

IN THE MATTER OF:

*THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT*

AND IN THE MATTER OF:

AN ADJUDICATION UNDER SECTIONS 60-65,  
REQUESTED BY [R.G.]

REASONS FOR DECISION  
OF THE  
HONOURABLE MR. JUSTICE BAUMAN

**BACKGROUND**

[1] In the early winter of 1996, [Mr. G.] was involved in a protracted dispute with the Workers' Compensation Board (the "WCB").

[2] The dispute centered, in part, on [Mr. G.'s] request under s. 29 of the Freedom of Information and Protection of Privacy Act R.S.B.C. 1996 c. 165 (the "Act"). That section permits a citizen, who believes that there is an error or omission in his or her personal information, to request the head of a public body possessing the information to correct it.

[3][Mr. G.] being unhappy with the WCB's disposition of his request, complained to the office of the Information and Protection of Privacy Commission (the "Commissioner"). He was advised that the Commissioner would conduct a written inquiry into the complaint. The Commissioner thereby invoked his jurisdiction under s. 56 of the *Act*.

[4] By letter dated February 8, 1996, [Mr. G.] thereupon requested of the Commissioner:

Therefore, for the purposes of this inquiry and justifiable as an element of natural justice under which the parties involved in the case should be able to know the case, I wish to directly request full disclosure from Workers' Compensation Board as it relates to their position in this regard.

[5] On February 26, 1996, [Mr. G.] made an access request (the "Access Request") to the Commissioner. The Access Request was for:

1. Any and all information pertaining to me by name, Workers' Compensation Board Claim File Numbers or B.C. Council of Human Rights File numbers

should include subfiles, case book's, reminder action notes. (sic) electronic mail, instructions, file tracking and control system files, copies of the file Jackets, rough drafts, notes, dictation's, memo's and/or any other means of collecting or storing information.

2. Specific references to the following Management and Portfolio Officers:

- Mr. P. Luttmer
- Mr. B. Trott
- Mr. M. Skinner
- Ms. M. Carlson
- Ms. L. Bennett
- Ms. L. Dixon

1. A request for disclosure relating to Workers' Compensation Board's refusal to correct personal information without justification submitted under section 29 of the Freedom of Information and Protection of Privacy Act. Attached is a copy of my request submitted to your office on February 8, 1996 via facsimile.

[6] On March 25, 1996, the Commissioner's office responded to the Access Request. On points (1) and (2) of the Access Request, the Commissioner's office declined to release anything on the ground that all material requested was excepted from the operation of the Act under s. 3(1)(c). On point (3) of the Access Request, the Commissioner's office replied: "a response was mailed to your address February 26, 1996 and subsequently faxed on March 5, 1996". On April 4, 1996, [Mr. G.] requested a review by an adjudicator of the Commissioner's response to the Access Request.

[7] On September 12, 1996, the Commissioner rendered a decision in [Mr. G.'s] s. 29 complaint.

[8] Prior to this order the WCB had submitted a s. 43 application to the Commissioner in respect of [Mr. G.'s] requests for information. On August 23, 1996, the Commissioner's Portfolio Officer recommended to the WCB and to [Mr. G.] that the facts did not support a s. 43 order. The Portfolio Officer, in the alternative, suggested that the parties work together towards a work management plan. I am told that this eventually led to an agreement (the "Mediation Settlement Agreement") between the parties on December 9, 1996.

## ISSUES

[9] Should the Commissioner's decision on the Access Request be confirmed?

## DISCUSSION

[10] The records sought by [Mr. G.] have been provided to me by the Commissioner. In his submission the Commissioner characterizes the records in this manner:

The Commissioner has provided the Adjudicator with copies of the records that would be responsive to the Access Request. They consist of the working files of the Commissioner's Office on cases commenced by *[Mr. G.]* (Commissioner's file references 105, 372, 373, 379, 619, 742, 788, 911, 1377, 1380, 1386, 1634, 1814, 2356, 2735 and 2777).

All the Commissioner's cases concerning *[Mr. G.]* related in some way to *[Mr. G. 's]* dealing with the Workers' Compensation Board or the Council of Human Rights. Some of the cases were complaints under s. 42 of the Act: 105, 372, 379, 911, 1386, 2356, 2735, 2777. Some related to requests for review under s. 52 of the Act: 373, 619, 742, 788, 1377, 1380, 1634, 1705, 1814.

[11] I have reviewed the records. Counsel for the Commissioner, in her written submission draws a distinction between operational records of the Commissioner's office and administrative records. The former are, it is argued, within the scope of s. 3(1)(c) of the Act, while the latter are subject to disclosure in accordance with the provisions of the Act.

[12] Counsel for the Commissioner argues that operational records, at the very least, include any record that is specific to a case file. These include case management or tracking sheets and lists, notes and working papers (including draft documents) of the Commissioner or his staff, and any other case specific records received or created by the Commissioner's office in the course of opening, processing, investigating, mediating, settling, inquiring into, considering, taking action on or deciding a case.

[13] That such records include those generated by a delegate of the Commissioner is clear: *[Mr. H.] v Information and Privacy Commissioner* ( September 6, 1996 ) Esson ( then C. J. S. C. ) as adjudicator [*Adjudication order no. 1*].

[14] On the contrary, administrative records, which are subject to the *Act*, it is urged, include amongst others personnel, competition and office management files. I dealt with the disclosure of records of this sort in the Commissioner's office in *[Mr. M.] v. Information and Privacy Commissioner* ( June 19, 1997 ) [*Adjudication order no. 2*].

[15] I agree with these submissions of the Commissioner and I conclude that the suggested distinction between operational and administrative records offers a workable approach to s. 3(1)(c) and the remainder of the *Act*.

[16] I also agree that the records covered by the Access Request are properly operational records. Accordingly, it is well established that they are beyond the scope of the *Act* pursuant to s. 3(1)(c):

- *[Mr. H.] v. Information and Privacy Commissioner* (supra) [*Adjudication order no. 1*]
- *[Mr. R.] v. Information and Privacy Commissioner* (June 30, 1997) Levine J. as Adjudicator [*Adjudication order no. 3*]

- *[Mr. R.] v. Information and Privacy Commissioner* (September 22, 1997) Bauman J. as Adjudicator [*Adjudication order no. 5*].

[17] But *[Mr. G.'s]* argument does not permit so clear a rejection of his Access Request.

[18] He argues that his Access Request was in pursuit of information he required, to make full answer and defense in his s. 29 complaint and the inquiry thereon. He submits that he was in the midst of a proceeding before the Commissioner when he made the Access Request. Accordingly, he relies on s. 3(2) of the Act:

3(2) This Act does not limit the information available by law to a party to a proceeding.

[19] The argument proceeds: a s. 29 inquiry is a proceeding; natural justice requires disclosure; s. 3(1)(c) cannot therefore limit the information available by law to *[Mr. G.]*

[20] Counsel for the Commissioner essentially suggests that this argument mixes fruit, to be colloquial, or at least, mixes functions under the Act, to be legalistic.

[21] She argues that s. 3(2) preserves legal rights to information *[Mr. G.]* may have as a party to a proceeding. It does not concern access and privacy rights under the Act which he shares with the public.

[22] Counsel for the Commissioner ends, however, with what is effectively a jurisdictional argument. It is essentially said that in my role as an adjudicator, I have no jurisdiction to, in effect, judicially review the process by the which the Commissioner disposed of the inquiry under s. 58 or the s. 43 application.

[23] I agree. The adjudicator under ss. 60 and 62, investigates and reviews a decision by the Commissioner qua "head of a public body" in a manner similar to the investigation and review by the Commissioner of decisions by other heads of public bodies.

[24] I do not sit in review of the Commissioner's exercise of jurisdiction under sections 52, 56 and 58. But that is essentially what *[Mr. G.]* asks me to do.

[25] If, as a matter of law, *[Mr. G.]* was entitled to the records described in the Access Request as part of the Commissioner's inquiry process, that was a matter for the Commissioner to initially determine and possibly for a judge secondarily, to consider on judicial review. It is not a matter for the adjudicator. I am *persona designata* exercising a limited jurisdiction under the Act.

[26] Counsel for the Commissioner specifically argues that 3(2) does not make questions about the Commissioner's determination of the information to be made available to a party to a proceeding under the Act justiciable by an adjudicator. I agree.

## CONCLUSION

[27] It follows that I confirm the Commissioner's disposition of the Access Request.