

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 178-1997
July 25, 1997**

INQUIRY RE: The adequacy of a search by the Ministry of Environment, Lands and Parks 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 June 5, 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 an applicant of a decision by the Ministry of Environment, Lands and Parks (the Ministry) to sever information from the records disclosed under section 22. The applicant believes that there are more records in the custody and control of the Ministry that have not been disclosed to him.

2. Documentation of the inquiry process

The applicant made a request on December 27, 1996 for records leading to the letter that he received stating that his position was redundant. In addition, he requested copies of all draft and final documentation with references to classification and seniority leading to redundant positions in the Ministry.

The Ministry responded to the request on January 29, 1997 by disclosing to the applicant all records in the custody or under the control of the Ministry that responded to his request, but with some severing under section 22 of the Act.

On February 24, 1997 the applicant wrote to my Office requesting a review of the Ministry's decision to sever information under section 22 and complaining that the Ministry did not provide all the records that the applicant believes exist. Following receipt of additional information from the applicant, his request for review was opened on March 7, 1997. As a result of mediation, the section 22 severing issue was resolved.

However, the applicant still believes that additional records exist which have not been provided.

3. Issue under review and the burden of proof

The issue under review at this inquiry is whether the Ministry fulfilled its duty to the applicant under section 6 of the Act by conducting an adequate search and by disclosing all the records in the custody or under the control of the Ministry that he requested. Section 6 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.

4. The records in dispute

The records being sought relate to documentation leading up to the letter of redundancy to the applicant dated December 10, 1996.

5. The applicant's case

The applicant has been contesting efforts to find him redundant for almost two years. His complaint is that he did not receive a single page of documentation leading to his December 10, 1996 redundancy letter; he does not believe that everything relating to that matter was done verbally. He is seeking records to support his complaints to the B.C. Council of Human Rights.

The applicant did not make a reply submission.

6. The Ministry of Environment, Lands and Parks' case

The Ministry submits that it has been under considerable budgetary pressures that resulted in the elimination of almost 1,900 positions. This involved a high-level review process during a short time period that did involve the British Columbia Government Employees' Union (BCGEU), and then the issuance of notices to individual employees about the new organizational structure. (Submission of the Ministry, paragraphs 1.03, 1.04; and Appendix A)

The vast majority of the records released to the applicant do not contain information leading to the 1996 redundancy letter. (Submission of the Ministry, paragraphs 1.09, 1.10)

The Ministry's position is that it has made every reasonable effort to assist the applicant as required by section 6(1) of the Act.

7. Discussion

Description of the Ministry's search efforts

I have reviewed the Ministry's detailed description of its efforts to search for records responsive to the applicant's request. (Submission of the Ministry, paragraphs 4.05-4.18) In my view, it is very helpful that the applicant has now seen this description, which involved repetitive efforts to find appropriate records. The applicant has also received an informative one-page reply from the Ministry to his own submission.

The Ministry emphasizes that decisions on which positions were to be made redundant occurred between November 22 and December 6, 1996: "The decision to eliminate these positions was based on budget reductions and Ministry restructuring as opposed to the quality of work being performed by individual employees." (Submission of the Ministry, paragraph 4.17) This involved meetings and conference calls in particular.

In Order No. 176-1997 (Ministry of Attorney General, July 21, 1997), I agreed with the Ministry's identical argument with respect to searches for records for both that inquiry and the current inquiry:

The Public Body is not required to prove a negative (i.e. that certain records do not exist). The Act does not require that a public body prove to a degree of absolute certainty that the requested records do not exist. The Public Body is only required to show that it has made every reasonable effort to identify the records responsive to the request. It is submitted that the evidence presented by the Public Body in this inquiry establishes that it has discharged its obligation to conduct an adequate search. (Submission of the Ministry, paragraph 4.04)

I agree with the Ministry that it "has conducted a thorough and comprehensive search, making efforts that fair and rational people would expect to be made and would find acceptable." (Submission of the Ministry, paragraph 4.18)

8. Order

I find that the search conducted by the Ministry of Environment, Lands and Parks was adequate within the meaning of section 6(1) of the Act. Under section 58(3)(a), I require the Ministry to perform its duty to assist the applicant. However, since I have found that the Ministry has made every reasonable effort to search for records, I find that the Ministry has complied with this Order and has discharged its duty under section 6(1).

David H. Flaherty
Commissioner

July 25, 1997