

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 103-1996
May 23, 1996**

**INQUIRY RE: The adequacy of the Ministry of Social Services' search for records
requested by an applicant**

**Fourth Floor
1675 Douglas Street
Victoria, B.C. V8V 1X4
Telephone: 604-387-5629
Facsimile: 604-387-1696
Web Site: <http://www.cafe.net/gvc/foi>**

1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner on April 11, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request by an applicant for a review of the adequacy of a search by the Ministry of Social Services for records that he had requested.

2. Documentation of the inquiry process

On November 23, 1995 the applicant wrote to the Ministry and requested copies of the "repeatedly requested updates" referred to in a January 19, 1995 letter sent to the applicant by a District Supervisor. On December 20, 1995 he wrote to the Ministry to clarify his request. On December 22, 1995 the Ministry informed the applicant that the records that he was seeking did not exist. On January 2, 1996 the applicant requested that the Office of the Information and Privacy Commissioner review the adequacy of the search conducted by the public body.

3. Issue under review at the inquiry

The issue under review at the inquiry is whether the Ministry of Social Services conducted an adequate search for the applicant's records. The relevant section of the Act is 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. Burden of proof

Section 57 of the Act, which establishes the burden of proof on parties in an inquiry, is silent with respect to the adequacy of a search. However, as a public body is in a better position to address the issue of an adequate search, I have determined, in this case, that the Ministry of Social Services has the burden of proving that it conducted an adequate search for the records that the applicant requested.

5. The Ministry of Social Services' case

The Ministry simply states that: "it has acted properly and in the spirit of the Act in this matter The Public Body has dealt with this Applicant before and has always been co-operative and responsive to the Applicant." (Submission of the Ministry, paragraph 5.1, and the Affidavit of Melinda Minkley) The Ministry referred me to my Order No. 86-1996, February 27, 1996, dealing with the same applicant. (Submission of the Ministry, paragraphs 5.2 to 5.4) The Ministry also submitted that it has met the expectations set out for this kind of case about the adequacy of a search in Order No. 30-1995, January 12, 1995, pp. 4, 5. (Submission of the Ministry, paragraphs 5.5 to 5.12)

The Ministry states that:

As a response to the request from the Applicant, the Public Body undertook a thorough and comprehensive search. It was a search that changed as clarification of the initial request was sought or demanded. All avenues were followed and the result was an accurate and complete look for information that the Applicant had requested. The Public Body submits that this is more than a fair and rational person would expect to be done and it further exemplifies the efforts of this Public Body in both assisting applicants and following the intentions of the Act. (Submission of the Ministry, paragraph 5.10)

6. The applicant's case

The applicant submitted a two-page letter largely claiming that my Office has not responded to previous correspondence and threatening further court actions against me. He also referred to the affidavit submitted by the Ministry as "fraudulent" and to the statements of a Ministry employee as "fraudulent and criminal" and malicious and criminal. I am further accused of being an accessory to collusion with the Ministry by refusing to hold inquiries that the applicant has apparently sought. The applicant has stated that: "Your [my] actions are pathetic."

7. Discussion

On the basis of the submissions of the Ministry, I am satisfied that it has met its duty under section 6 to assist the applicant and that it has conducted an adequate search in compliance with Order No. 30-1995, pp. 4, 5.

8. 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 Ministry of Social Services in this case was a reasonable effort within the meaning of section 6(1).

Under section 58(3)(a), I require the Ministry of Social Services 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 Ministry of Social Services has complied with this order and discharged its duty under section 6(1) of the Act.

May 23, 1996

David H. Flaherty
Commissioner