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**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 149-1997
January 31, 1997**

INQUIRY RE: Decisions of the Ministry of Attorney General regarding an applicant's requests for records from the Liquor Distribution Branch

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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 December 20, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of two separate requests for review of decisions of the Ministry of Attorney General (the public body) in response to requests for records submitted by the applicant.

2. Documentation of the inquiry process

On July 15 and August 1, 1996 the applicant submitted requests for records in the custody of the Ministry.

Request 1: The Ministry responded by disclosing 13 pages of records with excerpts severed under sections 13(1) and 17(1)(e) of the Act. The Ministry subsequently released all of the severed excerpts in the course of the Inquiry.

With respect to certain other records requested by the applicant, the Ministry denied their existence.

Request 2: The Ministry responded by disclosing 36 pages of records, which it described as constituting full access to the records requested.

Although the applicant eventually received all the records that had been originally severed by the Ministry, he maintains that the Ministry did not disclose all of the records in its custody that were responsive to his requests. On September 13, 1996 the applicant

submitted to this Office two requests for review of the adequacy of the Ministry's searches. The requests are consolidated for convenience into this single inquiry.

3. Issues under review at the inquiry

The issue common to the reviews in this inquiry is whether or not the public body fulfilled its duty to the applicant under section 6 of the Act by disclosing all of the records in its custody that the applicant requested.

The relevant sections of the Act are the following:

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.

Section 57 of the Act establishes the burden of proof on the parties to an inquiry about a decision to refuse access. It is silent with respect to section 6 and the issue of adequate search. Since public bodies are in a better position to address the issue of adequate search, I have determined in previous orders that the burden of proof under this section is on the public body. (See Order No. 138-1996, December 18, 1996, p.2; Order No. 127-1996, September 24, 1996, p.3)

4. The records in dispute

The applicant alleges that at the time of his requests, the Ministry had the following records in its custody, the existence of which it did not reveal:

- a) a list of questions concerning the applicant that were posed to investigators at the Liquor Distribution Branch, as well as the answers to those questions, and
- b) a summary of the review concerning the applicant that the Office of the Deputy Minister conducted.

The applicant also questions the fact that a blank space appears in a section of a chronology that was released to him pursuant to his first request.

5. The Ministry's case

The Government of British Columbia has a procedure in place to settle disputes between excluded employees (non-union members) and Ministries. An employee may ask the Deputy Minister to investigate and report on the matter. In 1995 the Liquor Distribution Branch of the Ministry suspended the applicant's short-term illness and injury benefits (STIIP). He then appealed to the Deputy Minister to settle the matter. She

set a process in motion to investigate the matter. (Submission of the Ministry, paragraphs 1.03-1.07) The applicant subsequently requested the records generated by the Office of the Deputy Minister and asked a number of specific questions about the process followed. Subsequent requests followed, two of which are at issue in this inquiry.

I review below the Ministry's detailed responses to the issues in dispute in this inquiry.

6. The applicant's case

The applicant's submission is essentially an effort at a factual rebuttal, with additional arguments, of the Ministry's submission on very specific points at issue.

7. Discussion

Procedural objections

The Ministry has raised a number of procedural objections about various aspects of this inquiry.

First, the applicant attempted to submit in this inquiry a record generated by my staff during the mediation process. In accordance with my Office's Policies and Procedures, this record was removed from the submissions provided to me and did not form part of the record of this inquiry. The Ministry was also concerned that the applicant had referred to this record in his submissions and requested that I disregard these references.

Second, the applicant complained about delays by the Ministry in responding to his requests. The Ministry communicated the reasons for its delay to the applicant at the time, apologized, and advised him that he had a right to file a complaint with the Commissioner. The applicant did not do this and raised the issue of the delay for the first time in this inquiry. Thus the Ministry submitted that this issue should not be part of this inquiry.

Finally, the Ministry submits that the applicant's arguments relate to records outside the scope of his requests, and the scope of its search should be limited to those within the original scope.

I agree with the submissions of the Ministry on these points.

Section 6(1): Reasonable efforts to assist applicants

The Ministry has presented detailed evidence to satisfy "both a conclusion that the Public Body made every reasonable effort to identify the records responsive to the Applicant's request, and a conclusion that certain records simply do not exist. While

something may have been spoken to or discussed, it does not mean a record exists.” (Submission of the Ministry, paragraph 5.04) I have reviewed its detailed description of its search efforts, and I am satisfied that this constituted a very reasonable effort to assist the applicant within the meaning of this section by searching for records and responding to his questions. (Submission of the Ministry, paragraphs 5.05-5.15)

I have also reviewed the Ministry’s explanation as to why there is a blank space before certain words in a record disclosed to the applicant. I accept the explanation of the typist that the “blank space is simply a typographical error in which extra spaces were inadvertently added. No information has been severed from this record.” (Submission of the Ministry, paragraph 5.17 and Affidavit of Cindy Chew)

I am persuaded by the descriptive information provided to me by the Ministry that it has made every reasonable effort to respond to the applicant’s requests for records and that its search efforts have been thorough and comprehensive. (Submission of the Ministry, paragraphs 5.21-5.22)

The absence of records

I am concerned in this inquiry about the absence of records about matters that probably should have produced some evidence of what transpired. The person who assisted the Deputy Minister to manage the investigation kept no notes of certain instructions that she gave to the individual doing the investigation and kept no notes of certain discussions with the applicant. While there is no obligation under the Act to create a record, I think that the public expects public bodies to produce reasonable documentation for actions affecting them as individuals.

8. Order

I find that the Ministry of Attorney General has fulfilled its duty to assist the applicant under section 6(1) of the Act. However, section 58(1) requires me to dispose of the issues in an inquiry by making an order under this section. Accordingly, under section 58(3)(a), I require the Ministry of Attorney General to perform its duty to make every reasonable effort to assist the applicant under section 6(1). However, I find that the search conducted by the Ministry of Attorney General in this case was a reasonable effort within the meaning of section 6(1). Since I have found that the search conducted was reasonable, I find that the Ministry of Attorney General has complied with this order and discharged its duty under section 6(1) of the Act.

January 31, 1997

David H. Flaherty
Commissioner