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

Order 00-34

INQUIRY REGARDING BRITISH COLUMBIA RACING COMMISSION'S SEARCH FOR GAMING POLICY RECORDS

David Loukidelis, Information and Privacy Commissioner
August 4, 2000

Quicklaw Cite: [2000] B.C.I.P.C.D. No. 37
Order URL: http://www.oipcbc.org/orders/Order00-34.html
Office URL: http://www.oipcbc.org
ISSN 1198-6182

Summary: Applicant sought gaming policy records from the British Columbia Racing Commission and two other public bodies. Applicant named several records he said should be in public body's possession, though it did not produce them. Public body found not to have fulfilled its s. 6(1) search duty initially, but further search not ordered, as public body subsequently fulfilled its s. 6(1) search obligation.

Key Words: duty to assist – 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 00-15; Order 00-26; Order 00-32.

1.0 INTRODUCTION

Along with Order 00-32 and Order 00-33 – issued concurrently with this one – this order deals with the applicant's request for records relating to the installation of slot machines at racetracks in British Columbia. By a letter dated August 20, 1999, the applicant sought access to records under the *Freedom of Information and Protection of Privacy Act* ("Act") from the British Columbia Racing Commission ("Commission"). During roughly the same period, he made similar access requests to the Ministry of Employment and Investment ("Ministry") and the British Columbia Lottery Corporation ("Lottery Corporation"). Those requests are dealt with in Order 00-32 and Order 00-33,

respectively. The issue raised in all three cases is the same – has each public body complied with its duty, under s. 6(1) of the Act, to make every reasonable effort to assist the applicant and to respond without delay openly, accurately and completely?

The applicant's request to the Commission sought records on matters relating to the government's gaming policy announced by the Minister of Employment and Investment ("Minister") on March 13, 1997. It also covered records related to statements by the Minister that the policy would include "placement of slot machines in age-restricted locations at racetracks if requested by the tracks" and that, through the *Lottery Corporation Act*, the Commission would be "fully involved and apprised of [its] respective roles and responsibilities regarding implementation matters" relating to the policy. The relevant parts of the request follow:

> Pursuant to the Freedom of Information and Privacy Act, would you please provide full and complete disclosure and any and all information and documentation in the possession your Commission [sic] in particular pertaining to the background, negotiation, development and implementation of the above-noted Gaming Policy, including (but not limiting the generality of the foregoing):
>
> – any and all memoranda, notes, records, reports, research material, correspondence, computer data with reference to the above negotiation, development and formulation of the said Gaming Policy; any interpretation(s) of it, policies and procedures with respect to its implementation, and any instructions or directions regarding the said Gaming Policy or its future.

In its September 1, 1999 response, the Commission told the applicant that it was "not in possession of any memoranda, notes, records, reports, research material, correspondence or computer data" relating to the government's March 1997 gaming policy. The Commission did provide the applicant with a copy of a March 13, 1997 news release captioned "Government rules out Las Vegas-style casinos and VLTs in bars and pubs".

Dissatisfied with the Commission's response, the applicant requested a review, under s. 52 of the Act, on September 19, 1999, on the basis that further records must exist and that the Commission had failed to disclose all responsive records. This request for review was made concurrently with the applicant's request for review of the matters addressed in Order 00-32 and in Order 00-33.

Both the applicant and the Commission favoured my dealing with the three review requests in one inquiry because they were interrelated, but the Lottery Corporation and the Ministry both objected to that approach. On December 20, 1999, I decided to conduct three separate inquiries.

On January 7, 2000, the Commission provided the applicant with further records in response to the applicant's request. The Commission frankly acknowledged that this information had not been provided "initially due largely to lack of due diligence … in comprehending the request" and admitted this had affected its original search for records, a circumstance for which the Commission apologized to the applicant.

2.0 ISSUE

The only issue to be considered in this inquiry is whether the Commission has performed its duty, under s. 6(1) of the Act, to make every reasonable effort to assist the applicant and to respond to the applicant without delay openly, accurately and completely. More specifically, did the Commission adequately search for records responsive to the applicant's request?

The Commission has the burden of proving that it discharged its s. 6(1) duty.

3.0 DISCUSSION

3.1 Applicable Principles – Section 6(1) of the Act reads as follows:

> 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.

Because the obligations of a public body under s. 6(1) of the Act in searching for responsive records have been canvassed fully in many orders, I see no need to repeat them here. See Order 00-15, Order 00-26 and Order 00-32, for example, on the applicable standards and the evidence that public bodies should provide in inquiries such as this.

3.2 Has the Commission Searched Adequately? – In the applicant's initial submission, he argues that it is "astounding" that the Commission does not possess any information or documentation that relates to any agreements or process and procedure relating to gaming policy. The applicant says that it is inconceivable that no such information exists in the Commission's records.

The applicant points to the March 1997 news release and the statements made at the time by the Minister about the appointment of a senior civil servant who, through the Lotteries Advisory Committee, was to "lead the implementation of these changes". (It appears that a Commission representative was appointed to the Lotteries Advisory Committee in this connection.) The Minister also said that this Committee was

> … responsible for working with racing representatives to help the continued viability of the British Columbia horse racing industry, and its estimated 3,000 direct jobs. This will include the placement of slot machines in age-restricted locations at racetracks if requested by the tracks.

The applicant also refers to a February 1998 report entitled "Gaming Policy Recommendations". This Report included a copy of the Lotteries Advisory Committee document "Gaming Commission Highlights New Directions, June 1997". This document is said to refer to approval of slot machines "for existing charity casinos that can accommodate them (to a maximum of 300 per location) and in age-restricted locations at

permanently established racetracks that desire them". Further, the Lotteries Advisory Committee's "Backgrounder" document stated that it would ensure that both the "Lottery Corporation and the Racing Commission are fully involved and apprised of their respective roles and responsibilities regarding implementation matters". Finally, the applicant refers to various other documents – which are apparently not in the possession of the Commission – that refer to gaming policy and, in particular, to placement of slot machines at racetracks.

The Commission's submissions are brief and to the point. The Commission reiterates again that it has "no material, other than that forwarded to the applicant, on policy, process, procedure, regulations or agreements/contracts pertaining to slot machines at race tracks". It says that if "such material exists it was never received" by the Commission. The Commission confirms that it does not have, and never has had, in its possession, a number of the documents referred to by the applicant in his initial submissions. The Commission says there has been no deliberate or concerted effort to conceal information and that it is willing to assist in any way, but it cannot produce what it does not have.

Section 6(1) of the Act requires the head of a public body such as the Commission to "make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely". The applicant here does not believe that the Commission has met its s. 6(1) duty and, further, believes the Commission may be deliberately withholding responsive records.

While it may seem surprising that the Commission never received copies of some of the documents that the applicant referred to in his submissions, there is no reason to infer from any of the information that is before me that this cannot be the case. It is true, as the applicant asserts, that the Commission did not file affidavits of the Commission representatives on the Lotteries Advisory Committee to support its assertions that these representatives do not and never have had the information that the applicant seeks. However, the Commission made inquiries to those representatives and they responded by saying they had no such records. It is also true that the Commission, as it freely acknowledged, did not initially deal with the applicant's access request as diligently as it could or should have done.

Having regard to all of the material that is before me, however, I am satisfied the Commission has now made every reasonable effort to respond to the applicant's access request openly, accurately and completely by searching adequately for records. When it disclosed further records to the applicant early this year, the Commission candidly acknowledged its initial lack of diligence in searching for records responsive to the applicant's request. The evidence provided by the Commission here speaks to sufficient subsequent efforts on its part to discharge its s. 6(1) duty to search for records. Accordingly, I find the Commission did not discharge its duty toward the applicant under that s. 6(1) when it responded to the applicant but, as I find that it has since conducted adequate searches, no s. 58 order is needed.

4.0 CONCLUSION

Because I have found that the Commission has, since the Commission's initial response to the applicant, complied with its duty under s. 6(1), no order is necessary under s. 58.

August 4, 2000

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia