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**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 168-1997  
June 6, 1997**

**INQUIRY RE: The adequacy of the Ministry of Small Business, Tourism and Culture's search for records requested by an applicant**

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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 May 13, 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 an applicant concerning the response by the Ministry of Small Business, Tourism and Culture (the Ministry) to two separate access requests. The applicant believes that there are more records in the custody and control of the Ministry that have not been disclosed to him.

**2. Documentation of the inquiry process**

The applicant made two separate requests, one on January 8, 1997 and the second on February 3, 1997, for records relating to his complaint against a Ministry employee. The first request asked for all reports and communications relating to the complaint, while the second request was for the report of the complaint.

The Ministry responded on February 5, 1997, advising that "our search has not found any records pertaining to your request." On February 12, 1997 the applicant requested a review of the Ministry's response.

In a further review of the file, the Ministry realized that it had overlooked a one-page e-mail that was responsive to the applicant's first request of January 8, 1997. This record was disclosed to the applicant on April 30, 1997.

**3. Issue under review at the inquiry and the burden of proof**

The issue under review in this inquiry is whether the Ministry conducted an adequate search for the records that the applicant requested. 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.

Section 57 of the Act, which establishes the burden of proof on the parties in this inquiry, is silent with respect to the issue of adequate search. Since the public body is in a better position to address the adequacy of a search, I have determined in a number of previous cases that the burden of proof should be placed on the public body.

**4. The applicant's case**

The only submission received from the applicant states that he made no request for an inquiry under the Act, either formally or informally, and that my Office has exceeded its mandate and failed to exercise all available adequate and alternate remedies available under the Act: "These actions violate my Charter Rights to a Fair Hearing." The applicant did not make a reply submission to the one presented by the Ministry.

**5. The Ministry's case**

According to the Ministry, the applicant initiated a complaint about the service he was receiving at the hands of a particular employee of the Williams Lake Government Agent's office. Although he has not accepted an invitation to discuss the matter with this particular office, he has filed an access to information request for records and communications relating to the complaint. Within a month, he made a second request pertaining to the same matter. One record responsive to these requests was located and released to the applicant. (Submission of the Ministry, paragraphs 1.03-1.13)

I have discussed below the Ministry's description of its search efforts.

**6. Discussion**

The Ministry's description of the "reasonable efforts" required under section 6(1) of the Act is one that I have accepted in many other cases. I have reviewed its description of the search undertaken and the related affidavit and I am satisfied that the Ministry has met its obligations under section 6(1). (Submission of the Ministry, paragraphs 4.01-4.08; and Affidavit of Gordon Strain, Manager, Information and Privacy)

The basic point is that the Government Agent in Williams Lake did not generate any records of the complaint because he intended to meet with the complainant and

discuss his concerns. There was no report prepared of the investigation. When the Government Agent discussed the complaint with the employee concerned, he concluded that the complaint was not substantiated.

The Ministry has also provided me with a copy of the communication to my Office, dated February 12, 1997, in which the applicant formally requested a review of the Ministry's decision on his access request.

## **7. Order**

I find that the Ministry of Small Business, Tourism and Culture has met the burden of proof to show that it conducted a reasonable and adequate search as required by section 6(1) of the Act and has made every reasonable effort to assist the applicant. On that basis it has discharged its duty under section 6(1) of the Act. I therefore find under section 58(3)(a) of the Act that the Ministry is not obligated to respond further to the particular information requests which are the subject of this Order.

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David H. Flaherty  
Commissioner

June 6, 1997