



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER

British Columbia
Canada

Order 00-04

**INQUIRY REGARDING THE UNIVERSITY OF BRITISH COLUMBIA'S
SEARCH FOR RECORDS**

David Loukidelis, Information and Privacy Commissioner
February 2, 2000

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Summary: Applicant complained to UBC about his treatment by UBC staff. He later sought copies of all records relating to investigation of his complaint. UBC disclosed 45 pages of records without any severing. Applicant alleged UBC failed to provide records responsive to his request. UBC found to have fulfilled its s. 6(1) duties.

Key Words: Duty to assist – respond without delay – respond openly and accurately – every reasonable effort

Statute Considered: *Freedom of Information and Protection of Privacy Act*, s. 6(1)

1.0 INTRODUCTION

On June 29, 1999, the applicant made a request for records under s. 5 of the *Freedom of Information and Protection of Privacy Act* (“Act”) to the University of British Columbia (“UBC”). The applicant’s request related to a complaint he had lodged with UBC about an encounter he had with security personnel at UBC. After the encounter, the applicant had written a letter of complaint to UBC. His access request was for “any and all documents pertaining to” his complaint against the UBC employees, “including witness statements and the investigation report.”

On July 9, 1999, UBC responded, by letter to the applicant, indicating that it had searched for responsive records in “the offices of the President and the University Counsel” and enclosing records. The records consisted of 45 pages, all of which UBC disclosed in their entirety, without any severing.

On August 11, 1999, the applicant submitted a request to this office for a review of UBC's decision, on the ground that the records UBC disclosed were "not responsive" to his access request. The applicant also alleged in this letter that UBC's conduct in responding may, in his words, have constituted an abuse of the freedom of information process. On September 27, 1999, following mediation with this office, UBC conducted a further search for records and disclosed an additional one-page record to the applicant. On October 13, 1999, the applicant asked that the review proceed to a written inquiry under the Act.

2.0 ISSUE

The applicant alleges that UBC failed in its duty to assist him under s. 6(1) of the Act on the basis that the records UBC gave him were not responsive to his request. The issue to be considered, therefore, is whether UBC complied with its duty to the applicant under s. 6(1) of the Act.

The Act is silent as to which party has to prove whether or not UBC met its duty to assist the applicant under s. 6(1). UBC agrees that it has the burden of proof. This is consistent with previous orders on this point.

3.0 DISCUSSION

3.1 Background to This Matter – Before discussing the merits of the case, some discussion of the background to the applicant's request would be useful.

The applicant applied for admission to the Faculty of Law at UBC and was unsuccessful. The applicant then made access to information requests to UBC about his application and the admission process. He communicated his concerns about the process to the Office of the President of UBC. On December 18, 1999, he went to that office in person and reportedly interrupted a staff meeting. He was asked to return later to a public area of the office to receive a letter from UBC responding to his concerns. When he did so, the applicant was met by three members of the campus security staff and a staff member from the Office of the President. The applicant was presented with a letter written by the Associate Vice-President for legal affairs, and it was evidently at this encounter that the alleged incident occurred, resulting in the applicant's complaint about UBC staff.

3.2 UBC's Duty to Assist Applicants – Section 6(1) of the Act requires the head of a public body such as UBC to "make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely". The applicant says UBC has not done this, *i.e.*, because UBC disclosed records that are not responsive to his request. Implicit in this is the contention that UBC has not adequately searched for, or has deliberately withheld, responsive records.

3.3 Did UBC Fulfill its Duty Here? – UBC’s position was briefly stated. It said that it undertook “substantial efforts” to respond to the applicant’s request, including searching every possible source of records at UBC. It said it had disclosed all records that it found and that it had complied fully with s. 6 in this case.

The UBC employee who handled the applicant’s request swore an affidavit in which she deposed that she made every effort to assist the applicant, and that she obtained documents from every source known to her at UBC that might hold records requested by the applicant. In that affidavit, the employee – who is a lawyer – deposed that she routinely handled access requests for UBC. She deposed that she had handled previous access requests by the applicant and had, in this case, made every effort to assist the applicant. She also deposed as follows:

I have made every effort to assist ... [the applicant] in his recent request and have requested and obtained documents from every source known to me at the University which may possibly hold the records requested. ... Specifically, I have requested and obtained copies of any records regarding ... [the applicant’s] request from UBC Campus Security, the office of the President of UBC, and the office of University Counsel. Other than the records that have been produced by UBC to ... [the applicant], I know of no other records or other departments, or individuals who can be contacted to obtain the records sought by ... [the applicant].

Exhibits “A” and “B” to that affidavit were copies of memorandums sent by that UBC employee to two UBC departments, asking those departments to search for any relevant records and provide them to her.

For his part, the applicant contends that the records disclosed by UBC are not within the scope of his request and are not responsive to his request. He says they relate to a different matter (namely, his admission to law school). He says that if UBC did investigate his complaint, it should have given him all relevant documents, and that if it did not investigate the complaint it should have said so instead of giving him records not responsive to his request. He argued that UBC should be ordered, under s. 58(3)(a) of the Act, to conduct a proper search.

The applicant says 31 pages of the disclosed records consist of 11 letters he wrote to UBC, nine letters UBC wrote to him and three letters of reference. These all relate to the applicant’s law school application and “are in no way related to my complaint”. The applicant acknowledged that three of the disclosed records do relate to his complaint. The first is a letter from the Assistant Deputy Minister of Advanced Education, Training and Technology. The second is the applicant’s February 9, 1999 letter to UBC’s president and the third is UBC Campus Security Report No. 9386.

On the one hand, the applicant says the problem is that most of the disclosed records “do not speak to the key issue in this matter – the investigation of my complaint”. On the other hand, the applicant asserts that UBC ignored his December 19, 1998 complaint and did not investigate it. He says that on February 9, 1999, he wrote to UBC’s president and

asked about the investigation into his complaint and never received a reply. He then made the access request that has led to this inquiry. He says UBC Campus Security Report 9386 – which UBC disclosed to the applicant – “establishes conclusively that UBC did not investigate my complaint of December 19, 1998”. The applicant repeated this assertion in his reply submission, where he argued that UBC’s affidavit evidence in this inquiry confirms that UBC did not search for records relating to his complaint “because the matter was never investigated”.

If the applicant is correct when he says UBC did not investigate his complaint, it is difficult to see how he can assert, at the same time, a failure by UBC to find responsive records. His access request was for “any and all documents pertaining to my complaint ... including witness statements and the investigation report”. The applicant has received a UBC Campus Security Report and two other records related to his *complaint*. If there was no investigation, as the applicant claims, it would not be strange at all that there are no records that relate to an *investigation*. If there was no investigation, one should not be surprised if no “witness statements”, “investigation report” or other investigation records, at least, are found. If the complaint was not acted upon in any way, what other records might there be that UBC has not, according to the applicant, found?

The applicant did not say why he thinks UBC has not found all relevant documents. He did not, for example, identify any other documents that might reasonably be expected to have been created in relation to his complaint, *e.g.*, as a result of inquiries from UBC to the applicant about his complaint or the other way around. He essentially asserted, without providing particulars, that UBC had not fulfilled its s. 6(1) duty and left it pretty much at that. Of course, UBC bears the burden of establishing that it complied with its s. 6(1) duty here. But in the face of UBC’s evidence – which supports a finding that UBC fulfilled its duty – the applicant’s bare assertion of wrongdoing can be given no weight.

In my view, UBC made every reasonable effort, in this case, to find responsive records and to otherwise assist the applicant respecting his access request. I also see nothing wrong with UBC’s disclosure of records related to the applicant’s law school admission application. I conclude that in providing these records to the applicant, UBC was attempting to respond as openly and completely as it could. UBC is not obliged, under the Act, to tell the applicant whether an investigation was undertaken into his complaint. It is required only to respond to his request. Having done everything it reasonably could to respond to the access request, and having disclosed such responsive records as it found, there is nothing wrong in UBC voluntarily disclosing the other (somewhat related) records without charge.

Based on the material in front of me, I find that UBC has, in compliance with s. 6(1) of the Act, discharged its duty toward the applicant under that section.

4.0 CONCLUSION

For the reasons given above, under s. 58(3)(a) of the Act, I order UBC to perform its duty under s. 6(1) of the Act to assist the applicant. However, since I have found that UBC complied with its duty under s. 6(1), I find that UBC has complied with that section and has discharged its duty under that section.

February 2, 2000

David Loukidelis
Information and Privacy Commissioner
for British Columbia