



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

Order 04-23

PROVINCIAL HEALTH SERVICES AUTHORITY

Celia Francis, Adjudicator
September 2, 2004

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Summary: Applicant requested records related to an investigation. The PHSA provided some responsive records and said it could not locate any others. The PHSA is found to have complied with its s. 6(1) duty in searching for responsive 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 00-30, [2000] B.C.I.P.C.D. No. 33.

1.0 INTRODUCTION

[1] The applicant requested copies of correspondence, e-mails and notes related to an investigation conducted by a contract investigator for the public body, the Provincial Health Services Authority (“PHSA”), as well as records showing what the investigator was paid and a copy of the investigator’s report. The PHSA responded by saying that it had been unable to locate any records related to the investigation within the PHSA. It said it had obtained a copy of the report from the investigator and enclosed a copy of this report and its covering letter.

[2] The applicant complained to this Office about the PHSA’s response, pointing out that the PHSA had not provided any payment records and suggested that the PHSA finance department should have some records of this nature. He also said the PHSA had not provided any other records, such as e-mails.

[3] Because the matter did not settle in mediation, a written inquiry was held under Part 5 of the Act. I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

2.0 ISSUE

[4] The issue before me in this case is whether the PHSA complied with its duty under s. 6(1) of the Act to assist the applicant by conducting an adequate search for responsive records.

3.0 DISCUSSION

[5] **3.1 Standards for Records Searches** – The Information and Privacy Commissioner has set out in a number of orders the standards he expects from public bodies in searching for records and accounting for those searches in inquiries (see Order 00-30, [2000] B.C.I.P.C.D. No. 33, for example). I apply here the same principles, without repeating them.

[6] Section 6(1) reads as follows:

Duty to assist applicants

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.

[7] **3.2 Did PHSA Fulfil its Section 6(1) Duty?** – The applicant generally questioned the PHSA's search for responsive records. He said that the PHSA had later sent him a copy of an invoice from the investigator but that it had failed to produce notes, e-mails and other correspondence related to the investigation (para. 3, p. 2, initial submission).

[8] The PHSA said that, as a result of this request and others from the same applicant, it had located and disclosed a number of records that related to the investigation. It also listed the locations within the PHSA in which it had located such records. Supported by affidavit evidence on this point, it said it had contacted the investigator to ask for a copy of his investigation file. It learned that, in accordance with his normal practice, the investigator had, two years after the delivery of the report, destroyed the documents in his file, apart from the report and the invoice. The investigator did not, the PHSA concluded, have any records "that would augment the records already disclosed to the Applicant ..." (paras. 4-7, initial submission; para. 3, Chesney affidavit).

[9] The applicant's reply was mainly concerned with the conduct of the investigation, although he again voiced suspicions of the PHSA's search and the investigator's "mysterious destruction of the records", suggesting it has something to hide.

[10] From my review of the material before me, I consider that the PHSA made reasonable efforts to search for records that responded to the applicant's request. I also accept the PHSA's evidence that the investigator destroyed the file after two years and note that, under s. 31 of the Act, public bodies are obliged to retain personal information they use to make a decision "that directly affects" an individual for at least one year "after being used". The applicant's request postdated the investigation by over four years.

[11] I find that the PHSA has complied with its duty under s. 6(1) to assist the applicant by conducting an adequate search for responsive records.

4.0 CONCLUSION

[12] Given my finding on the s. 6(1) issue, no order under s. 58 is necessary.

September 2, 2004

ORIGINAL SIGNED BY

Celia Francis
Adjudicator