



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

Decision F06-09

**THE BOARD OF SCHOOL TRUSTEES, SCHOOL DISTRICT NO. 8
(KOOTENAY LAKE)**

Celia Francis, Adjudicator
October 12, 2006

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Summary: The public body's request that no inquiry under Part 5 be held respecting its search for responsive records is granted. No inquiry to be held.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 6(1) & 56.

Authorities Considered: **B.C.:** Order 00-15, [2000] B.C.I.P.C.D. No. 18; Order 00-26, [2000] B.C.I.P.C.D. No. 29; Order 00-32, [2000] B.C.I.P.C.D. No. 35; Order 02-57, [2002] B.C.I.P.C.D. No. 59; Order 01-03, [2001] B.C.I.P.C.D. No. 3.

1.0 INTRODUCTION

[1] This decision stems from a request by the Board of School Trustees, School District No. 8 (Kootenay Lake) ("School District"), that this Office decline, under s. 56 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), to hold an inquiry under Part 5 of FIPPA respecting the applicant's complaint about the School District's search for records in response to two access requests, which I describe below, made by the respondent, who is the applicant for records ("respondent").

[2] For the reasons given below, I have decided to exercise my discretion under s. 56 of FIPPA not to proceed with an inquiry in this matter.

2.0 DISCUSSION

Background

[3] The respondent is a former employee of the School District whose employment ended in March 2005. In April 2004, the respondent was involved in a workplace incident at a school. The School District hired a consultant to conduct a review of the workplace incident. In June 2004, the consultant provided the School District with an investigation report.

[4] The respondent made access requests to the School District in April 2004 and December 2005. The respondent's first request was for "disclosure of such information on me as may be maintained in your files, and to the extent said disclosure is required by law." The School District initially responded in June 2004 by telling the respondent she could view her employment file pursuant to the local union agreement but that it would not provide her with a copy of the records. After the respondent approached this Office about the response, the School District disclosed records to the respondent, severing some information. The respondent then requested a review of School District's decision to withhold information. Mediation led to the disclosure of more records and information.¹

[5] During this time, the applicant also questioned why the School District had not provided certain specified records,² in addition to the following:

- a. pictures of dirty bathrooms and attached reports;
- b. audiotapes of the two interviews between the consultant and the respondent;
- c. copies of pages from the consultant's notebook recording his notes of the interviews;
- d. audiotape of an interview between the consultant and the respondent's husband;
- e. records of certain telephone calls; and
- f. other unspecified records of named School District employees.

¹ The severing issue fell away as at some point the respondent apparently received a complete copy of the record in question, the consultant's report; para. 11 of the portfolio officer's fact report that accompanied the notice for the inquiry initially scheduled on this matter states that she received it from her union although the respondent disputes this (p. 5, initial submission). It is clear however that the respondent received a copy of this report from some source, as she included what appears to be a complete copy with her initial submission.

² The School District said some of these records did not exist and that it later located and disclosed the other records to the respondent; see paras. 9-10 & 19, School District's initial submission.

[6] The School District said in response that no records existed related to items a, e and f and that it did not have records related to items b, c and d as they were in the custody of the consultant who was out of the country.

[7] The respondent's second request repeated the wording of the first request and added that it was not restricted to: records related to the respondent's firing by the School District; reports, pictures, material and meeting notes generated by a named individual or submitted by this person to CUPE and WCB (WorkSafeBC); records associated with a contract between the School District and the consultant related to the investigation of the workplace incident of April 1, 2004, including the consultant's report; and "Copies of Threatening letters" sent to two named individuals. The School District said in response it was not aware of any threatening letters and that it had disclosed all the other records. The respondent requested a review of this response as well.

[8] This Office then scheduled an inquiry to deal with the issue of whether the School District had control of the consultant's records (items b, c, and d above), an issue remaining from the first request, and whether the School District had complied with s. 6(1) in conducting a search for responsive records, apparently related to both requests. Meanwhile, the School District had conducted another search and located and disclosed to the respondent the pictures related to item a above. Upon the consultant's return to Canada, the School District retrieved records in his possession and disclosed to the respondent records related to items b, c and d above.

[9] The School District then took the position that the control issue was now moot, that it had located and disclosed all responsive records and that, as a result, no inquiry should be held respecting its search for records. The School District therefore wrote to this Office asking that it decline, under s. 56 of FIPPA, to hold an inquiry on the search issue.

The School District's arguments

[10] The School District first argued that, as a result of the disclosures to the respondent on March 22, 2006, the control issue has been satisfied. The respondent did not appear to take issue with this position. As the School District has now retrieved and disclosed the consultant's records, I agree with the School District and there is no need to hold an inquiry on the control issue.

[11] The School District also argued that it has complied with its duty under s. 6(1) of FIPPA to conduct an adequate search for responsive records. Due to "the comprehensive nature of Access Request No. 1", the School District said it conducted a thorough search of all areas where responsive records could reasonably be expected to be found and that, on various occasions from 2004 to 2006, it had disclosed all responsive records it could locate, including personnel, grievance, payroll, benefits and departmental records. The respondent has not

worked for the School District since March 2005, it said, and there is no reason to believe that there are any new records except those related to her access requests. It also offered explanations of why the School District does not have certain records the respondent seems to believe the School District has or should have.

[12] In support of its arguments, the School District provided affidavit evidence from the current Superintendent of the School District³ in which, among other things, he set out in detail the efforts the School District had taken to search for responsive records and the time (25-30 hours) he had personally spent searching. Relying on Orders 00-15,⁴ 00-26⁵ and 00-32,⁶ the School District argued that s. 6(1) does not impose a standard of perfection or require a public body to establish with absolute certainty that records do not exist. It said that its efforts have been reasonable, thorough and comprehensive and that it has explored all avenues in attempting to comply with its s. 6 obligations. In the School District's view, the evidence clearly demonstrates that it has complied with its duty to conduct an adequate search under s. 6(1) of FIPPA.

The respondent's arguments

[13] The respondent asked that I decline the School District's application and that an inquiry proceed,⁷ apparently on the search issue, although this is not clear. The respondent's submission dwelt primarily on workplace incidents and related matters that are not relevant to the search issue, although she alleged in a few places that the School District had not disclosed complete copies of certain records, such as her personnel file or the consultant's investigation report.⁸ She also appeared to question the absence of other items, such as pay slips, records of telephone calls she had made to School District officials and records she had received from WorkSafeBC or her union.⁹ The respondent also alleged that the School District had "falsified" or "manufactured" various records, including the consultant's report,¹⁰ although she provided no evidence in support of these allegations.

³ See Reid affidavits # 1 and # 2.

⁴ [2000] B.C.I.P.C.D. No. 18.

⁵ [2000] B.C.I.P.C.D. No. 29.

⁶ [2000] B.C.I.P.C.D. No. 35.

⁷ Page 1, respondent's reply submission

⁸ See, for example, paras. 5.d and 6.b, "Submission" part of respondent's reply submission. One of these allegations concerns the consultant's report, a complete copy of which the respondent claims not to have received. As noted above, however, she provided a copy with her submission.

⁹ See, for example, paras. 9-12, respondent's reply submission. The School District responded to these concerns by saying that it had provided some of these records and explaining why it did not have others; see School District's response.

¹⁰ See paras. 23 & 25, "Background" and "Falsification" parts of respondent's reply submission, for example. The School District denied that it "falsified", "manufactured" or "altered" any records – see para. 17, School District's response and para. 12, Reid affidavit # 2.

Discussion

[14] Section 56(1) of FIPPA reads as follows:

Inquiry by Commissioner

56(1) If the matter is not referred to a mediator or is not settled under section 55, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

[15] Section 56 confers discretion as to whether to hold a Part 5 inquiry respecting a request for review. As noted in earlier decisions, there may be a variety of reasons why this discretion might be exercised in favour of not holding an inquiry. These include the factors expressed in Orders 02-57¹¹ and Order 01-03.¹²

[16] The issue here is whether an inquiry should proceed respecting the School District's compliance with its duty under s. 6(1) of FIPPA in searching for responsive records. Section 6(1) reads as follows:

Duty to assist applicants

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.

[17] The respondent appears to be dissatisfied with and feels aggrieved about a number of aspects of her dealings with the School District on various workplace issues and incidents, including the April 2004 workplace incident mentioned above. Indeed, the vast majority of her submission dealt with these matters and included copies of records she has received from various sources, apparently through access requests and other processes. Although the respondent expressed concern that some records or files are missing or incomplete, it is not clear why she believes this. A careful review of the respondent's submission revealed no basis on which her allegations might plausibly rest.

[18] The School District provided a detailed description of the efforts it took in searching for responsive records, describing the locations it searched and the time taken for those searches. It also provided reasonable explanations of why it does not have other records. While I have not described in detail the School District's argument and evidence on its search, I have considered them carefully. I have concluded that it would be pointless to conduct an inquiry here. The School District has, in my view, already amply demonstrated that it has made every reasonable effort in its searches for responsive records and that it

¹¹ [2002] B.C.I.P.C.D. No. 59.

¹² [2001] B.C.I.P.C.D. No. 3.

has thus fulfilled its duty under s. 6(1). There is nothing to be gained in delving further into this matter.

4.0 CONCLUSION

[19] In these circumstances, where it is plain and obvious—including in light of previous orders respecting similar searches—that the School District has complied with its duty under s. 6(1), I have decided that no inquiry should be held under Part 5 of FIPPA respecting the respondent's request for access to records. This Office's file for the respondent's complaint will be closed.

October 12, 2006

ORIGINAL SIGNED BY

Celia Francis
Adjudicator

OIPC File: F04-22768 & F05-27488