



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

Order 04-32

MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL

David Loukidelis, Information and Privacy Commissioner
November 10, 2004

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Summary: The Ministry took 10 months to respond, and did so only partially, to the applicant's request for access to records. The Ministry failed to comply with its s. 6 duty to make every reasonable effort to respond to the request without delay and is ordered to respond completely.

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; Order 04-31, [2004] B.C.I.P.C.D. No. 32.

1.0 INTRODUCTION

[1] On December 4, 2003, the Ministry of Public Safety and the Solicitor General (“Ministry”) received a request from the applicant for access to records relating to the proposed Campbell River destination casino project.

[2] On February 5, 2004, the public body wrote to the applicant to advise that the request had been partially transferred to the Ministry of Attorney General under s. 11(1)(c) of the *Freedom of Information and Protection of Privacy Act* (“Act”). It also advised the applicant that, since the request would require the Ministry to review a large volume of records, it was granting itself an extension of time to respond under s. 10 of the Act. It advised the applicant it was now required to respond by March 22, 2004.

[3] On March 19, 2004, the Ministry wrote to this office requesting the grant of a 60-day extension in the time for responding to the applicant's request. The Ministry advised this office that the extension was required due to the volume of records involved and because it needed to consult with other public bodies, namely, the B.C. Lottery Corporation and the Ministry of Water, Land and Air Protection.

[4] On March 22, 2004, this office wrote to the Ministry advising that the requested extension had been granted and that it was required to respond to the applicant by June 17, 2004. On the same date, the Ministry wrote to the applicant to advise of the extension and new deadline for response.

[5] On June 17, 2004, the Ministry wrote to this office a second time and requested another 60-day extension citing the same grounds for its request as it had on March 19, 2004. On July 23, 2004 the OIPC wrote to the Ministry advising that a further extension had been granted and that it was required to respond to the applicant by July 30, 2004.

[6] On August 6, 2004, the applicant requested a review of the public body's failure to respond to its request.

[7] On September 1, 2004, the public body provided a partial response to the applicant's request.

[8] On September 20, 2004, the applicant initiated a complaint against the public body for failure to respond completely to its request.

2.0 ISSUE

[9] The issues to be decided are as follows:

1. Did the public body make a reasonable effort to respond to the applicant openly, accurately, completely and without delay as required by s. 6 of the Act?
2. Has the public body failed to respond in accordance with the requirements of s. 7 of the Act?

3.0 DISCUSSION

[10] The Ministry concedes that it has failed to comply with its s. 7 obligation to respond when required, *i.e.*, by July 30, 2004. Like the public bodies involved in Order 04-30, [2004] B.C.I.P.C.D. No. 31 and Order 04-31, [2004] B.C.I.P.C.D. No. 32 released concurrently with this decision, the Ministry argues that, although it responded to the request late, it has met its s. 6(1) duty to make every reasonable effort to respond to the applicant without delay.

[11] The Ministry's arguments on s. 6(1), and the material on which it relies, are essentially the same as that found in Order 04-30.

[12] I have considered this issue, in the circumstances of this case, 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.

[13] 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.

[14] On the question of completing its response to the applicant's request, the Ministry has said that, as of the date of its initial submission, it expected to receive input from the Ministry of Finance and the B.C. Lottery Corporation on the Ministry's consultation with those public bodies, within two weeks from that date. The Ministry said that it "should be able to complete its response by November 12, 2004, "or perhaps sooner" (para. 4.24, initial submission).

[15] As in Order 04-30, I do not know what the state of affairs is at this time—I have no way of knowing whether or not the Ministry has now responded completely. I would certainly expect that its consultations have been completed, judging by the Ministry's own estimate of the time needed to do that. Again, the Ministry says it would be reasonable for me to order it to respond by November 12, 2004, but since that is the day after tomorrow, and the day after a statutory holiday, I find myself in the odd position of giving the Ministry a little more notice of this order than its submission last month would entail.

4.0 CONCLUSION

[16] Having found that the Ministry failed to meet its s. 6(1) duty, no order is necessary respecting the Ministry's breach of that duty.

[17] Under s. 58 of the Act, I order the Ministry to respond completely to the applicant on or before November 16, 2004.

November 10, 2004

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia