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**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 242-1998
June 25, 1998**

INQUIRY RE: The adequacy of the search conducted by the New Westminster Police Service in response to a request for records

**Fourth Floor
1675 Douglas Street
Victoria, B.C. V8V 1X4
Telephone: 250-387-5629
Facsimile: 250-387-1696
Web Site: <http://www.oipcbc.org>**

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 May 11, 1998 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of the response by the New Westminster Police Service (NWPS) which indicated that the NWPS could not find any records responsive to the applicant's request.

2. Documentation of the inquiry process

On December 21, 1997 the applicant submitted a request to the NWPS for a record of the conversation that the applicant had had with a particular police Constable. On December 22, 1997 the NWPS responded to the applicant's request by informing him in writing that it was unable to locate any record that related to the information the applicant requested.

On January 22, 1998 the applicant requested a review of this response.

On April 8, 1998 the applicant requested an inquiry before the Information and Privacy Commissioner. On April 9, 1998, with the consent of both parties, the inquiry deadline was extended from April 22, 1998 to May 5, 1998. On April 9, 1998, my office gave notice to the applicant, and the public body that a written inquiry would be held on May 5, 1998.

On April 28, 1998, the applicant requested an extension of the inquiry deadline, which the NWPS agreed to. The new inquiry date was set for May 11, 1998.

3. Issue under review and the burden of proof

The issue under review in this inquiry is the adequacy of the search conducted by the NWPS in response to the applicant's request for records. The section of the Act relevant to this issue 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.
- (2) Moreover, the head of a public body must create a record for an applicant if
 - (a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and
 - (b) creating the record would not unreasonably interfere with the operations of the public body.

Section 57 of the Act, which establishes the burden of proof on parties in an inquiry, 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 is on the public body.

4. The record in dispute

The record in dispute is an alleged recording of a telephone conversation between the applicant and a Constable of the NWPS.

5. The applicant's case

The applicant finds it hard to believe that there are no notes of his conversation with a particular Constable on a particular day in 1996.

6. The New Westminster Police Service's case

The Police Information Retrieval System (P.I.R.S.) has no complaint file created on the appropriate date involving the applicant. The telephone call in question might have been tape-recorded if the police officer alleged to have taken it was the Duty Non-Commissioned officer on that day, but these tapes are recycled every ninety days. According to the police:

If the Detective had thought the complaint warranted a file being made up, he would have done so. The police take many telephone calls where no file is created.

The Police Service also supplied me with a copy of its policy on tape recording.

7. Discussion

Neither the Police Service nor the applicant made a reply submission in this inquiry. I am pleased that the applicant in particular has had access to the full explanation by the police as to why there is no record of his telephone call.

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 New Westminster Police Service in this case was a reasonable effort within the meaning of section 6(1) of the Act. I also find that no responsive record exists in the custody or under the control of the New Westminster Police Service.

Under section 58(3)(a), I require the New Westminster Police Service 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 and that no responsive record exists in the custody or under the control of the New Westminster Police Service, I find that the New Westminster Police Service has complied with this Order and discharged its duty under section 6(1) of the Act.

David H. Flaherty
Commissioner

June 25, 1998