



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER

British Columbia
Canada

April 12, 2000

Joseph Doyle
Douglas Symes Brissenden
Barristers and Solicitors
2100 One Bentall Centre
505 Burrard Street
Vancouver, BC V7X 1R4

[*The Applicant*]

Dear [*Applicant*] and Joseph Doyle:

Re: Request for Review between [*the Applicant*] and the British Columbia Police Commission (“public body”) - OIPC files 9594, 9671 and 9673 (collectively “Inquiries”)

1.0 BACKGROUND

The only issue in the Inquiries is whether, under s. 6 of the *Freedom of Information and Protection of Privacy Act* (“Act”), the British Columbia Police Commission (“Police Commission”) conducted an adequate search for records in response to access requests made by the applicant. On January 21, 2000, I wrote to the parties and expressed preliminary concern, based on my review of the parties’ submissions, about my jurisdiction to proceed with the Inquiries. My January 21 letter invited submissions from the parties on the jurisdictional issue. For the following reasons, I have decided that I do not have any jurisdiction to proceed with the Inquiries. This decision is based on the parties’ submissions in response to my January 21 letter, the material submitted to me by the parties respecting the Inquiries, and the portfolio officer’s fact report respecting the Inquiries.

In letters dated July 27, 1999, August 20, 1999, August 21, 1999 and August 26, 1999, the applicant sought access to records from the Police Commission. The letters each were addressed to the Information and Privacy Coordinator of the Police Commission. The Police Commission treated the letters as three separate access requests under the Act. The Registrar of the Police Commission responded to the requests by letters dated August 11, 1999, August 26, 1999, and a second August 26, 1999 letter (which addressed both of the applicant’s requests dated August 20 and 21, 1999).

By letters dated September 18, 1999 and September 23, 1999, the applicant requested reviews, under s. 52 of the Act, of the Police Commission’s decisions. By a letter dated December 1, 1999, the applicant asked for a correction to the Notices of Inquiry and Fact Report issued by the portfolio officer who was handling the reviews in this Office. In response to this the portfolio officer issued an *erratum* on December 1, 1999. The *erratum* clarified that the Police Commission is the public body for the purposes of the Inquiries.

2.0 PARTIES' ARGUMENTS

In its February 4, 2000 submission on the jurisdictional issue, the Police Commission argued I have no jurisdiction to proceed with the Inquiries. It noted that s. 55 of the *Police Amendment Act, 1997*, which came into force effective July 1, 1998 by B.C. Reg. 205/98, amended Schedule 2 to the Act. The amendment removed the Police Commission from Schedule 2, such that the Police Commission was no longer a “public body” under the Act after July 1, 1998. Also effective July 1, 1998, by virtue of the *Police Amendment Act, 1997*, the “police complaint commissioner under Part 9 of the *Police Act*” became a “public body” under the Act.

The Police Commission argued I have no jurisdiction to “review any decision, act or failure to act” by the Police Commission in respect of the applicant’s requests. This is because the requests all were made over a year after the Police Commission ceased to be a public body under the Act. The Police Commission says I only have the jurisdiction to conduct a review, or inquiry, respecting any decision, act or failure to act of a public body in relation to an access request made to it validly, as a public body under the Act.

For his part, the applicant argued that since I conducted an inquiry into the above matter on December 20, 1999, all that remains is for me to dispose of the issue by making an order under s. 58(1) of the Act. The applicant said that the Police Commission is “specifically identified as a public body under Schedule 2” to the Act. He noted that his requests for review relate to an appeal before the Police Commission “and that the events leading to the appeal occurred long before the enactment of the *Police Amendment Act, 1997*”.

3.0 DECISION

It is clear from the Act, including ss. 2 to 7, that it applies only to a “public body” as that term is defined in Schedule 1 to the Act. My jurisdiction to conduct a review under s. 52 of the Act, and an inquiry under s. 56 of the Act, is limited to requests for review of “any decision, act or failure to act of the head” of a public body “that relates to that request” for access to the “head of a public body” (s. 52).

At the time the applicant’s requests were made, the Police Commission was not a “public body” under the Act. The Act did not apply to the Police Commission then and does not apply to it now. The fact that the applicant’s requests may relate to matters pre-dating the change in status of the Police Commission for the purposes of the Act does not affect this analysis. The fact that the Police Commission responded to the applicant’s requests as if it was a public body does not give me jurisdiction to proceed with the Inquiries. Since the Police Commission is not a public body under the Act, and has not been a public body at any time relevant to the applicant’s requests, I find that I have no jurisdiction under the Act to proceed with the Inquiries, including to make any order under s. 58 of the Act.

Yours sincerely,

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia