

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 207-1997  
December 23, 1997**

**INQUIRY RE: The adequacy of the Ministry of Attorney General's search for records**

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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 September 18, 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 from the applicant of a decision by the Ministry of Attorney General, Information and Privacy Program (the Ministry), that no records exist that would respond to the applicant's request.

**2. Documentation of the inquiry process**

On March 20, 1997 the applicant requested records from the Ministry of Attorney General, Information and Privacy Program. The request was for copies of records sent by facsimile from the Ministry's Legal Services Branch to the lawyer for the Office of the Information and Privacy Commissioner in 1995. These records related to litigation involving the applicant and the Government of British Columbia, including a decision by the British Columbia Supreme Court that the applicant not bring further court proceedings against the former Ministry of Social Services without special leave of a judge of the Supreme Court.

The Ministry responded to the applicant's request on April 10, 1997, with further clarification on April 21, 1997. The Ministry told the applicant that no responsive records exist. The applicant requested a review of the Ministry's decision on April 25, 1997.

The applicant requested a similar set of records from the Office of the Information and Privacy Commissioner. The Office located responsive records in its files, waived

solicitor-client privilege for a number of them, and disclosed them to the applicant on May 1, 1997. Thus the applicant received some of the requested records from a different source.

On June 10, 1997 the applicant requested an inquiry by the Information and Privacy Commissioner to review the Ministry's decision that no responsive records are in the custody or under the control of the Ministry. On July 2, 1997 the Office gave notice to the applicant and the Ministry of the written inquiry to be held on July 24, 1997. By consent of the parties, the written inquiry was rescheduled to September 18, 1997.

### **3. Issue under review and the burden of proof**

The issue to be reviewed by the Information and Privacy Commissioner is the adequacy of the Ministry of Attorney General's search for records that respond to the applicant's request of March 20, 1997.

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Section 57 is silent with respect to a request for review about the issue of adequate search. I decided in Order No. 103-1996, May 23, 1996, that the burden of proof in such cases is on the public body.

### **4. The records in dispute**

The applicant requested copies of records sent by facsimile as well as other communications from the Ministry's Legal Services Branch to the lawyer for the Office of the Information and Privacy Commissioner in 1995. These records related to litigation involving the applicant and the Government of British Columbia.

### **5. Procedural objections**

The applicant objected to various aspects of the review of the Ministry's response to his access request, including the perceived lack of response to his wish that someone from outside my Office be delegated under section 49 to investigate various associated issues. He also objected to various perceived inaccuracies in the Portfolio Officer's Fact Report, all of which I have considered. He objected to the timetable for submissions in this inquiry but was advised by my Office that he could formally request a time extension after reviewing the Ministry's submissions.

The applicant also objected to decisions taken by my Office in response to his allegations about violations of the Act by the Attorney General and a member of his staff and, on the basis that I am in a conflict of interest as a party to those objections, stated his belief that this inquiry should be conducted by a justice of the Supreme Court. I have addressed these sorts of allegations before, especially in Order No. 119-1996, August 29, 1996; Order No. 134-1996, December 9, 1996; and Order No. 163-1997,

May 14, 1997. My Office is the only forum for a review of a decision of a public body under the Act.

## **6. The applicant's case**

The applicant essentially submits that he should have access to certain records from the Ministry, as described above. Implicitly, he seems to be arguing that the Ministry did not carry out a reasonable search to locate what he wants.

## **7. The Ministry of Attorney General's case**

The Ministry's submission documents the fact that it has explained to the applicant why the records he is seeking do not exist. (Submission of the Ministry, paragraphs 1.04, 1.07) The Ministry has also provided me, and the applicant, with a very detailed description of its search efforts to find responsive records. (Submission of the Ministry, paragraphs, 4.05 to 4.09)

The Ministry further submits:

... the Public Body has conducted a thorough and comprehensive search, making efforts that fair and rational people would expect to be made and would find acceptable.... The Public Body is confident that no records within its custody or control exist which are responsive to the Applicant's request... Given that the Applicant has received records from the Office of the Information and Privacy Commissioner, the Public Body has every reason to believe that the Applicant is not using the Act for the purposes for which it was intended and that he is not acting in good faith. (Submission of the Ministry paragraph, 4.10)

## **9. 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 Attorney General in this case was a reasonable effort within the meaning of section 6(1).

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

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David H. Flaherty  
Commissioner

December 23, 1997