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**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 203-1997
December 12, 1997**

INQUIRY RE: The adequacy of a search for records by the City of Prince George

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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 November 24, 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 Babine Investments Ltd. (the applicant) of the adequacy of the search by the City of Prince George (the City) for records pertaining to the Muffin Break/PGI Foods Building.

2. Documentation of the inquiry process

The applicant made a request on June 24, 1997 for “a copy of the report from Development Services as to the compliance of the Muffin Break / PGI Foods building with the off-street parking and loading requirements of the City of Prince George Zoning By-Law No. 3482, 1989.” The City responded on July 22, 1997. The applicant was not satisfied with the response and submitted another request to the City on July 25, 1997 for information including the report requested on June 24, 1997. The City provided new responses to the applicant on August 18, August 20, and August 27, 1997, stating that no report existed.

On August 22, 1997 the applicant requested “a review of the adequacy of the City of Prince George’s search in response to our request made June 24, 1997....”

3. Issue under review and the burden of proof

The issue under review is whether the City fulfilled its duty to the applicant under section 6(1) of the Act by conducting an adequate search for records responsive to the applicant's request. Section 6(1) 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.

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 the adequacy of a search for records arising under section 6(1). 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. 103-1996, May 23, 1996, p. 1)

4. The records in dispute

The applicant alleges that, among the records responsive to its request pertaining to planning, rezoning, and by-law enforcement, is a report done by the City's Development Services Department concerning the Muffin Break/PGI Foods Building. The applicant believes it involves compliance with off-street parking and loading requirements.

5. The applicant's case

The applicant believes that the record in dispute exists because of an "undertaking" by the city manager during a meeting with him and a telephone conversation with a senior planner for the City.

The applicant did not make a reply submission.

6. The City of Prince George's case

The City states that it has made a thorough search for all of the records responsive to the applicant's access request of July 25, 1997. It has furnished me with a copy of a lengthy letter in which it instructed City staff to search for relevant records. (Submission of the City, Exhibit C) However, the City did not locate the specific record that is the subject of concern in this inquiry. The City states that its search "did not result in the location of a record such as the one the applicant requested by fax on June 24, 1997." (Submission of the City, p. 4) It also explained to the applicant, by letter, that no written report exists "as to the compliance of the Muffin Break/PGI Foods Building with the

off-street parking and loading requirements of City of Prince George Zoning Bylaw No. 3482, 1980....” (Submission of the City, pp. 4, 5) The City’s basic position is that no written report exists with respect to any such investigation. The City states:

It is true that the City had intended to prepare a report as requested by the applicant. However, that report never came to fruition, in part due to the applicant’s refusal to cooperate. (Submission of the City, p. 5)

The City also reiterated and reinforced the points above in its reply submission.

7. Discussion

I have addressed the underlying problems in this inquiry in previous Orders and choose not to repeat them here. (See Order No. 162-1997, May 9, 1997; Order No. 182-1997, August 13, 1997) The City’s current position in the ongoing dispute over parking between a muffin shop and a restaurant is that it has been advised by counsel for its insurance company that it should not become directly involved with the parties to this dispute. (Submission of the City, p. 2)

In previous orders I have also discussed the obligations of a public body under section 6(1) of the Act. A public body is not required to prove with certainty that the requested records do not exist, it is only required to show that it has made every reasonable effort to identify the records responsive to the request. (See Order No. 178-1997, July 25, 1997)

I agree with the City’s submission that its search for records responsive to the applicant’s request of July 25, 1997, which encompassed a search for the report requested on June 24, 1997, was noteworthy for its thoroughness. (Submission of the City, p.4) Based on a review of the submissions of the parties, I find that the City of Prince George conducted an adequate search for the records in dispute in this inquiry.

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 City of Prince George in this case was a reasonable effort within the meaning of section 6(1).

Under section 58(3)(a), I require the City of Prince George 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 Prince George has complied with this Order and discharged its duty under section 6(1) of the Act.

David H. Flaherty
Commissioner

December 12, 1997