



BY COURIER

September 12, 2000

Don Morrison
Police Complaint Commissioner
900 – 1111 Melville Street
Vancouver, BC V6E 3V6

Dear Don Morrison and :

Request for Review between an applicant and the Office of the Police Complaint Commissioner (public body) – OIPC File: 10766

1.0 BACKGROUND

In my letter to the parties dated July 28, 2000, I ruled that, because s. 66.1 of the *Police Act* applies to records requested by the applicant in his February 7 and 9, 2000 access to information requests to the public body under the *Freedom of Information and Protection of Privacy Act* (“Act”), I had no jurisdiction under the Act to proceed with the inquiry connected with those requests or to make any order under s. 58 of the Act.

In my July 28, 2000 letter, I noted that the public body had, in responding to the applicant’s access requests on February 11, 2000, based its decision on s. 3(1)(c) of the Act. Because of the possibility that the public body’s files relating to the applicant’s *Police Act* complaints might contain copies of operational records created by a police department, in the ordinary course, before the applicant’s complaints were made, submitted or lodged under the *Police Act*, I asked the public body to assist further with respect to application of s. 3(1)(c) of the Act to any such records. I requested that the public body provide me with the following:

1. Copies of any records in the files which were created prior to the time the conduct complaints were made, submitted or lodged;
2. Further submissions in relation to the application of s. 3(1)(c) of the Act to the records identified in paragraph 1; and
3. A further affidavit sworn by a knowledgeable person confirming that all the other records in the files referred to in the affidavits of William MacDonald were created on or after the conduct complaints were made, submitted or lodged.

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The public body responded under cover of a letter dated August 15, 2000. That letter was accompanied by copies of two records and affidavits sworn by Lori Loseth and William MacDonald, both of whom are with the public body. By a letter dated August 23, 2000, the applicant responded to the public body's further submissions. This letter disposes of the remaining s. 3(1)(c) issue identified above.

2.0 DECISION

In her affidavit, sworn August 14, 2000, Lori Loseth deposed that, with only two exceptions, all records contained in public body's complaint file 0428 were received or created after August 17, 1999, the date on which the relevant conduct complaint was received. The two exceptions are copies of the "Emergency/Outpatient Record" from the ... Hospital, dated April 25, 1999, and a copy of the "Continuation Report" from the New Westminster Police Department, dated April 25, 1999. These are the two records delivered to me by the public body. Ms. Loseth deposed that these two records were received by the public body from the New Westminster Police Department on September 24, 1999, "after the lodging of the conduct complaint". The public body's file 0428 was opened on August 17, 1999, upon receipt of a Form 1 Record of Complaint submitted by the applicant.

Similarly, Ms. Loseth deposed that all of the records contained in the public body's file RM98080 – which relates to a July 20, 1998 conduct complaint made by the applicant about a Vancouver Police Department member – were "received or created after the date the conduct complaint was made" by the applicant.

Ms. Loseth deposed that the two conduct complaint files just described relate to the processing of conduct complaints under Part IX of the *Police Act*. She also deposed that "there are no other records concerning" the applicant in the "care or custody of" the public body.

In his affidavit, sworn July 13, 2000, William MacDonald also deposed that the public body only has two files relating to the applicant, as described in Ms. Loseth's affidavit. Mr. MacDonald deposed that the "materials within both files relate solely to the processing of" the applicant's "complaints under Part IX of the *Police Act*", both of which relate to conduct complaints under that Part.

In its further written submissions in this matter, the public body argues that both of the records described above "fall under s. 3(1)(c) of the *Freedom of Information and Protection of Privacy Act*", which provides that the Act does not apply to:

- (c) a record that is created by or for, or is in the custody or control of, an officer of the Legislature and that relates to the exercise of that officer's functions under an Act.

Schedule 1 to the Act contains the following definition:

“officer of the Legislature” means the Auditor General, the Child, Youth and Family Advocate, the Commissioner appointed under the *Members’ Conflict of Interest Act*, the police complaint commissioner appointed under Part 9 of the *Police Act*, the Information and Privacy Commissioner, the Chief Electoral Officer or the Ombudsman

Section 47 of the *Police Act* provides that the police complaint commissioner is “an officer of the Legislature”.

The applicant’s reply to the public body’s further submission addressed issues connected with his complaints under the *Police Act*. His reply did not address the jurisdictional issue arising from s. 3(1)(c) of the Act.

There is no doubt the two records described above, in file 0428, are within the custody of the public body. It is equally clear that s. 3(1)(c) places those records beyond the Act’s reach. It is plain, in my view, that the two records are in the custody of the public body solely for the purposes of its investigation and disposition of the conduct complaint made by the applicant against members of the New Westminster Police Department. I have no hesitation in finding that these records are records in the custody of the public body, as an officer of the Legislature, and that they relate to the exercise of that officer’s functions under the *Police Act*, within the meaning of s. 3(1)(c) of the Act. This finding also extends to all records in files 0428 and RM98080, since those records relate to the exercise of the public body’s complaint-handling functions under the *Police Act*.

I find that, by virtue of s. 3(1)(c) of the Act, I have no jurisdiction to proceed with the inquiry, or to make any order, under the Act in relation to those records. For clarity, this decision supplements my July 28, 2000 decision, in which I found that s. 66.1 of the *Police Act* leads to the same conclusion with respect to records created on or after the making, submitting, lodging or processing of the applicant’s conduct complaints under Part IX of the *Police Act*. To summarize, I have no jurisdiction to proceed with the inquiry, or to make an order, under the Act with respect to the applicant’s request for a review under the Act. This proceeding is complete.

Sincerely,

Original signed by

David Loukidelis
Information and Privacy Commissioner
for British Columbia