



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

Order 01-44

**UNIVERSITY OF BRITISH COLUMBIA**

David Loukidelis, Information and Privacy Commissioner  
October 3, 2001

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**Summary:** Applicant made two access requests for specific letters in the custody of UBC. Only one could not be found, because it did not exist. UBC fulfilled its s. 6(1) duty in searching for records.

**Key Words:** duty to assist – adequacy of search – respond without delay – respond openly, accurately and completely – every reasonable effort.

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

**Authorities Considered: B.C.:** Order No. 327-1999, [1999] B.C.I.P.C.D. No. 40; Order 00-32, [2000] B.C.I.P.C.D. No. 35; Order 00-42, [2000] B.C.I.P.C.D. No. 44.

## 1.0 INTRODUCTION

[1] The applicant in this case is the same as the applicant in Order 01-42, [2001] B.C.I.P.C.D. No. 44, Order 01-43, [2001] B.C.I.P.C.D. No. 45 and Order 01-45, [2000] B.C.I.P.C.D. No. 47, which are released concurrently with this decision. He is also the applicant who made the access request that led to Order No. 327-1999, [1999] B.C.I.P.C.D. No. 40. In each case, the applicant's apparent objective has been to obtain information about what he claims is the mistreatment inflicted on him by the University of British Columbia ("UBC") in connection with his graduate studies at UBC. Most recently, in Order 01-42 and Order 01-43, the applicant sought records relating to an investigation by the Ombudsman of British Columbia ("Ombudsman") into the applicant's complaint about UBC's conduct. The Ombudsman dismissed the applicant's complaint and the applicant is not happy about that either.

[2] This decision arises from two access requests that the applicant made to UBC under the *Freedom of Information and Protection of Privacy Act* (“Act”). One was dated May 15, 2000 and the other November 2, 2000. The first request sought access to three specific letters written by UBC faculty to other UBC faculty, in connection with the applicant’s unsuccessful appeal to the academic appeal committee of UBC’s Senate. That request referred to attachments to a February 12, 1998 letter (“1998 Letter”) sent by a UBC faculty member to the applicant in connection with the applicant’s appeal. The request sought “at least 9 documents which were central to the faculty of graduate studies and your office’s academic case against me”, but only specifically asked for the following:

1. a copy of a February 19, 1997 letter from a UBC faculty member, to whom I will refer as Prof. A, to a faculty member, to whom I will refer as Prof. B, but (the applicant said) only if that letter “is different from the document” described in the 1998 Letter as a February 10, 1997 letter from Prof. A to Prof. B;
2. an April 30, 1997 letter to the applicant from someone at UBC, but only if that letter “is not the same as the document” described as a February 10, 1997 letter from Prof. A to Prof. B; and
3. a letter dated November 14, 1997, but only if it “is not the same as the document” described as a November 14, 1997 letter from Prof. A to the applicant.

The applicant’s first request went on to say that:

I guess that all the documents in section 1 and 2 above are the same documents nicely in different contexts and that the two documents in section 3 above are also the same document. However, I am no longer sure.

[3] UBC responded to the first request on June 20, 2000. It confirmed that, as regards items 2 and 3 of the applicant’s request, the two letters referred to in each item are the same. UBC did not provide the applicant with copies of any records that responded to these aspects of the first request. (By a letter dated October 6, 2000, however, UBC gave the applicant a copy of the February 10, 1997 letter referred to in the second item of his request and a copy of the November 14, 1997 letter referred to in the third item.)

[4] In relation to item 1 of the first request, UBC told the applicant it was “not able to locate any letter dated February 19, 1997.” UBC said it believed the reference to a “February 19, 1997” letter in the 1998 Letter “may have been a typo.” UBC said “the date should have read February 10, 1997.”

[5] The applicant’s second request was based on the applicant’s contention that, as he put it,

... the UBC Senate Committee had access to accurate information I did not have then despite my [previous] FOI Request made before this hearing and deliberations nor after their decision was communicated to me and nor now [*sic*].

[6] Based on the applicant's supposition that the academic appeal committee had access to "documents/evidence I do not have", the second request sought access to "each of these documents/evidence listed below if presented to the appeal committee." In the alternative, he asked UBC "to provide a formal statement per issue accepting that they made a decision without this specific evidence." (This latter request is not, of course, a request for access to records under the Act and is not before me.) The second request then listed 12 classes of records relating to his appeal that the applicant either believed existed, knew existed or thought should exist.

[7] In its December 1, 2000 response to the applicant's second request, UBC said the following:

It is standard procedure for the appellant to be copied on any documents that the Senate Committee receives regarding an academic appeal. You were provided all the documents that the Senate Committee viewed regarding your academic appeal. Although you have already been provided with these documents, the Office of the Registrar has gone to the effort of creating a detailed spreadsheet listing all the documents they have related to your academic appeal. Please find enclosed the spreadsheet, titled *File on Academic Appeal: ...*[applicant], consisting of three pages.

