



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

Order 04-36

**PROVINCIAL HEALTH SERVICES AUTHORITY**

Celia Francis, Adjudicator  
December 20, 2004

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**Summary:** The applicant requested records identifying legal counsel in a particular matter. The PHSA said no records exist. The PHSA complied with its s. 6(1) duty in searching for responsive records and accounting for the non-existence of such records.

**Key Words:** duty to assist.

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

**Authorities Considered:** B.C.: Order 00-15, [2000] B.C.I.P.C.D. No. 18.

## 1.0 INTRODUCTION

[1] The applicant made the following request to the Provincial Health Services Authority (“PHSA”):

- definition of legal counsel that provided for a review of the Terms and Conditions of employment for medical staff for C&W [Children’s and Women’s Health Centre, which is part of the PHSA] in the year 2000. I understand that C&W paid \$2,206.48 to [a named law firm] for that purpose and this was supplemented by \$282.16 from the medical staff. I would like to know who it was at [the named law firm] that provided the review.

[2] The PHSA responded by saying that it interpreted the applicant as asking for the identification of the particular legal counsel and by refusing access to any such records under s. 14 of the *Freedom of Information and Protection of Privacy Act* (“Act”) which

protects information covered by solicitor-client privilege. The applicant requested a review of this decision by this Office. During mediation, the PHSA determined that no responsive records existed and the issue apparently evolved into whether or not the PHSA had complied with its duty under s. 6(1) to assist the applicant.

[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] According to the notice for this inquiry, the issue before me in this case is whether the PHSA complied with its duty under s. 6(1) to assist the applicant.

## 3.0 DISCUSSION

[5] **3.1 Compliance with Section 6(1)** – It is evident from the applicant’s submissions that he both questions the adequacy of the PHSA’s search for responsive records and believes the PHSA has such records but improperly refuses to produce them under s. 14 of the Act. However, the notice for this inquiry states that the issue is the PHSA’s compliance with its duty under s. 6(1) of the Act and this is the issue on which the PHSA has had an opportunity to make a submission. I have therefore considered only the s. 6(1) issue here. As will be seen, any s. 14 issue is moot.

[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] The Information and Privacy Commissioner has considered s. 6(1) in many orders and has set out what he expects from public bodies in searching for records and in accounting for such searches (see, for example, Order 00-15, [2000] B.C.I.P.C.D. No. 18). I will apply here, without repeating them, the principles from those orders.

[8] The applicant said that he based his request on “the Treasurer’s Report of January 29, 2001 for the C&W Association of Salaried Physicians 2000” which he said shows that the named law firm did two reviews for the Association: the Association’s constitution and bylaws and the “T&C [Terms and Conditions of Employment] Agreement”. He attached a copy of this report to his submission, which lists liabilities related to the named law firm of

- \$282.16 for the “Constitution, Bylaws”, “paid by Med Staff Assn” and
- \$2,206.48, for “T&C Agreement”, “paid by C&W”.

[9] The applicant argued that not all work of a lawyer is protected by solicitor client privilege. He said that the review in question is not protected by s. 14 and suggested that in any event the client in this case is not the hospital. The applicant also suggested, among other things, that, although his request asked for records from 2000, the legal work may have been done or billed for in 1999 or 2001 (pp. 2 & 3, initial submission; p. 2, reply).

[10] The PHSA said that it determined during the mediation period that there were no responsive records, as the named law firm had not provided it with legal services in 2000 in relation to the review or development of the terms and conditions of employment for salaried physicians. The PHSA also said it did not receive or pay any accounts from the named law firm regarding that issue.

[11] The PHSA supplied affidavit evidence on these points from its vice-president of human resources and organizational development at the time and a lawyer with the named law firm. It also supplied *in camera* affidavit evidence from the named law firm which it said “explains the reference in the Applicant’s request to the sum of \$2,206.48 alleged to have been paid by the Health Centre to [the named law firm]” (paras. 3-7, initial submission; para. 2, Crist affidavit; para. 2, Araujo affidavit; paras. 2-3, *in camera* affidavit).

[12] The applicant objected in his reply to the *in camera* evidence. The *in camera* affidavit is properly received *in camera* and, although I cannot say anything about it, I have considered it in arriving at my findings.

[13] After careful review of the material before me, including the *in camera* affidavit evidence, I am satisfied that the PHSA complied with its duty under s. 6(1) to assist the applicant, both in searching for responsive records and in accounting for the non-existence of such records. It is evident to me that the PHSA undertook all searches, and made other efforts, as required under s. 6(1).

#### **4.0 CONCLUSION**

[15] For the reasons given above, no order under s. 58 is necessary.

December 20, 2004

#### **ORIGINAL SIGNED BY**

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Celia Francis  
Adjudicator