



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F23-38

PROVINCIAL HEALTH SERVICES AUTHORITY

Jay Fedorak
Adjudicator

May 18, 2023

CanLII Cite: 2023 BCIPC 45
Quicklaw Cite: [2023] B.C.I.P.C.D. No. 45

Summary: An individual requested from the Provincial Health Services Authority (PHSA) any records that it had created for the Provincial Health Officer relating to the indoor setting type of Covid-19 transmission. PHSA responded to the request by providing the applicant with one record. The applicant complained that PHSA had not conducted an adequate search for records in accordance with s. 6(1). The adjudicator found that PHSA had conducted an adequate search.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165, s. 6(1).

INTRODUCTION

[1] This inquiry is about whether the Provincial Health Services Authority (PHSA) complied with its duty to conduct an adequate search for records in response to an access request under the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] An individual (applicant) requested from the PHSA any records that the BC Centre for Disease Control (BCCDC), which is part of the PHSA, may have created for the Provincial Health Officer relating to the imposing of restrictions on indoor meetings throughout the province as a measure to contain the spread of the Covid-19 virus. The PHSA responded to the request by providing a copy of one record. The applicant refused to accept that the PHSA had provided all of the records responsive to the request in its custody or under its control. The applicant complained to the Office of the Information and Privacy Commissioner (OIPC) that the PHSA had failed to conduct an adequate search for records in accordance with s. 6(1).

[3] Mediation failed to resolve the matter and the applicant requested that it proceed to an inquiry.

ISSUE

[4] The issues to be decided in this inquiry are as follows:

1. Did PHSA conduct an adequate search for records responsive to the applicant's request as required by s. 6(1) of FIPPA?
2. If the PHSA failed to conduct an adequate search, what is the appropriate remedy?

[5] FIPPA does not set out the burden with regards to s. 6(1). Past orders have found that the burden is on the public body to show that it has performed its duties under s. 6(1).¹

DISCUSSION

[6] **Background** – PHSA is the health authority responsible for specialized health care and related services in British Columbia, including the BCCDC. These services include public health surveillance, detection, treatment, prevention and consultation. During the course of the Covid-19 pandemic, the Provincial Health Officer imposed restrictions on indoor public gatherings.

Section 6(1) – adequate search

[7] Section 6(1) reads as follows:

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.

[8] Section 6(1) imposes a number of obligations on a public body. As mentioned above, the applicant's complaint in this case is that PHSA did not adequately search for records responsive to the access request. Previous orders have established that s. 6(1) requires a public body to conduct an adequate search for records. A public body's search efforts should be those that a fair and rational person would find acceptable. Section 6(1) does not impose a standard of perfection, but rather a standard of reasonableness.²

[9] Former Commissioner Loukidelis said that in order to demonstrate that it conducted an adequate search, a public body should:

...candidly describe all the potential sources of records, identify those it searched and identify any sources that it did not check (with reasons for not

¹ Order F20-13, 2020 BCIPC 15 (CanLII), para 13, for example.

² Order 02-18, 2002, BCIPC 42443 (CanLII), para 7.

doing so). It should also indicate how the searches were done and how much time its staff spent searching for the records.³

[10] PHSA submits that it conducted two searches for responsive records. The first it describes as the “Initial Search”. This search involved identifying officials who, owing to their functions and responsibilities, would be likely to have possession of any responsive records.

[11] PHSA access to information staff identified a group of four executive officials with responsibility and broad powers of oversight of the administration of the BCCDC. PHSA concluded that, if there were any records responsive to the request, these officials would likely have been aware of them. PHSA access to information staff contacted all of these executive officials. The search located one record. Each official responded that they did not have possession of any other records that might be responsive to the request.

[12] With the assistance of officials within the BCCDC, PHSA access to information staff identified nine other officials. They contacted each of these officials to ask them to conduct a search for responsive records and later verified that each of these officials had responded.

[13] PHSA submits that access to information staff contacted all departments where it was reasonable to conclude that responsive records might reside. These staff did not contact departments where there was no reason to believe that records would reside.

[14] PHSA asserts that it has established policies and procedures governing the conducting of searches for records in response to FIPPA access requests. It adds that it regularly provides training about FIPPA obligations to all officials who might be involved in a search for records.⁴

[15] After discussions with the applicant about its response to his request, PHSA conducted a “Supplemental Search”. The Supplemental Search involved reviewing the Initial Search to identify possible gaps and consulting with executive officials to identify other officials who might have possession of responsive records. The executive officials were not able to identify any other officials for the purposes of the search, but two officials who conducted searches as part of the Initial Search, also conducted a Supplemental Search of records in their possession. These Supplemental Searches did not locate any additional responsive records.⁵

³ Order 00-32, 2000 BCIPC 35 (CanLII), page 5.

⁴ PHSA initial submission, paras. 6-11.

⁵ PHSA's initial submission, para. 17.

[16] PHSA submits that its searches have met the standard for a reasonable search that previous orders have established. Given the heightened level of awareness of issues relating to the Covid-19 pandemic, PHSA asserts it is reasonable to conclude that the officials that it contacted would have known about the existence of any responsive records. The fact that they were unaware of any existing records and were unable to locate them confirms PHSA's position that there were no further responsive records. PHSA adds that the fact that it conducted a Supplemental Search for records to ensure that it had not overlooked any possible locations, supports its conclusion that it conducted a reasonable search. As an aside, PHSA suggests that other public bodies may have created records of the nature the applicant is seeking, as the Provincial Health Officer received similar types of records from sources other than the BCCDC.⁶

[17] The applicant disagrees with the arguments of the PHSA. He summarizes his arguments as follows:

- The BCCDC is the agency responsible for COVID-19 case information aggregation and analysis.
- The BCCDC has had, and continues to have, a principal responsibility for the COVID-19 case transmission data and information pertaining to case transmission by "Setting Type", including in religious settings.
- The BCCDC has provided COVID-19 case transmission by location setting to the office of the PHO during the period of the request, including but not limited to information provided at regular meetings of the staff of both agencies.⁷

[18] The applicant concludes that, as the BCCDC is responsible for creating and analysing data relating to Covid-19 transmission, including identifying transmission by indoor setting, it must have provided information to the Public Health Officer. While he does not contest the results of the search that PHSA has described, he believes that there should be responsive records relating to the regular meetings of the staff of the BCCDC and the Public Health Officer. He asserts that the minutes of the meeting or records tabled at the meetings may be responsive to his request and that the PHSA has not clarified whether it has searched the records of these meetings.⁸

[19] PHSA disagrees with the applicant's assertion that it has responsibility for transmission data relating to setting type, including religious settings. It submits that the fact the Covid-19 Case Report Form contains a field for the setting of transmission type does not mean that the BCCDC regularly received, analyzed

⁶ PHSA's initial submission, paras. 13-17.

⁷ Applicant's response submission, p. 4.

⁸ Applicant's response submission, p. 5.

and disclosed this information to the Provincial Health Officer. PHSA provided as documentation in support of its submissions copies of documents it routinely provided to the Provincial Health Officer, including through regular meetings. These documents include extensive data on Covid-19 transmission, but they do not include any reference to the setting of the transmissions.⁹

Analysis

[20] I find that PHSA took a methodical approach to its search for responsive records. It identified all of the employees whose responsibilities related to the subject matter of the applicant's requests, or who otherwise would be likely to know of the existence of any responsive records. It requested each of these individuals to search for any records in their possession. PHSA subsequently revisited its search efforts and tried to identify any other officials, who it might have overlooked in the first search. While it did not identify any other officials, two officials who had participated in the Initial Search also participated in the Supplemental search. PHSA provided affidavit evidence of its search efforts. I accept that evidence and find that the search efforts were logical, comprehensive and targeted.

[21] PHSA was also able to provide an adequate explanation for why it did not locate more than one record. While, at the time of making the request, it was reasonable for the applicant to guess that the BCCDC might have custody of responsive records, this inference was merely speculative. The applicant has offered no proof to suggest that PHSA has further records in its custody.

[22] The BCCDC clearly provided statistical information to the Provincial Health Officer through standard reports, but there is no indication that any of these reports contained information about the setting of transmission. The Provincial Health Officer issued regulations restricting indoor activities. While it may be reasonable to assume that the Provincial Health Officer based the decisions to impose these restrictions on relevant data, it is important to note that her office obtained data from multiple sources.

[23] Therefore, I find that the PHSA conducted a reasonable search for records that meets the test for compliance with s. 6(1).

⁹ PHSA's reply submission, paras. 10-16 and appendices.

CONCLUSION

[24] For the reasons given above, under s. 58 of FIPPA, I confirm that PHSA has conducted an adequate search for records in accordance with s. 6(1).

May 18, 2023

ORIGINAL SIGNED BY

Jay Fedorak, Adjudicator

OIPC File No.: F21-85759