The Senate Committee received only the documents listed in this spreadsheet and nothing else. After reviewing this spreadsheet, if there are any documents you would like us to deliver to you again, please contact our office with the page numbers, as listed in the first column, and we will provide you with a copy of the requested records.

[8] In his request for review of UBC's decision on this request, the applicant said he wanted either a copy of the "specific documents requested" in the 12 classes of records described above, "or a formal statement" indicating that the academic appeal committee "did not receive or consider these documents." He also alleged that UBC had willfully misinterpreted his request, because he had asked for copies "of documents presented by the faculty of graduate studies or the faculty of ... or anybody to the UBC Senate other than the four documents given to me and used against me."

## 2.0 ISSUE

[9] The only issue before me in this inquiry is whether UBC has, in accordance with s. 6(1) of the Act, made every reasonable effort to assist the applicant by responding openly, accurately and completely. Specifically, has UBC conducted an adequate search for records in light of its s. 6(1) obligations? Previous orders have established that UBC has the burden of proving that it fulfilled its duty under s. 6(1).

[10] In his initial submission, the applicant raised s. 28 of the Act, which requires a public body to make reasonable efforts to ensure that it uses only accurate and complete information to make decisions affecting individuals. In his reply submission, the applicant referred to, and appeared to make some arguments respecting, ss. 22-24, 26-28

and 30-34 of the Act. None of these sections is relevant to the s. 6(1) issue properly before me and I have not considered the applicant's arguments on any of them.

### 3.0 DISCUSSION

[11] **3.1 Nature of the Search Duty** – Section 6(1) of the Act requires UBC to make “every reasonable effort” to assist the applicant by responding without delay and by responding “openly, accurately and completely”. When it comes to searching for records in responding to an access request, s. 6(1) does not impose a standard of perfection. Rather, a public body's efforts in searching for records must conform to what a fair and rational person would expect to be done or consider acceptable. See, for example, Order 00-42, [2000] B.C.I.P.C.D. No. 46. As I said in Order 00-32, [2000] B.C.I.P.C.D. No. 35, at p. 5, this means the

... search must be thorough and comprehensive. In an inquiry such as this, the public body's evidence should candidly describe all the potential sources of records, identify those it searched and identify any sources that it did not check (with reasons for not doing so). It should also indicate how the searches were done and how much time its staff spent searching for the records.

[12] I will now consider whether UBC has met these standards in searching for records that respond to the applicant's two requests.

[13] **3.2 The First Request** – UBC relies on the affidavit evidence of Christina Ulveteg, its FOI Co-ordinator, who deposed that she and other UBC staff spent approximately 40 hours processing the applicant's first access request and roughly 25 hours processing his second request.

[14] In responding to the first request, Christina Ulveteg personally reviewed “over 3000 pages of records in the office of the University Counsel, including all of ...[the applicant's]... previous freedom of information request files.” She found copies of all of the letters referred to in the first request, with the exception of any letter dated February 19, 1997 (again, copies of the other two letters were sent to the applicant in October 2000).

[15] In an attempt to determine whether any February 19, 1997 letter existed, she wrote to Prof. A – the author of the 1998 Letter, which referred to a “February 19, 1997” letter – and asked him to “confirm whether or not this letter exists”. She deposed that Prof. A responded by saying that he had carefully examined the applicant's appeal file and was not able to locate any February 19, 1997 letter. She deposed that UBC then responded to the applicant's access request, as noted above, by suggesting that “February 19, 1997” must have been a typographical error and the reference should have been to a February 10, 1997 letter, which did exist. A copy of that letter had previously been disclosed to the applicant.

[16] Christina Ulveteg later met with Prof. A. Christina Ulveteg deposed that Prof. A, having reviewed the records that she had gathered, suggested that she contact UBC's

Manager, Secretariat Services. According to para. 15 of Christina Ulveteg's affidavit, UBC's Secretariat Services office is located in UBC's Office of the Registrar, which is where the applicant's academic appeal file is held.

[17] Christina Ulveteg contacted the Manager, Secretariat Services, who gave her copies of the attachments to the 1998 Letter. She then provided copies of these to the applicant. The Manager also confirmed that there was no February 19, 1997 letter in the files there. Christina Ulveteg deposed that she is "not aware of any other files or offices which may possibly contain" any letter dated February 19, 1997, and that she does "not believe that such a record exists."

[18] Somewhat curiously, the applicant says, in para. 1 on p. 2 of his initial submission, that the February 19, 1997 letter "never existed, and therefore it does not exist, but they list it as evidence to make a false claim against me." He also contends that, although copies of the February 10, 1997 letter were provided to him in 1998 and 2000, that letter "never existed and therefore does not exist." The applicant nonetheless asks me, in his initial submission, to require UBC to provide him with "the following key documents", including a copy of the same February 19, 1997 letter that he says does not exist.

[19] It also appears the applicant believes that the February 10, 1997 letter disclosed to him is not the same letter that was provided to the academic appeals committee. He says he wants a copy of the February 10, 1997 letter, "that truly is a letter" to do with whether examination procedures had been followed in the faculty in which he was a student. Similarly, he seems to think that the November 14, 1997 letter that was given to him by UBC is not the same as another November 14, 1997 letter that he thinks must exist. The applicant's submissions are not clear on these points and he gives me no evidentiary basis to give them an air of reality.

[20] In his reply submission, the applicant complains that UBC has not provided evidence from Prof. A or from its University Counsel, the latter of whom signed letters that responded to the applicant's first request. He also argues that Christina Ulveteg's affidavit is "meaningless", because she "has not even signing authority to release documents." Last, he repeats the allegation of "conflict of interest" that he raised in Order No. 327-1999, which I rejected. I do not propose to revisit it here, including because it was only raised for the first time in the applicant's reply submission.

[21] Last, the applicant's initial submission at some length details various allegations about the mistreatment he says he suffered at UBC, while he was a graduate student and during his unsuccessful appeal to the academic appeal committee. UBC categorically rejects these allegations, which are in any case irrelevant to the s. 6(1) issue before me. The applicant also makes serious allegations about what he claims are false or misleading statements by UBC in relation to this inquiry, including in Christina Ulveteg's affidavit. UBC vigorously disputes these allegations as well. The applicant has not provided me with any evidence to substantiate these allegations, which are, on their face, at odds with the sworn evidence provided by UBC and the documentary material before me.

[22] For the reasons given below, I am satisfied that UBC has fulfilled its s. 6(1) duty to conduct an adequate search for records. As a preliminary point, the applicant's concern with the quality of UBC's evidence is misplaced. Christina Ulveteg is, as her affidavit establishes, UBC's FOI Co-ordinator and she personally searched for records that responded to the applicant's first request. She also asked others to search for records and gathered the results of those searches. She informed herself of the circumstances surrounding the creation of relevant records and, in the case of some records, their previous disclosure to the applicant. She spoke to the individuals she considered might have relevant information about sources of records and who might have responsive records. She provided sworn testimony as to what they told her. To require UBC to provide affidavits sworn by Prof. A, UBC's University Counsel, or any person consulted by Christina Ulveteg during her search for records is, in the circumstances, neither necessary nor desirable.

[23] As for the adequacy of UBC's search, the first request relates to three specific, dated letters. UBC has disclosed copies of those letters to the applicant, as it has done before. Despite the applicant's apparent concern that there may be two February 10, 1997 letters and two November 14, 1997 letters, I conclude there is no reason to believe there are two letters of each date. I am satisfied UBC has done more than enough to search for records. As regards the supposed letter of February 19, 1997, it has done what is reasonable in the circumstances to determine whether such a letter exists and to find it. There is no reason to think such a letter exists and the applicant has not given me any grounds to think it does. I note that, among other things, UBC has searched the files of Secretariat Services, which is where the applicant's appeal file is located. I also note that UBC questioned Prof. A, who wrote the 1998 Letter, and he says he does not have a copy of any such letter.

[24] I find that UBC has satisfied its s. 6(1) duty in searching for records that respond to the applicant's first request.

[25] **3.3 The Second Request** – Christina Ulveteg deposed that, in response to the applicant's second request, she again contacted the Manager, Secretariat Services, again because that is where the applicant's academic appeal file is held. At para. 15 of her affidavit, Christina Ulveteg deposed that the Manager confirmed that the applicant "had already received copies of all documents relating to his appeal." This was confirmed in a letter dated December 1, 2000 from University Counsel to the applicant.

[26] As is noted above, the applicant's initial submission on the second request is largely devoted to allegations of wrong-doing by UBC in relation to the applicant. These allegations include supposed abuses of his rights under Part 3 of the Act respecting personal information accuracy, use and so on. As regards the s. 6(1) issue that is actually before me, many of the applicant's other arguments relate to previous access requests that he has made to UBC and that are not before me in this inquiry. He refers, as well, to the alleged destruction of documents by a now retired UBC faculty member and the impropriety of such actions. The applicant calls on me to use my powers under s. 42 of the Act "to correct the situation." The applicant also refers to s. 28 of the Act and says it

guarantees him the right to gain access to certain information in the retired faculty member's file.

[27] Without belabouring the point, there is ample evidence that UBC has searched for responsive records in all of the places they might exist. Records that respond to the second request, it is reasonable to suppose, should be found in UBC's appeal files. I see no reason to suspect there might be other sources at UBC for responsive records. I have no hesitation in finding that UBC has fulfilled its duty to conduct an adequate search for records under s. 6(1) of the Act. The applicant's other allegations about UBC's actions under the Act are not before me and I make no findings respecting those allegations.

#### **4.0 CONCLUSION**

[28] Because I have found that UBC has fulfilled its duty to the applicant under s. 6(1) of the Act in relation to both of the requests for review that are before me, no order is necessary under s. 58(3).

October 3, 2001

#### **ORIGINAL SIGNED BY**

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David Loukidelis  
Information and Privacy Commissioner  
for British Columbia