



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

Order 04-31

LAND AND WATER BRITISH COLUMBIA INC.

David Loukidelis, Information and Privacy Commissioner
November 10, 2004

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Summary: The public body took 10 months to respond to the applicant's request for access to records. The public body failed to comply with its s. 6(1) duty to make every reasonable effort to respond to the request without delay.

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

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 6(1) and 7.

Authorities Considered: B.C.: Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order 04-30, [2004] B.C.I.P.C.D. No. 31.

1.0 INTRODUCTION

[1] On December 4, 2003, the applicant made a request to Land and Water B.C. Inc. (“public body”) requesting records relating to the proposed Campbell River destination casino project.

[2] On December 23, 2003, the public body wrote to the applicant to advise that it expected to respond to the applicant by February 5, 2004.

[3] On January 16, 2004, the public body issued a fee estimate to the applicant and on February 3, 2004, the applicant sent the deposit required by the public body.

[4] On February 9, 2004, the public body advised the applicant that, due to what it described as the large number of records involved in the request, it was granting itself an

extension of 30 days to respond to the applicant. The public body advised the applicant that it expected to respond to the applicant by April 7, 2004, but that it would notify the applicant if a further extension was required.

[5] On March 8, 2004, the public body wrote to this Office and requested a 45-day extension to June 14, 2004, because locating and processing the approximately 1,000 relevant records was taking longer than expected and because it appeared consultation with other public bodies would need to be undertaken. On March 9, 2004, this office wrote to the public body advising that a further extension had been granted and that it was required to respond to the applicant by June 14, 2004. On March 10, 2004, the public body wrote to the applicant advising that it had been granted an extension in time to respond to the request and that it was now required to respond to the applicant by June 14, 2004.

[6] On May 31, 2004, the public body wrote to this office and requested a further 15-day extension of the time to respond to the applicant because the Ministry of Finance and the Ministry of Attorney General had not yet responded to the public body's March 15, 2004 consultation request. The public body proposed a new response deadline of July 5, 2004. On June 8, 2004, the OIPC wrote to the public body advising that a further extension had been granted and that it was required to respond to the applicant by July 5, 2004. On June 10, 2004, the public body wrote to the applicant advising that it had been granted a further extension and that it was now required to respond to the applicant by July 5, 2004.

[7] On August 6, 2004, the applicant wrote to this office and requested a review of the public body's failure to respond to its request for records.

[8] The public body responded to the applicant's request on October 15, 2004, on the eve of this inquiry.

2.0 ISSUE

[9] The issue remaining to be decided is whether the public body made a reasonable effort to respond to the applicant openly, accurately, completely and without delay as required by s. 6(1) of the Act.

3.0 DISCUSSION

[10] The public body has, again, replied to the applicant's request, but did so after the time required under s. 7. The public body makes essentially the same arguments as the Ministry of Attorney General made in Order 04-30, [2004] B.C.I.P.C.D. No. 31, to why I should find that, despite its late response, it has fulfilled its s. 6(1) duty to make

every reasonable effort to respond without delay. I have considered this issue in light of the discussion of s. 6(1) found in, for example, Order 02-38, [2002] B.C.I.P.C.D. No. 38:

[22] Both public bodies breached the Act's requirement to respond to the applicant's request in the time required under s. 7(1) (subject to either s. 10(1) or ss. 23 and 24). It is simply not tenable to say that a public body that is in breach of the Act by having responded late can still be found to have fulfilled its statutory duty to respond to an applicant "without delay". As I indicated in Order 01-47, [2001] B.C.I.P.C.D. No. 49, at para. 28, the s. 6(1) duty to respond without delay requires a public body to make every reasonable effort to respond before the time required under s. 7(1). A public body in breach of the latter duty cannot be found to have fulfilled the former.

[23] I do not question the diligence or good faith of those who processed the applicant's request, but their inability to respond as required by law cannot – whether or not it was due to an excess of demand over the resources available to respond – wipe away the fact that the responses were late. I therefore find that both public bodies have failed to discharge their duty under s. 6(1) to respond to the applicant without delay. Since they have responded, however, I can do no more in this case (there is no fee that I could have ordered to be waived or refunded under s. 58(3)(c)). Any issue arising from the deemed decisions to refuse access, under s. 53(3), also falls away in light of the eventual responses. In both instances, I can only say that these public bodies, and all others, should ensure that adequate resources are available so that their access to information staff can process requests in compliance with the law.

[11] On the basis of the material before me in this case, I find that the public body has not fulfilled its duty to the applicant to make every reasonable effort to respond without delay. I make this finding on the two alternative bases mentioned in Order 04-30, released concurrently with this decision.

4.0 CONCLUSION

[12] The public body having responded to the applicant's request and, my having found that it did not fulfill its s. 6(1) duty, no order is necessary respecting the public body's breach of its s. 6(1) duty.

November 10, 2004

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia