



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order 00-46

INQUIRY REGARDING THE VANCOUVER POLICE BOARD

David Loukidelis, Information and Privacy Commissioner
October 12, 2000

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Summary: As one of many access requests to the VPB, the applicant sought copies of correspondence connected in some respect with his *Police Act* complaints against various members of the Vancouver Police Department. VPB found to have complied with its duty under s. 6(1) to search for records.

Key Words: duty to assist – every reasonable effort.

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

Authorities Considered: B.C.: Order 00-15; Order 00-26; Order 00-32.

1.0 INTRODUCTION

On February 15, 2000, the applicant wrote to the Vancouver Police Board (“VPB”) and, under the *Freedom of Information and Protection of Privacy Act* (“Act”), sought access to “records pertaining to communications between” the VPB and its “past and present lawyers” and other individuals and organizations (including the Law Society of British Columbia) “relating to my complaints against officers of the Vancouver Police Department” and against various VPB lawyers. In relation to a letter that the applicant referred to as being dated October 17, 1996 – a copy of which had previously been given to him – the applicant said he “would like to have the other records referred to in that letter, namely, a transcript of the voice mail [that the letter’s recipient had left for the letter’s writer] as well as [a named individual]’s notes of her telephone conversation with [the letter’s recipient].” These two aspects of the applicant’s request are the subject of this inquiry.

On April 17, 2000, the VPB provided the applicant with copies of eight letters, seven of which were letters either from or to the applicant. The letter referred to by the applicant in his request – which was actually dated October 7, 1996 – was disclosed to the applicant in the VPB’s response.

The applicant, in letters dated May 17 and 26, 2000, requested a review, under s. 52 of the Act, of the VPB’s compliance with its obligations under s. 6(1) of the Act. As mediation was not successful in resolving the issue, I held a written inquiry under s. 56 of the Act.

2.0 ISSUE

The issue in this inquiry is whether the VPB complied with its obligation under s. 6(1) of the Act to make every reasonable effort to assist the applicant, especially by carrying out an adequate search for the requested records. Although the Act is silent on the point, previous orders have placed the burden of proof on the public body to establish that it has complied with its s. 6(1) duties.

3.0 DISCUSSION

3.1 Procedural Objection – The applicant says that, because the VPB did not make its initial submission before the deadline imposed on the parties in the Notice of Written Inquiry, its submission is not properly before me. He says this has prejudiced him and that I should only consider the applicant’s submissions in reaching my decision.

The VPB made an initial submission on time, but discovered that confusion over file numbers for several matters involving this Office and the same applicant had caused it to file a submission that was meant for another inquiry involving the applicant. The first (mistaken) submission was made on time on Friday, August 18, 2000. It was withdrawn the following Monday, August 21, 2000, at the same time as the VPB delivered its correct initial submission.

The VPB’s timely initial submission was the wrong one. This unfortunate slip was clearly inadvertent. The applicant has not elaborated on his assertion that the minor delay in filing of the VPB’s submission has caused him prejudice. In the absence of any reason to conclude that the applicant was prejudiced, I have accepted the submission. It should be noted that, on August 21, 2000, the Executive Director of this Office rescheduled the inquiry to August 29, 2000, in order to give both parties adequate time to make reply submissions in light of the switch in the VPB’s submissions.

3.2 Did the VPB Fulfill Its Section 6(1) Duty? – Section 6(1) of the Act requires the head of a public body to “make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.” I have described in some detail – in Order 00-15, Order 00-26 and Order 00-32, for example – the standards expected of public bodies under s. 6(1) in their efforts to search for requested records and in describing those efforts in an inquiry such as this. There is no need to repeat those discussions here.

The VPB submits that it responded adequately to the applicant's request for information. It says, first, that the "the first portion of the request" was "repetitive", since it was the subject of Order No. 129-1996. As regards the voicemail message transcript and telephone conversation notes described above, the VPB says it made inquiries and determined that no transcript of a voicemail message was ever made and that no notes exist of the telephone conversation. It also says the person who would have received the telephone call, if it was made, has no current recollection of the telephone conversation. The author of the letter confirmed that no transcript of the voicemail message he had received was ever made and the person who supposedly made telephone conversation notes said she had no recollection of the conversation at all.

Bearing in mind that the VPB bears the burden of establishing that it has met its s. 6(1) obligations, I note that the applicant has not given me any reason to suppose that either of the records he alleges exist actually do exist. I have no hesitation in concluding, on the basis of the VPB's submissions and a common sense assessment of the circumstances, that the VPB has complied with its duty under s. 6(1) in its efforts to determine whether it had custody or control of any records responsive to the applicant's request.

4.0 CONCLUSION

Because I have found that the VPB complied with its duty under s. 6(1) of the Act in determining that the requested records had never been created, such that a further search for them was not necessary, no order is necessary under s. 58(3) of the Act.

October 12, 2000

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia