



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

Order 01-45

UNIVERSITY OF BRITISH COLUMBIA

David Loukidelis, Information and Privacy Commissioner
October 3, 2001

Quicklaw Cite: [2001] B.C.I.P.C.D. No. 47
Document URL: <http://www.oipcbc.org/orders/Order01-45.pdf>
Office URL: <http://www.oipcbc.org>
ISSN 1198-6182

Summary: Applicant made two requests for access to specific dated letters in the custody of UBC. UBC disclosed all but one, which could not be found and which UBC had reason to believe 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 01-44, [2001] B.C.I.P.C.D. No. 46.

1.0 INTRODUCTION

[1] This decision involves the same applicant as 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 01-44, [2001] B.C.I.P.C.D. No. 46. There is no need for me to revisit the background to the applicant's dealings with the University of British Columbia ("UBC"), as I touched on it in Order 01-44. Like Order 01-44, this case involves the applicant's contention that UBC has not performed an adequate search for records in responding to his access requests.

[2] As is also the case in Order 01-44, the applicant's submissions in this inquiry make very serious allegations of fraud, deceit and other intentional wrong-doing on the part of various UBC employees, all ostensibly to hide documents and cover-up UBC's alleged mistreatment of the applicant. To the extent these allegations touch on UBC's duties under the Act, I have – as the following discussion indicates – concluded there is no merit to them. Moreover, the applicant's general allegations about UBC's supposed

wrong-doing are not relevant to the issues before me under the *Freedom of Information and Protection of Privacy Act* (“Act”) and I have nothing to say about them.

[3] This order disposes of five requests for review by the applicant, all of which were dealt with in a single inquiry. Those five requests for review stemmed from five separate access requests that the applicant made to UBC earlier this year. Those requests were dated February 3, 2001 (“First Request”), February 9, 2001 (“Second Request”), February 26, 2001 (“Third Request”), February 26, 2001 (“Fourth Request”) and May 8, 2001 (“Fifth Request”).

2.0 ISSUE

[4] The only issue before me in this inquiry is whether UBC fulfilled its duty under s. 6(1) of the Act by undertaking an adequate search for records in response to each of the applicant’s five access requests. As was noted in Order 01-44, UBC bears the burden of proof on that issue.

3.0 DISCUSSION

[5] **3.1 Nature of UBC’s Search Duty** – In Order 01-44, I discussed the familiar principles respecting a public body’s duty under s. 6(1) to conduct an adequate search for records. There is no need to repeat that discussion, which I have applied in this case.

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

[7] **3.2 Discussion of Each Request** – The following discussion addresses each of the five requests involved in this case. Before turning to that analysis, however, I will deal with an evidentiary objection by the applicant.

[8] As is the case in Order 01-44, the applicant argues that UBC’s case is flawed because it has not presented affidavits sworn by the authors or recipients of the various documents or by the individuals who signed the responses to his access requests. As I said in Order 01-44, in s. 6(1) search cases it is not always necessary or desirable to have affidavits from the often numerous individuals who are involved in searching for records. In this case, certainly, Christina Ulveteg has, in her capacity as UBC’s FOI Co-ordinator, directed the search for records and has informed herself of the nature, scope and results of those searches through her discussions and correspondence with the knowledgeable individuals who conducted the searches. Her affidavit in my view provides a satisfactory evidentiary foundation for UBC’s case.

[9] I should also note, at this stage, that – although I have carefully considered all of the affidavit evidence and other material before me in reaching my decision – in this case no useful purpose would be served by setting out the parties’ submissions in any detail.

First Request

[10] The First Request covered three specific records, *i.e.*, a February 10, 1997 letter, a February 5, 1997 letter and a November 10, 1997 letter. (As can be gathered from Order 01-44, the applicant has already received copies of the February 10, 1997 letter on at least two occasions.) It appears the First Request was prompted by an October 12, 2000 letter to the applicant from a UBC official. The applicant's access request indicated he believed that the October 12, 2000 letter contained inaccuracies about events and documents. Indeed, the applicant's request for review and submissions in this inquiry explicitly allege that various UBC officials have intentionally misdescribed documents and lied about the true nature of various documents.

[11] UBC disclosed all three of the requested records to the applicant. In his request for review, however, the applicant claimed that he could "see that the true nature of the actual documents is inconsistent with the descriptions provided." The applicant contended that these various documents were not properly described in the October 12, 2000 letter or in an earlier February 12, 1998 letter written by another UBC official. The request for review went on to say that he had asked for copies of the documents "to ensure the accuracy of the information released to me and of the information they formally have stated is in their hands." (Rather curiously, the applicant's request for review also asserted that "there is only one of each of these letters with these dates", which is at odds with the applicant's claim elsewhere that there are other letters with the same dates.)

[12] In relation to all of the access requests, UBC relies on an affidavit sworn by Christina Ulveteg, who is UBC's FOI Co-ordinator. In that capacity, she personally co-ordinated the searches for requested records in this case and the numerous other access requests the applicant has made since 1998. As regards the First Request, Christina Ulveteg deposed that, after she became aware of the applicant's request for review, she contacted the recipient of the November 10, 1997 memorandum – which UBC had disclosed to the applicant – and asked him if it was the only memorandum he had received with that date. He told her that a further check of the Faculty of Graduate Studies files indicated that it was the only letter of that date received from the memorandum's author. It is not clear why she limited her inquiries to this record. It may be that the applicant had intimated to her, directly or through this office, that he believed another such record existed. At all events, Christina Ulveteg also deposed that she was not aware of any other files or offices of UBC that had not already been searched or that could possibly contain records the applicant believes exist.

[13] In his submissions, the applicant says that, if UBC claims it has already given these records to him, that claim is not true. He asks me to force them to "provide me copies again" in order to "clarify things once and for all." In saying this, the applicant clearly is asking that UBC be forced to give him yet another copy of the same records it disclosed in response to the First Request. I note that, although the applicant claims it is not true that UBC gave him copies of the three records, he asks me to order that copies be given to him "again". These two statements are inconsistent, the latter being an indication that the applicant in fact did get copies in the first place. Although the burden

of proof is not on the applicant, I note that he has not offered any grounds to suppose other records exist with these same dates.

[14] I have no hesitation in finding that UBC has conducted an adequate search for records when measured against the standards described in Order 01-44.

Second Request

[15] The Second Request sought records of a specified UBC professor, *i.e.*, a November 10, 1997 memorandum from that professor to another UBC official, a copy of any documents “related to the name of the experts who carried out this 1997 re-evaluation of my academic work, and the reasons for failure”, and a copy of the February 5 and 10, 1997 letters described above, “if in his file on me” (referring apparently to the named UBC professor).

[16] In its March 22, 2001 response, UBC said it had contacted the professor, who had apparently indicated that he had no file on the applicant and that he did not “have any records pertaining to this request.” The applicant’s request for review of this decision gave some reasons why the applicant thought the professor should, personally, possess copies of relevant records and went on to demand their disclosure. Once again, however, the applicant’s request for review went on to say that the documents described in the first two parts of this request “do not exist” and that the UBC officials involved had lied. The request for review also indicated that the records described in the third item of the request “must be in my file” in the relevant faculty. It appears from this statement that the applicant believes the individual professor must possess copies of anything that is in the faculty file.

[17] Christina Ulveteg’s evidence is that, after she received the Second Request, she contacted the named UBC professor and asked him if he had any records regarding the applicant. The professor provided her with six pages of records that did not respond to the access request at all. Christina Ulveteg later provided the professor with a copy of the Second Request and asked him to search again for responsive records. The professor responded the next day, telling her that he had given her all records relating to the applicant. He also told her that he did not keep a file regarding the applicant in his office and that any records that he had sent or received regarding the applicant would be kept in the applicant’s file “in the office of the Dean of Graduate Studies” within the relevant UBC faculty. Christina Ulveteg deposed that she knows of no other files or offices that might possibly contain records responsive to the Second Request that have not already been looked into by UBC.

[18] The applicant’s argument in relation to the Second Request, essentially, is that there must be other records that have the same date as the records already released to him. Again, although the applicant does not bear the burden of proof, I note that he simply asserts, without offering any supporting evidence, that other records must exist. He merely claims that various UBC officials know this to be the case and that they are lying if they deny it.

[19] Once again, I find that UBC has adequately searched for records and has discharged its s. 6(1) duty in the relation to the Second Request.

Third and Fourth Requests

[20] Because UBC responded jointly to the Third and Fourth Requests, each of which was dated February 26, 2001, I will deal with them together. The Third Request sought access to any records that fell into any of four classes specified in that request. The Fourth Request was in a similar vein, although it fell into ten different classes and also covered specific letters that the applicant knew for certain existed.

[21] UBC's April 6, 2001 response to the Third and Fourth Requests reads, in relevant part, as follows:

These two recent requests are repetitive in nature. UBC has previously provided you with a copy of all records containing your personal information that it is permitted by law to disclose. Over the years, you have made several requests for personal information, as listed in the table below, in which UBC has released more than 3600 pages of records to you. UBC does not have any further records to provide you. [original emphasis]

[22] In his request for review, the applicant says it is not true that "all those documents have been previously given to me." In her affidavit in this inquiry, however, Christina Ulveteg deposed that UBC had previously disclosed seven pages of records to the applicant that also fell under the Third Request. She also deposed that she was not aware of any other sources of records at UBC that have not already been investigated. The applicant's arguments in response to this are very similar to those in relation to the other requests dealt with in this order, *i.e.*, allegations of deceit and misrepresentation by UBC.

[23] I accept UBC's evidence that, to the extent responsive records exist, it has previously disclosed copies of those responsive records to the applicant. I note, in this respect, that the applicant has not claimed that he has lost copies he has received before. I find that UBC has conducted an adequate search for records as required by s. 6(1) of the Act.

Fifth Request

[24] The Fifth Request was similar to the Third Request, since it sought access to any records that fall into six classes described in the request. Those classes of records relate to the supposed approval of the applicant's "second Ph.D. thesis" in the relevant faculty, records relating to the applicant's request to extend the time in which he could have his candidacy for a graduate degree approved and other classes of records of a similar nature.

[25] In its June 4, 2001 response, UBC said the following:

This letter is in response to your letter of May 8, 2001. This constitutes your 23rd request for personal information. As a result of your requests, UBC has done thorough searches (numerous times) for records pertaining to you. As we stated in

our letter dated April 6, 2001: “UBC has previously provided you with a copy of all records containing your personal information that it is permitted by law to disclose.” Your latest request continues to be repetitive in nature. UBC does not have any further records to provide you. [original emphasis]

[26] The applicant’s request for review denied that he had received any records, at any time, that respond to the Fifth Request. In her affidavit, Christina Ulveteg deposed that she had conducted a new search for any records that responded to the request. She contacted the administrator in the office of the Dean of the relevant faculty and the Director of Student Academic Services at UBC’s Faculty of Graduate Studies. The latter confirmed that “copies of all documents in the Faculty of Graduate Studies relating to ...[the applicant]...had previously been forwarded to the office of the University Counsel”, the office in which Christina Ulveteg works. The Director of Student Academic Services also confirmed that the Faculty of Graduate Studies had not received any new or additional records relating to the applicant.

[27] In addition, the administrator in the office of the faculty Dean responded by specifically addressing classes of items in the Fifth Request and describing records that had previously been provided to the office of the University Counsel in response to previous access requests by the applicant. Christina Ulveteg deposed that these records had previously been disclosed to the applicant in response to a previous access request. She also deposed that UBC has previously provided the applicant “with any documents responsive to” the Fifth Request and that she is not aware of any other sources of records at UBC that could contained responsive records and that have not already been searched on the applicant’s behalf.

[28] I readily find that UBC has conducted an adequate search for records as required by s. 6(1) of the Act.

4.0 CONCLUSION

[29] Because I have found that UBC has, in relation to each of the access requests covered by this decision, conducted an adequate search for records, no order is necessary under s. 58 of the Act.

October 3, 2001

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia