



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

Order 01-05

CITY OF VANCOUVER

David Loukidelis, Information and Privacy Commissioner
January 29, 2001

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Summary: The applicant requested records from the City relating to a complaint he made against a member of Vancouver Police Department. City responded that it was unable to locate any records in its custody or under its control. City found to have conducted reasonable search under s. 6(1).

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

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

Authorities Considered: B.C.: Order 00-15.

1.0 INTRODUCTION

[1] On April 6, 2000, the applicant made a request to the City of Vancouver (“City”), under the *Freedom of Information and Protection of Privacy Act* (“Act”), for the following:

- any and all records pertaining to a specific lawyer’s billing to the City for his work “on the ... [applicant’s name] file”;
- a list of all records in the applicant’s file which was provided to the lawyer by an employee of the Police Complaints Commission (“PCC”);
- the information requests sent to the lawyer or the City by the PCC employee; and
- the complaint sent to the lawyer by the PCC employee.

[2] Attached to the request was a copy of a telephone message slip dated June 1, 1998, addressed to a named person, indicating that “[name of the lawyer] from the City of Vancouver” had called “re: [the applicant]” and that the lawyer had been “asked to do something on this file, by the City of Vanc.”.

[3] In a letter dated April 17, 2000, the City told the applicant that the City had searched for responsive records. It said the lawyer named in the applicant’s request had never acted as counsel for the City, that the named PCC employee had never been employed by the City and that any correspondence between the lawyer (“lawyer”) and the PCC employee (“employee”) in relation to the applicant’s complaint file was not in the custody or under the control of the City.

[4] On April 26, 2000, the applicant requested a review, under Part 5 of the Act, of the City’s decision. On May 17, 2000, the applicant asked that the matter proceed to an inquiry and I held a written inquiry under s. 56 of the Act.

2.0 ISSUE

[5] The issue before me, as set out in the Notice of Written Inquiry, is whether the City failed in its duty to assist the applicant under s. 6(1) of the Act. The Act is silent as to which party has to prove whether or not the City met its duty to assist the applicants under s. 6(1). Previous orders have placed the burden of proof on the public body in these matters, as set out in the Notice of Written Inquiry.

[6] In his initial submission, the applicant sought to expand the inquiry to include the duties of a public body under s. 8(1) of the Act. This issue is not set out in the Notice of Written Inquiry. I decline to address this issue, which is not properly before me.

3.0 DISCUSSION

[7] Public bodies other than the City are, indirectly, relevant to this inquiry. The Vancouver Police Board (“VPB”) is a public body. It receives its mandate from the *Police Act*, which provides that both civilian employees and police officers are employees of the VPB. The *Police Act* also provides that the Mayor of the City is the chair of the VPB.

[8] Another public body is the Office of the Police Complaints Commissioner (“OPCC”), which also receives its authority from the *Police Act*. The Police Complaints Commissioner is an Officer of the Legislature and is not employed by, nor is he or she part of, any police board or local government. The PCC performed a police complaints function under the *Police Act* before amendments in 1998 brought the OPCC into existence for that purpose. It appears from the evidence presented to me that the employee is or was an employee of the PCC or the OPCC and that the VPB may have entered into a contract with the lawyer for legal services.

[9] Section 6(1) of the Act requires the City to “make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.” The standards expected of public bodies in searching for records have been canvassed in a number of orders. I do not propose to repeat them here. See, for example, Order 00-15.

[10] The thrust of the City’s argument is that the lawyer and the employee are not employed by the City, such that any records that were generated by either of these people and that may be responsive to the request are not in the custody or control of the City. The City’s initial submission sets out, in affidavit form, the steps taken by its Manager, Corporate Information & Privacy, in responding to the applicant’s request. In that affidavit, the Manager discusses his conversation with his predecessor, who is now with the City’s Legal Services Department. That individual informed the Manager that the Legal Services Department had no records that responded to the applicant’s request.

[11] The Manager further deposed that he discussed this matter with the lawyer identified in the request, who assured him of the following:

- he had never been employed by the City, although he had acted as counsel for the Vancouver Police Department (“VPD”) with respect to at least one complaint;
- he had never provided any records to the City that might be responsive to the request;
- in June 1998, the employee was employed by the PCC; and
- the information contained on the telephone slip described above was incorrect.

[12] The Manager also deposed that, because the VPD and the OPCC are “separate organizations”, the City has no ability to gain access to records held by either of them.

[13] In his submissions, the applicant contended that the legal and financial affairs of the VPB are handled by the City and that the City’s Corporation Counsel (who I infer is an employee of the City) was allegedly responsible for responding to any questions the lawyer may have had regarding payment of his accounts. Even if that were true, it does not necessarily mean the City, as opposed to the VPB, has custody or control of any responsive records.

[14] The issue of whether a public body has met its obligations under s. 6(1) of the Act turns on the efforts it has actually made to locate responsive records. In this case, the Manager contacted the City’s Legal Services Department in an attempt to find responsive records, which are, after all, related to legal matters. I do not agree with the applicant that the Manager should, in this case, have asked the City’s accounting personnel or other City departments to look for records such as those described above.

4.0 CONCLUSION

[15] For the reasons given above, I find that the City has performed its duty, under s. 6(1) of the Act, to assist the applicant. No order is necessary under s. 58(3).

January 29, 2001

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia