



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER

British Columbia  
Canada

Order 00-15

## INQUIRY REGARDING COLLEGE OF DENTAL SURGEONS RECORDS

David Loukidelis, Information and Privacy Commissioner  
June 8, 2000

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**Summary:** Applicant sought copies of all records relating to her dental treatment, including treatment charts, by various dentists and at a clinic. College disclosed 27 records and severed one record under s. 22 of the Act. Applicant considered College's response incomplete, saying it failed to provide all records responsive to her request. Applicant sent follow-up letter to College, to which College replied, clarifying its initial response. College found to have fulfilled its s. 6(1) duties.

**Key Words:** Every reasonable effort – respond openly, accurately and completely.

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

**Authorities Considered: B.C.:** Order No. 30-1995; Order No. 103-1996.

### 1.0 INTRODUCTION

The applicant in this case believes that the College of Dental Surgeons of British Columbia ("College") has failed to disclose to her all records responsive to her July 30, 1999 access request to the College. Her request covered "[c]omplete records related in any way to my treatment by" two named dentists and "[c]omplete radiological reports from my treatment" by two other named dentists, as well as records of her treatment at a clinic. The College responded, on August 27, 1999, by disclosing 27 records to the applicant. One of the records was severed to withhold third party personal information the College said was protected from disclosure under s. 22(1) of the *Freedom of Information and Protection of Privacy Act* ("Act").

Dissatisfied with this response, the applicant wrote to the College on September 16, 1999, saying she considered its response to be incomplete. Her letter described the aspects of her access request to which, she said, the College had failed to respond. By a letter dated

September 20, 1999, the College clarified its original response by telling the applicant that the College did not have some of the records requested by the applicant. In that letter, the College said that “[w]e would suggest that you contact the dentists directly for copies of the reports that the College does not have access to”.

Also on September 16, 1999, the applicant requested a review, under s. 52 of the Act, of the College’s decision. Since the matter was not settled in mediation, I held a written inquiry under s. 56 of the Act.

## **2.0 ISSUE**

The only issue to be considered here is whether the College fulfilled its duty, under s. 6(1) of the Act, to make every reasonable effort to respond to the applicant openly, accurately and completely. Citing Order No. 103-1996, the College accepts that it has the burden of establishing that it complied with that duty.

In her initial submission, the applicant says the College should be held to account for failing to transfer her request, as contemplated by s. 11 of the Act. In its reply submission, the College correctly points out that this inquiry is restricted to the s. 6(1) issue. The College added, however, that it “has no knowledge that any other public body has the records” requested by the applicant. I am not prepared, in this case, to consider the s. 11 issue, since it did not form part of the applicant’s request for review or the notice of written inquiry issued by this Office. I would not be inclined to find for the applicant if I were to consider the s. 11 issue.

## **3.0 DISCUSSION**

**3.1 Applicant’s Late Submission** – The applicant did not file a reply submission by the deadline set out in the notice of written inquiry. Over three weeks after that deadline, however, the applicant delivered a further submission. At that time, I wrote to the applicant and told her that, although I would not accept her further submission then, I would tell the parties if I took her late submission into consideration in my deliberations and would give the College a chance to respond to any new issues. Because the applicant’s further submission was delivered well after the deadline of which she was given ample written notice, and because she has not provided any explanation for the lateness of her further submission, I have not considered it in deciding this matter.

**3.2 The College’s Statutory Duty** – Section 6(1) of the Act reads as follows:

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.

On its face, this requires public bodies to “make every reasonable effort” to assist applicants and to respond “without delay to each applicant openly, accurately and

completely”. The applicant says the College has failed to respond completely because it failed to disclose records responsive to her access request.

Like my predecessor, I consider s. 6(1) to require a public body to exert that effort, in searching for records, which a fair and rational person would find to be acceptable in all the circumstances. A public body’s efforts must be thorough and comprehensive. Although s. 6(1) does not impose a standard of perfection, the public body must make a reasonable effort to explore all avenues in attempting to comply with its s. 6(1) obligations.

I agree with what my predecessor said in Order No. 30-1995, where he noted that a public body should, in an inquiry such as this, candidly describe all potential sources of records and its reasons for any decision not to explore any of them. It should also describe, in reasonable detail, the efforts it actually took to search for records, including by describing the various sources that it checked, by giving details as to how the search was conducted (*e.g.*, whether e-mail requests were sent to public body staff who might have responsive records and whether the person responsible for processing the request actually conducted the search herself or himself), and by indicating how much time staff expended in the search. This is consistent, I note in passing, with views expressed in the *Policy and Procedures Manual* issued by the Information, Science and Technology Agency of the Ministry of Advanced Education, Training and Technology, for use by public bodies.

**3.3 Did the College Fulfill its Obligations?** – The College says it responded fully to the applicant’s request. In its initial submission, the College says the applicant “requested additional records” in her September 16, 1999 letter and that the College conducted a second “complete and thorough search looking for these records”. That search revealed there were no such records.

I disagree with the College’s contention that the applicant requested additional records in her September 16, 1999 letter. It appears that after she received the College’s August 27, 1999 response, the applicant contacted the College by telephone, and later wrote to the College on September 16, 1999, asserting her position that the College had omitted records from its initial response. The September 16, 1999 letter clearly takes that position and reiterates the applicant’s request for records relating to her treatment, as described above. In her letter, the applicant refers to ‘charts’ held by various dentists. This does not mean her September 16, 1999 letter was a request for additional records. It was merely a repetition of her original request, which she asserted the College had failed to fulfill.

As to the merits of the s. 6(1) issue, based on the evidence presented by the College, I have no doubt it fulfilled its s. 6(1) duty to respond completely to the applicant’s request, including as expressed in her September 16, 1999 letter. The College’s freedom of information coordinator, Jane Meachin, swore an affidavit, in which she deposed that she had conducted the searches in response to the applicant’s request.

Paragraph 3 of her affidavit reads as follows:

I conducted a search of the College's records in response to the applicant's request. I conducted a complete and thorough search and review of all records that were related to the request. I reviewed the relevant records completely and thoroughly a second time when the Applicant indicated she believed there were omissions in the College's response. I estimate that approximately 10-15 hours were expended in searching the records and responding to the Applicant's request.

In her affidavit, Meachin deposed that if a record is provided to the College, or created by the College, for the purposes of the College's complaint process, it is kept by the College and is not returned to the originating dentist or other sources. In other words, if the College had received records from dentists, the College would still have them and she would have found and disclosed them. Such records as she found were disclosed to the applicant. She also deposed that she was not aware of any other public bodies that have records requested by the applicant.

This affidavit was supported by a further affidavit, sworn by Dr. Evelyn McNee, who is the College's Registrar and head for the purposes of the Act. Dr. McNee deposed that the College had

... made a diligent, thorough, accurate, and comprehensive search of the files of the College for records within the scope of the Request ... .

She also deposed that the College had "disclosed all records to the Applicant" (subject, of course, to the College's application of s. 22(1) to third party personal information, as noted above). Last, Dr. McNee deposed that the College had undertaken a second search of its files in response to the applicant's September 16, 1999 letter, as discussed above, and that the College "does not have the specific additional records requested by the Applicant".

For her part, the applicant argues the College has not conducted an adequate search, "as several records are missing". She notes that some of the dentists' charts, or radiological reports, respecting her treatment have not been included in the College's response. In one case, for example, she notes that one of the records disclosed by the College states "send X-ray to Dr. ... [Doe]". The applicant says this "radiological report is missing".

In this case, the College says it does not have the records requested by the applicant and, in effect, that it never had them. The College says these records may be in the custody or under the control of various dentists who treated the applicant some years ago, and suggests the applicant contact the dentists to see if she can obtain copies of those records from them. The X-ray reference just noted does not mean the College has the X-ray or ever had it.

It is clear the College has fulfilled its duty under s. 6(1) to find responsive records and disclose them to the applicant. The College has also pointed out that the records the

applicant says are missing are dentists' treatment records that may still be available directly from those dentists. The College has noted that the applicant can use the Directory of Dentists, which is readily available at all public libraries, to find the current addresses for these dentists.

#### **4.0 CONCLUSION**

I find the College has fulfilled its duty under s. 6(1) of the Act to make every reasonable effort to respond to the applicant openly, accurately and completely. No order is necessary under s. 58(3) of the Act.

June 8, 2000

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David Loukidelis  
Information and Privacy Commissioner  
for British Columbia