



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

Order 00-35

**INQUIRY REGARDING THE VANCOUVER POLICE
DEPARTMENT'S SEARCH FOR RECORDS**

David Loukidelis, Information and Privacy Commissioner
August 4, 2000

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Summary: Public body complied with its duty to applicant under s. 6(1) in its search for requested record.

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

On January 12, 2000, the applicant wrote to the Vancouver Police Department (“VPD”) and, under the *Freedom of Information and Protection of Privacy Act* (“Act”), sought access to an unsevered copy of a record that he attached to his letter. That record was entitled “Notice of Results of Investigation”. It had a number of lines of text blacked out and two handwritten annotations indicating that it had been sent to the deputy chief constable, now the chief constable, of the VPD. The applicant evidently believed that the VPD had a clean, unsevered version of the same record. The VPD responded on January 13, 2000 by telling the applicant that the record “does not belong to the Vancouver Police Department. We, therefore, cannot comply with your request”.

On January 18, 2000, the applicant requested a review, under s. 52 of the Act, of the VPD’s decision. During mediation, the VPD conducted a further search for the requested

record. However, as mediation was not successful in resolving the request for review, I held a written inquiry under s. 56 of the Act.

2.0 ISSUES

The issue in this inquiry is whether the VPD complied with its obligation 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 in carrying out its search for the requested record. 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 Applicable standards – 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.

3.2 Did the VPD Fulfill Its Section 6 (1) Duty? – The applicant takes the position that the VPD has the requested record in its custody and under its control and says it is irrelevant that the record does not “belong to” the VPD. He further argues that the issue is not whether the VPD has conducted an adequate search for the requested record, but rather whether the VPD is required to disclose the record to him.

The VPD’s Search for the Record

The VPD argues that it made every reasonable effort to locate the record requested by the applicant. It submitted affidavit evidence from Constable Randall Smith, an analyst in the VPD’s information and privacy unit, in which he described the efforts he took to look for the record. Cst. Smith deposed that he contacted the both Internal Investigation Section of the VPD and the Vancouver Police Board (“Board”) and asked if staff in those offices knew the origin of the record attached to the applicant’s request. Staff in both offices told him they did not know where the record originated.

In his reply submission, the applicant disputes the VPD’s argument that it made a reasonable effort to search for the requested record. He asks if staff in the information and privacy unit had spoken to the chief constable and suggests staff could have contacted other organizations, which he named.

In its reply submission, the VPD filed a further affidavit from Cst. Smith, in which he deposed that he had conducted yet another search for the record. He deposed that he had visited the chief constable’s office and asked staff if they recognized the record. He was told they did not recognize the record and did not know where it could be found. He also visited the VPD’s Internal Investigation Section and showed staff in that office a copy of

the severed record the applicant had provided. He said that staff conducted a search for the record and told him they could not locate it.

Cst. Smith also deposed that he visited the Board's offices and showed staff there a copy of the record the applicant had supplied. He deposed that staff there conducted a search for the record and told him they could not locate it.

It was not clear from the VPD's initial and reply submissions if staff in the office of the chief constable had actually searched for the record when Cst. Smith spoke with them about it. The submissions also did not state whether or not Cst. Smith had spoken with the chief constable himself, had asked him if he remembered receiving the record or, if he had spoken with the chief constable, what the reply was. I therefore requested clarification of these points.

The VPD's submissions also did not explain what it meant by the term "did not originate" with its Internal Investigation Section or the Board. I therefore asked if this phrase meant that the VPD had searched for, but could not find, a copy of the record or if it meant that it had a copy of the record, but believed it did not have to be disclosed because it did not "belong to" or "originate" with the VPD.

The VPD responded to my inquiries by saying it did not know if staff in the chief constable's office had searched for any records. I was told, however, that Cst. Smith had shown the record to the chief constable, who said he did not recognize it. The VPD went on to say that no one within the VPD appeared to have the document in question nor did anyone recognize it. The VPD said it has been unable to locate the record within the VPD and cannot identify which agency created the record (it says, at the same time, that it belongs to another agency). Although the applicant claims the VPD has a copy of the record, the VPD repeated that it has searched for the record and has not been able to locate it

Did the VPD Make A Reasonable Effort to Search for the Requested Record?

Based on its submissions, I am satisfied that VPD searched in all of the likely places the record "Notice of Results of Investigation" would be if the VPD had a copy of it. I therefore find that the VPD complied with its duty under s. 6 (1) in its efforts to search for this record.

I note in passing that it would have been helpful if the VPD had simply expressly told the applicant in its response letter that it could not find the record, rather than saying the record did not "belong to" the VPD and it could not therefore comply with his request. This imprecision in its response led directly to my request for clarification. If the VPD's response had been clearer, the subsequent review and inquiry processes themselves might not have been necessary.

4.0 CONCLUSION

Because I have found that the VPD complied with its duty under s. 6(1) of the Act in its search for the requested record, no order is necessary under s. 58(3) of the Act.

August 4, 2000

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia