



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order 01-49

MINISTRY OF ATTORNEY GENERAL

David Loukidelis, Information and Privacy Commissioner
October 17, 2001

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Summary: Applicant requested records related to an investigation he believed had been done about him during a job competition. Ministry treated request as one for updated disclosure and said it had no records post-dating earlier request. Applicant requested review of adequacy of search. Ministry found to have conducted adequate search.

Key Words: duty to assist – every reasonable effort – respond openly, accurately and completely.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 6(1).

Authorities Considered: B.C.: Order 00-15, [2000] B.C.I.P.C.D. No. 18; Order 01-34, [2001] B.C.I.P.C.D. No. 35.

1.0 INTRODUCTION

[1] The applicant in this case made a request to the Ministry of Attorney General (“Ministry”), under the *Freedom of Information and Protection of Privacy Act* (“Act”), for files, correspondence, e-mail messages or other records regarding an alleged investigation of the applicant by the Ministry, the RCMP, another provincial ministry, a federal department or other bodies, during the time of a particular job competition. The Ministry responded that the applicant’s request repeated two earlier requests. It said that it had conducted a search for records created since his last request and had found none.

[2] The applicant requested a review of the Ministry’s response by my office, saying the answer he had received was inadequate and that “I was denied the information I am seeking”. Mediation was not successful, so I held an inquiry under s. 56 of the Act.

2.0 ISSUE

[3] The only issue before me in this inquiry is whether the Ministry fulfilled its duty under s. 6(1) of the Act to assist the applicant, and to respond openly, accurately and completely, in its search for records that respond to the applicant's request. As established by previous orders, the burden of proof in this inquiry is on the Ministry.

[4] Although the applicant raised ss. 7 and 25 in his initial submission, as the Ministry pointed out in its reply, neither issue is properly before me and I have not considered them.

3.0 DISCUSSION

[5] **3.1 Records Search Standards** – Section 6(1) of the Act requires a public body to “make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely”. I have discussed in many orders the principles that apply to public bodies in their efforts to assist applicants by searching for records. See, for example, Order 00-15, [2000] B.C.I.P.C.D. No. 18. Order 01-34, [2001] B.C.I.P.C.D. No. 35, is also relevant here. There is no need to repeat those principles here.

[6] **3.2 Did the Ministry Fulfil Its Search Duty?** – The first part of the applicant's initial submission outlined a series of jobs with the federal and provincial governments which he was offered and in some cases took. The applicant apparently believes that the RCMP have been conducting an investigation of him since the first job, with the co-operation of various government bodies. He admits that he has no real evidence of this supposed investigation and that he does not know why the RCMP would be investigating him. He describes three successive access requests he made to the Ministry for records related to this supposed investigation.

[7] The applicant says little in his initial submission about why he believes the Ministry did not assist him in accordance with s. 6(1), except by saying that the Ministry had suggested he approach other bodies for records, when he had already done so. He also says the Ministry did not comply with the 30-day legislated timeline set out in s. 7 of the Act in any of the three requests he made. As the Ministry points out, however, its compliance with s. 7 is not properly before me in this inquiry and I have not considered the applicant's arguments on this point.

[8] The applicant goes on to suggest that s. 25 applies, on the basis that it is in the public interest to disclose the existence of the supposed investigation records. Again, s. 25 is not properly before me in this inquiry and I have not considered the applicant's submission on this point.

Ministry's Search Efforts

[9] The Ministry says this request is the seventh in a line of repetitive and overlapping requests which “stem from the Applicant's belief that he is/has been under

investigation” by the RCMP and various federal and provincial bodies, that they have been sharing information about him and that “a particular job competition was held or used for the purpose of gathering information about him to further that investigation”. The applicant apparently also believes there may be “a related prosecution.” It says the access request in issue here is the same as an earlier one, except that this request included records that might have been created since the earlier request (paras. 2.04-2.07, initial submission).

[10] The Ministry says it used every reasonable effort in searching for responsive records and that it searched all areas which it considered might have records. It named three areas, principally within the Ministry, which it had searched, expecting they might have records. It said it had no reason to suppose that other areas had records (paras. 5.02, 5.06, initial submission). The Ministry also reminds me that both my predecessor and I have found that public bodies need not prove that records do not exist. It cited a number of orders to this effect.

[11] The Ministry supports its arguments with affidavit evidence from the analyst responsible for processing both this request and some of the applicant’s earlier requests (paras. 4-17, Stewart affidavit). The analyst deposed that, in responding to the earlier request, he had first clarified it with the applicant and had then, in part based on his communications with the applicant, approached three offices, including the Ministry’s Criminal Justice Branch, to determine if they had records. In response to his inquiries, he received some records related to the job competition, but no records regarding any investigation of the applicant. The Ministry disclosed some of these records and withheld others.

[12] In responding to the current request, the analyst deposed that he contacted two of the same three offices he had contacted earlier and was told they had created no records since the last request. He says he did not contact the Criminal Justice Branch as, at this time, it was processing its own request from the applicant. On the occasion of both the earlier and present requests, the analyst says, he contacted the other provincial ministry mentioned in the applicant’s requests to see if it also had requests from the applicant and both times he was told that it had.

[13] The Ministry has also supplied affidavit evidence from staff in two of the three offices that were searched. They also described the searches they undertook in response to the applicant’s earlier request. One staff member said she provided the analyst with competition records, but found no records related to any investigation, and said that neither she nor others were aware of any such investigation. The other staff member, an employee with the Criminal Justice Branch, said he found no records, either in respect of the applicant’s earlier request or, later, during the processing of its own request. Both staff members described their search efforts in some detail (paras. 4-13, Lau affidavit; paras. 4-8, Street affidavit).

Is the Ministry Required to Search Again?

[14] This case is similar in some respects to the situation in Order 01-34, [2001] B.C.I.P.C.D. No. 35, where I found that the public body was not required to provide full disclosure, again, in response to a request which duplicated an earlier request in which the applicant had not requested a review. Rather, I found that the public body properly treated the later request as one for updated disclosure, *i.e.*, a request for records which post-dated the earlier request.

[15] I gather from the material before me that the applicant did not request a review of the Ministry's response to the earlier request. That request is certainly not before me, although I read the applicant's submission on this inquiry on the current request as an attack on the adequacy of the Ministry's response to the earlier request. If this issue were before me, however, I would almost certainly find no reason to question the Ministry's efforts in searching for responsive records.

[16] At all events, based on the submissions and affidavits before me regarding the present request, I am abundantly satisfied that the Ministry has made a reasonable effort to assist the applicant in its search for records that post-date the earlier request and to respond openly, accurately and completely to the applicant's request. I so find.

4.0 CONCLUSION

[17] Given my finding on the s. 6(1) issue before me, no order under s. 58(3)(a) is necessary.

October 17, 2001

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia