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**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 185-1997  
August 18, 1997**

**INQUIRY RE: The adequacy of the City of Surrey's search for records requested by an applicant**

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**1. Description of the review**

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on July 16, 1997 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review by the applicant concerning the response by the City of Surrey to his access request. The applicant believes that the record that was requested exists and that the City has not conducted an adequate search to locate it.

**2. Documentation of the inquiry process**

The applicant submitted a request to the City of Surrey on March 31, 1997 for records which he believes exist, based on a notation on a memo between a City Planner and the City's legal counsel.

The City responded on April 21, 1997 advising that it had searched all possible areas where the requested record would be, if it existed, and was unable to locate such a record.

**3. Issue under review and the burden of proof**

The issue under review in this inquiry is whether the Ministry conducted an adequate search for the record that the applicant requested. The applicant also raised the applicability of section 25 to this matter in his initial submission. The relevant sections of the Act are 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.

***Information must be disclosed if in the public interest***

- 25(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
- (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
  - (b) the disclosure of which is, for any other reason, clearly in the public interest.

Section 57 of the Act, which establishes the burden of proof on the parties in this inquiry, is silent with respect to the issue of adequate search. Since the public body is in a better position to address the adequacy of a search, I have determined in a number of previous Orders that the burden of proof should be placed on the public body.

**4. The applicant's case**

The applicant is involved in a dispute over the rezoning of real property in Surrey. The record in dispute is a memorandum that a City official wrote to the City Solicitor and the response, or the lack of a response and follow-up, thereto. (Submission of the Applicant, paragraphs 11, 12) The applicant believes that a record must exist that the City has not located.

**5. The City of Surrey's case**

The City has submitted affidavit evidence to me that describes its efforts to locate records responsive to the request of the applicant. No such record has been located. A staff manager spent seven hours reviewing all the possible files in both the Law Division and Planning Department, including both sides of all papers in a number of such files. (Affidavit of Maralyn Procyk, paragraph 8) This search did not turn up any record that would have satisfied the applicant's request.

The City states that it has searched in all possible files for a relevant document, not once but twice:

It is the City of Surrey's position that both searches were thorough, extensive and in fact exhaustive. If a document was made that recorded

the outcome of the search of bona fides a third party's ownership of land, it would have been found in these searches.

It would not be unusual if the outcome of such a bona fides search was not recorded. It could have been verbally relayed to appropriate staff, and in likelihood would have been recorded only in circumstances where something unusual had been discovered in the search; something noteworthy. (Submission of the City, paragraphs 5, 6)

## **6. Discussion**

I dealt with earlier aspects of this case in Order No. 156-1997, March 19, 1997 and choose not to repeat background information that appears in the earlier Order. I do repeat that the general aspects of the dispute that underlies this request for access to information are well beyond my jurisdiction under the Act. (See Submission of the Applicant, paragraphs 1-9, 21-28)

I have considered the submissions of the parties and find that the City of Surrey has made every reasonable effort to search for the record at issue. (Reply Submission of the City, paragraph 2)

### ***Section 25: Information must be disclosed if in the public interest***

The applicant raised the application of section 25 of the Act in this inquiry. (Submission of the Applicant, paragraphs 19, 24-25) The issue in this case is the adequacy of the search for an apparently non-existent record. One cannot request the application of section 25 to disclose a record that has not yet been found and which the City claims does not exist. I therefore agree with the City that section 25 is not relevant to the issue before me. (Reply Submission of the City, paragraph 1)

In Order No. 162-1997, May 9, 1997, I found that a private interest dispute involving property rights did not fall within the scope of section 25. The following statement from pages 3 and 4 of that Order is relevant to the dealings between the City of Surrey and the applicant:

The City is of the view that section 25 has no application to the records in dispute. In its submission, the applicant's communications with it are 'aimed at furthering the applicant's *special* and *private interests*.' Its reply submission added that '[n]o parallel can, or should, be drawn between private business interests and the public interest in the matter at hand.'

I find that the applicant has misunderstood the meaning of 'public interest' in the context of this particular inquiry. The records in dispute concern a private matter affecting the interests of Babine Investments Ltd., its

tenants, and adjacent residents and property owners. The interests of the parties seeking disclosure do not rise to the level of public interest as defined by section 25 of the Act. Moreover, I defer to the similar determination of the City of Prince George on this matter. In my view, the facts in this inquiry do not meet the test of urgency and vital communication implied by the language of section 25. The fact that some members of the public might be interested in an issue does not necessarily make it a matter 'clearly in the public interest.'

## **7. Order**

Section 58(1) of the Act requires me to dispose of the issues in an inquiry by making an order under this section. I find that the search conducted by the City of Surrey in this case was a reasonable effort within the meaning of section 6(1).

Under section 58(3)(a), I require the City of Surrey to perform its duty under section 6(1) to make every reasonable effort to assist the applicant. However, since I have found that the search conducted was reasonable, I find that the City of Surrey has complied with this Order and discharged its duty under section 6(1) of the Act.

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David H. Flaherty  
Commissioner

August 18, 1997