

**IN THE MATTER OF:**

***THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT***

**AND IN THE MATTER OF:**

**AN ADJUDICATION UNDER SECTION 62,  
REQUESTED BY M. (F.) ON 18 SEPTEMBER 1997**

**REASONS FOR DECISION  
OF THE  
HONOURABLE MR. JUSTICE BAUMAN**

[1] This matter comes before me in my capacity as an adjudicator designated under s. 60 of the *Freedom of Information and Privacy Act*, R.S.B.C. 1996, c. 165 (the "Act").

[2] I have been requested to review the decision of the Information and Privacy Commissioner (through his delegate) dated 19 August 1997 under s. 62 of the Act.

[3] The applicant, M. (F.), made the following request of the Commissioner by letter dated 24 July 1997:

This section 5 request is in two parts.

Part 1

I request a record showing the number of:

(a) requests for review in which [K.O.] has assisted in the mediation and/or negotiation process to date; and

(b) privacy complaints and investigations processed by [K.O.] (i) with portfolio officers, (ii) intake officers, and (iii) on her own, to date.

Part II

I request a record showing the number of:

(a) Law Co-op students employed in the OIPC to date;

(b) Requests for review processed by Law Co-op students (i) under supervision, and (ii) unsupervised, to date; and

(c) Privacy complaints and investigations handled by Law Co-op students with (i) portfolio officers, (ii) intake officers, and (iii) on their own, to date....

[4] The Commissioner's office responded in writing on 19 August 1997 as follows:

In response to your questions in Part I (a) and (b) and Part II (b) and (c), I regret to inform you that the Office of the Information and Privacy Commissioner is unable to provide the records you have requested as the requested records do not exist. Our case file tracking system does not record that information. Co-op students are assigned to a Portfolio Officer/supervisor while working at OIPC and participate in a variety of mediations and complaint files. The extent of participation for co-op students on any given case file varies from case file to case file. There are no records that would indicate the involvement or extent of involvement of the co-op students on these files. Co-op students also spend one or two weeks working with the Intake Officers during their time with the office. Again, no records exist that would indicate the extent of assistance that co-op students provide to Intake.

In response to Part II (a), please find attached a record that I have created to indicate the names and employment dates of the law co-op students employed by the OIPC to date. This information is also available in our various Annual Reports, which are available at local libraries, Crown Publications and on the OIPC website (1993/94 is not currently available on the website and 1996/97 will be available shortly).

[5] The applicant, in his written submissions, raises two issues:

(i) whether under s. 6 of the *Act* the Commissioner has a duty to create the records requested; and

(ii) whether the Commissioner properly delegated his duties, power or functions under the *Act* to the law co-op student who initially disposed of the applicant's request for information.

[6] As to the second issue, I accept that the enquiry there suggested is beyond my competence to pursue as an adjudicator under the *Act*. The Minister's response of 29 October 1997 on this point disposes of the issue from my perspective as an adjudicator.

[7] As to the first issue, the Commissioner leads the evidence of Linda Calver, the Manager of Finance and Administration for the Commissioner's office.

[8] Ms. Calver reviews the capabilities of the office's case tracking system and then deposes:

For the reasons stated above, the records requested by [M. (F.)] do not exist in the Commissioner's information database because its tracking capability does not extend to

the involvement of Law Co-op students on files. It was and is not possible, therefore, to create under s. 6(2) of the Act a record of the information [M. (F.)] requested from the Commissioner's information database.

[9] In her further submission of 20 July 1998, Commissioner's counsel states:

...

2. The Commissioner's information database can be queried for the number matters assigned to generic Law Co-op student ID between the dates that [K.O.] worked at the Commissioner's office. The figure is 8. This figure, however, does not represent the number of matters "handled" by Law Co-op students. It only identifies those actually assigned to Law Co-op students over that period of time. The number of matters "handled" by Law Co-op students, regardless of the extent of the "handling" or involvement, could be much greater, especially given that Law Co-op students commonly assist on matters assigned to other staff members.

[10] I accept the Commissioner's position on the capabilities of the case tracking system and I conclude that the Commissioner has, in respect of this particular enquiry, made all reasonable efforts to assist the applicant and that he is unable to create the requested record. It follows that this adjudication must be disposed of in the manner adopted by the Commissioner.

"RJB"

Bauman J.

Vancouver, B.C.

10 February 1999