating and retrieving records responsive to such a request, City staff take their duty to assist an applicant seriously and use common sense in the location and retrieval of records responsive to the request. (Submission of the City, pp. 3, 4 ) I am satisfied that in the present inquiry, the request for records was forwarded to the appropriate individuals and departments and a thorough search carried out.

The City also made a useful point about the history of its relationship with this applicant:

The numerous requests for information of the applicant, confrontational tone of his correspondences with the City, and notice of damages, have had a chilling effect on the creation and retention of records by the City with regards to these matters. (Reply submission, p. 2)

It bears repeating that there is no obligation under the Act to create records.

I find that the City has searched adequately for records responsive to this request for access to records and, more importantly, has furnished the applicant with explanations as to why certain records do not exist. (Reply Submission of the City, pp. 3-5)

## 8. Order

Section 58(1) of the Act requires me to dispose of the issues in an inquiry by making an order under this section. I find that the search conducted by the City of Prince George in this case was a reasonable effort within the meaning of section 6(1).

Under section 58(3)(a), I require the City of Prince George to perform its duty under section 6(1) to make every reasonable effort to assist the applicant. However, since I have found that the search conducted was reasonable under section 6(1), and that the City has made every reasonable effort to assist the applicant, I find that the City of Prince George has complied with this Order and discharged its duty under section 6(1) of the Act.

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David H. Flaherty  
Commissioner

May 15, 1998