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INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order F10-16

MINISTRY OF FINANCE

Michael McEvoy, Adjudicator

May 18, 2010

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Summary: Two journalists requested records in an electronic format containing the names of government employees along with their salary expenses, job title and department. The Ministry replied that the record could not be created from a machine readable record in its custody or control using its normal hardware and software and technical expertise. The Ministry was not required to create the records at issue in the inquiry.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 6(2).

Authorities Considered: B.C.: Order 03-16, [2003] B.C.I.P.C.D. No. 16; Order 04-24, [2004] B.C.I.P.C.D. No. 24

1.0 INTRODUCTION

[1] Two Vancouver Sun journalists (“applicants”) requested the following records from the Ministry of Finance (“Ministry”):

In electronic database format, the name, title, department, salary and expenses for all B.C. government staff who earned more than \$75,000 in the most recent fiscal year. Please provide the salary and expense data for the most recent fiscal year or calendar year for which data is available. I am requesting this information in standard electronic database format (Excel, Access or CSV). I would like each staff member’s salary on a separate row with the different fields (name, position, salary, expenses) in separate columns. If information on each staff member’s title is not held in the same place as their salary, please provide me the two separate

databases – one with each person’s salary, the other with each person’s title and department - with some unique identifier (such as the employee’s number) that can be used to cross reference the two sets of data.

[2] The most recent fiscal year at the time of the applicants’ request was 2007-08. The Ministry replied that the information was publicly available and provided the complainants with an internet website address to find the information. The applicants responded that the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) required the Ministry to provide the information in a common database format such as Excel. The Ministry then said it was not compelled to create the record as requested as to do so would unreasonably interfere with its operations under s. 6(2) of FIPPA. The applicants wrote the Office of the Information and Privacy Commissioner (“OIPC”) to complain. Mediation did not resolve the matter and an inquiry was held under Part 5 of FIPPA.

2.0 ISSUE

[3] The stated issue in the notice of inquiry is whether the Ministry has met its duty to assist the applicants under s. 6(2) of FIPPA.

3.0 DISCUSSION

[4] **3.1 Applicants’ submissions**—The applicants say the information they request in electronic format is similar to that which most government agencies are already required to disclose under the *Financial Information Act*. The applicants believe the employee salary and expense data that the Ministry discloses in the Public Accounts was most likely compiled using some type of database or spreadsheet program. For this reason, they assert that exporting that data in electronic format “should be relatively easy.”¹

[5] They note that the Public Accounts do not include titles and departments of government staff and say the Ministry’s suggestion that the applicants look up each staff member individually on the government’s public online directory would “be so overwhelmingly time consuming as to be impractical.”² The applicants contend that this directory must be based on some type of electronic database. They believe this database could be used in conjunction with “almost any off-the-shelf database program” to match up job titles with the remuneration data using some type of unique identifier like an employee identification number. Alternatively, the applicants request that the Ministry provide them with the two sets of data along with an identifier for employees that would be common to both sets of data so they can then match the data up using their own database software.³ The applicants further argue that Order 03-16⁴ clearly states that

¹ Applicants’ initial submission, para. 6.

² Applicants’ initial submission, para. 6.

³ Applicants’ initial submission, para. 6.

public bodies are required to provide records in an electronic format unless doing so would pose an unreasonable burden on their operations.

[6] The applicants submit that as governments digitize their operations, the ability of requesters to get that data in electronic format, which the agencies themselves use to analyze their data, is increasingly important. The applicants submit that this is consistent with FIPPA's purpose of making public bodies more accountable. They contend that a printout of hundreds or thousands of staff members does not permit any meaningful analysis of how salaries vary between different government agencies and whether a given public servant's salary is justified. They also note that when their newspaper launched a database of public sector salaries this proved popular with its readers, generating over "1 million hits" on The Vancouver Sun's website.⁵

[7] **3.2 Ministry's submissions**—The Ministry says, by way of background, that the Public Accounts include the Province's audited financial statements and other important financial information and these are an important set of accountability documents. Among the documents published by the Province, in this regard, are the "Consolidated Revenue Fund Detailed Schedules of Payments." The Province publishes them on its website each fiscal year, including the fiscal year 2007-08. The Ministry says included in these schedules is a list of salaries for Members of the Legislative Assembly, Ministers, appointed public service employees and public service employees who earned more than \$75,000 per year in the previous fiscal year. That document also includes travel expense information concerning Order in Council (OIC) appointees, other appointees and non-OIC employees where their expenses are equal to or greater than \$5,000.

[8] The Ministry widens the scope of its submission in this inquiry, beyond that noted above in the introductory section, to encompass s. 6(2)(a) of FIPPA. The Ministry argues it does not have in its custody or control a machine readable record from which the requested record can be created. The Ministry says the applicant is seeking access:⁶

...to either (1) a single database that includes all of the requested information or (2), if information concerning each employee's title is not held in the same place as their salary, two separate databases, one with each person's salary, the other with each person's title and department, with a unique identifier (such as an employee number) that can be used to cross-reference the two sets of data. Neither of those records can be created using the public body's normal computer hardware, computer software and technical expertise.

⁴ [2003] B.C.I.P.C.D. No.16.

⁵ Applicants' initial submission, para. 10.

⁶ Ministry's initial submission, para. 4.10.

[9] The affidavit evidence of Linda Bondesen, a Ministry manager, indicates extensive manual processing is the only way to create the requested records. The Ministry argues that s. 6(2)(a) does not create an obligation to create a record where manual processing is required. The Ministry also submits that if it had to manually create the record requested by the applicant, as described in its attached affidavit material,⁷ it would take considerable time and resources away from the Ministry's other reporting requirements. For this reason, the Ministry also argues the creation of the requested record would unreasonably interfere with its operations under s. 6(2)(b).

[10] **3.3 Parties' responses to Adjudicator's query**—I wrote the parties on March 15, 2010 asking some questions. I asked the applicants to clarify their request concerning travel expenses. The applicants replied that they seek the electronic data consistent with the annual public accounts, *i.e.*, travel payments exceeding \$5,000 for all employees, OIC appointees, other appointees and employees not appointed under the *Public Service Act*.

[11] I also asked the Ministry two questions relating to statements made by Linda Bondesen. Bondesen deposed at paragraph 12 of her affidavit:

To the best of my knowledge the government payroll system does not have the capacity for periodic reporting (*i.e.* reporting as at a specific date). That means the extracted information used in the Public Accounts could be different than information contained in a file extracted several months later for the same time period.

[12] I asked whether Bondesen's statements meant that the Ministry's service provider was unable to create a record encompassing the five fields in question (*i.e.*, employee, salary, expenses, title and department) requested by the applicants for the 2007/08 fiscal year. I also asked in the alternative whether the Ministry meant that a record setting out those five fields could be created but that in the Ministry's view some of the information under those headings would be subject to certain alterations to ensure consistency with the information in the Public Accounts data.

[13] The Ministry answered that it cannot create a single record, electronic or otherwise, that encompasses the five requested fields for 2007-08. It identifies two sets of records that it keeps that contain the following fields: (1) employee names and salaries and (2) employee names and expenses. The Ministry says it cannot marry these record sets because there is no common employee identifier for these two databases. With respect to applicants' request to include employee position titles, the Ministry submits that it does not have the information for the fiscal reporting year 2007-08. The Ministry says its service provider did not supply this information until the 2008-09 fiscal year and it cannot be retroactively obtained with accuracy.

⁷ Affidavit of Linda Bondesen, paras. 9-14.

[14] In response to this, the applicants say that, if the Ministry is unable to provide the requested records, I should order it to provide whatever electronic data it can in relation to the applicants' request even if there is no common employee identifier for the data in question. The latter point is a departure from the applicants' original position where it requested a common employee identifier with the different data sets. The applicants also request that once the data becomes available for the 2009-10 fiscal year the Ministry provide that data with the same fields currently used to compile Public Accounts, namely by employee name, title, salary and expenses.⁸

[15] **3.4 Findings**—Section 6 of FIPPA 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.
- (2) Moreover, the head of a public body must create a record for an applicant if
 - (a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and
 - (b) creating the record would not unreasonably interfere with the operations of the public body.

[16] The definition of a record under FIPPA includes anything on which information is recorded or stored by electronic means. It does not include a computer program. Order 03-16 addressed, in some detail, whether a public body was required to create a requested record in a standard electronic database format from machine-readable records in its custody using its normal computer hardware and software and technical expertise. Commissioner Loukidelis found in that case that it was.

[17] The issues here are whether the Ministry can create a single record containing data under all the fields requested or, in the alternative, whether the Ministry can create two separate records with an identifier for employees common to both, in an electronic format from machine readable records in its custody or control using its normal computer hardware and software and technical expertise.

[18] The answer with respect to the request for the single record, in my view, is no. The reason is that the electronic data relevant to the applicants' request cannot be linked by the Ministry using its normal computer hardware, software

⁸ Applicants' reply to Adjudicator's query, March 26, 2010.

and technical expertise in order to create, in a standard electronic database format, the requested record. The evidence establishes that the two different databases that the Ministry possesses, one of which has employee salaries and the other providing employee expenses, cannot be linked together in one record or with its service provider's data because there is no common employee identifier. Without an employee identifier common to both databases, I am satisfied that only considerable manual processing could create the requested record. I would agree with the Ministry's submission that s. 6(2)(a) does not impose this obligation on the part of the public body. This is consistent with the approach taken in Order 04-24.⁹

[19] Moreover, I am also satisfied that it is not possible to meet the applicant's request to incorporate employee title information into a single record because that data does not exist for the 2007-08 fiscal year.

[20] In summary, the Ministry cannot create a single record containing all fields requested by the applicants pursuant to s. 6(2) of FIPPA.

[21] The applicants argued in the alternative, that the Ministry should provide the separate databases it does have along with an identifier for employees that is common to both databases. First, and without deciding this issue, it may not be appropriate under FIPPA to disclose a public servant's employee number. However, I need not decide that question here because, while one database utilizes the six-digit employee number, the other database identifies an employee using a seven digit numeric "Supplier code".¹⁰ Thus, in answer to the second question, the Ministry cannot create the electronic records requested in the alternative because there is no common identifier for employees to link the two databases.

[22] I note that in their reply letter to my query of March 15, 2010 the applicants state they are now prepared to accept separate databases without common employee identifiers for 2007-08. While the Ministry may be able to create such records in a standard electronic format, I have no evidence on this point because this particular request was not in issue in this inquiry.

[23] The applicants also asked that I order the Ministry to provide the electronic data used to produce the 2009-10 Public Accounts. In effect, the applicants ask me to make an advance ruling on an information request that they have not yet even made to the Ministry. In my view, this is premature but it is of course open to the applicants to make this request to the Ministry when the information becomes available.

⁹ [2004] B.C.I.P.C.D. No. 24.

¹⁰ Ministry's reply to Adjudicator's query, March 25, 2010.

4.0 CONCLUSION

[24] For the reasons given above, under s. 58 of FIPPA, I confirm that the Ministry is not required to create the records requested by the applicants.

May 18, 2010

ORIGINAL SIGNED BY

Michael McEvoy
Adjudicator

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