



Order F23-50

**MINISTRY OF FORESTS, LANDS, NATURAL RESOURCE OPERATIONS  
AND RURAL DEVELOPMENT**

Jay Fedorak  
Adjudicator

June 26, 2023

CanLII Cite: 2023 BCIPC 58  
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**Summary:** An individual requested from the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (Ministry) any records regarding himself and his business. The Ministry responded to the request by providing the complainant with some records. The complainant complained that the Ministry had not conducted an adequate search for records in accordance with s. 6(1). The adjudicator found that Ministry had not conducted an adequate search in its first response to the request but subsequently provided an adequate response after a further search for records.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165, s. 6(1).

**INTRODUCTION**

[1] This inquiry is about whether the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (Ministry) complied with its duty to conduct an adequate search for records in response to an access request under the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] An individual (complainant) requested from the Ministry any records regarding himself or his business. The Ministry responded to the request by claiming that it had no responsive records. The complainant refused to accept that the Ministry had produced all of the records responsive to the request in its custody or under its control. The complainant complained to the Office of the Information and Privacy Commissioner (OIPC) that the Ministry had failed to conduct an adequate search for records in accordance with s. 6(1).

[3] The Ministry subsequently conducted another search for records including program areas that it had not previously searched. The Ministry located 46 pages of records.

[4] The complainant remained dissatisfied with the Ministry's response.

[5] Mediation failed to resolve the matter and the complainant requested that it proceed to an inquiry.

## ISSUE

[6] The issues to be decided in this inquiry are as follows:

1. Did the Ministry conduct an adequate search for records responsive to the complainant's request as required by s. 6(1) of FIPPA?
2. If the Ministry failed to conduct an adequate search, what is the appropriate remedy?

[7] FIPPA does not set out the burden with regards to s. 6(1). Past orders have found that the burden is on the public body to show that it has performed its duties under s. 6(1).<sup>1</sup>

## DISCUSSION

[8] **Background** – The complainant's business advises First Nations clients regarding Aboriginal Rights and Indigenous Title and represents them in consultations with government and industry on matters of land use and planning. The complainant also requested a review of the Ministry's application of exceptions to the records it produced, but this matter is subject to a separate inquiry.

### ***Section 6(1) – adequate search***

[9] Section 6(1) reads as follows:

The head of a public body must make every reasonable effort to assist complainants and to respond without delay to each complainant openly, accurately and completely.

[10] Section 6(1) imposes a number of obligations on a public body. As mentioned above, the complainant's complaint in this case is that Ministry did not adequately search for records responsive to the access request. Previous orders have established that s. 6(1) requires a public body to conduct an adequate search for records. A public body's search efforts should be those that a fair and rational person would find acceptable. Section 6(1) does not impose a standard of perfection, but rather a standard of reasonableness.<sup>2</sup>

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<sup>1</sup> Order F20-13, 2020 BCIPC 15 (CanLII), para. 13, for example.

<sup>2</sup> Order 02-18, 2002 BCIPC 42443 (CanLII), para. 7.

[11] Former Commissioner Loukidelis said that in order to demonstrate that it conducted an adequate search, a public body should:

...candidly describe all the potential sources of records, identify those it searched and identify any sources that it did not check (with reasons for not doing so). It should also indicate how the searches were done and how much time its staff spent searching for the records.<sup>3</sup>

[12] The Ministry submits that it conducted multiple searches for responsive records. The first involved canvassing nine program areas. The complainant subsequently modified his request providing additional detail. The Ministry canvassed the nine program areas again using the wording from the revised request. Representatives from each of the nine program areas responded indicating that they had failed to locate any responsive records.

[13] After the complainant complained to the OIPC, the Ministry conducted a further search for records and canvassed an additional seven program areas that had not participated in the previous searches for records. One of the program areas located 46 pages of records responsive to the request.

[14] The Ministry submits that its search efforts met the requirements of s. 6(1) and were consistent with the standard practice of responding to requests by the government of British Columbia. Information Access Operations (IAO) coordinates the responses of ministries to requests under FIPPA. IAO received the complainant's original request and contacted the Ministry to coordinate the search for records. The Manager of Executive Services in the Office of the Deputy Minister testified in an affidavit that she reviewed the responses from each of the nine program areas searched to determine whether the Ministry had canvassed the appropriate staff.<sup>4</sup>

[15] The Ministry submits that it canvassed all of the relevant employees in the Program Areas that it believed had the potential to hold relevant records. It instructed these employees to use the search feature in the Ministry's file explorers on the Local Area Network and to search all electronic files. The Ministry also searched all shared electronic folders, individual electronic folders, email and calendars relating to relevant employees. It submitted a detailed search results report, which describes the individual search efforts of each program area as an exhibit to an affidavit appended to its initial submission.<sup>5</sup> It asserts that it has no reason to believe that there are any other unsearched information holdings that would have additional records responsive to the requests.<sup>6</sup>

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<sup>3</sup> Order 00-32, 2000 BCIPC 35 (CanLII), page 5.

<sup>4</sup> Ministry's initial submission, Affidavit 1, para. 7.

<sup>5</sup> Ministry's initial submission, Affidavit 2, Exhibit A.

<sup>6</sup> Ministry's initial submission, para. 37.

[16] The Ministry submits that it spent 60 hours searching and reviewing records. It acknowledges that it is possible that additional records may have existed prior to receipt of the requests. It speculates that there may have been email correspondence of a transitory nature, but employees would have destroyed these transitory records in accordance with government records regulations.<sup>7</sup>

[17] The complainant disagrees with the submissions of the Ministry. He believes that the Ministry holds minutes, notes or directions that it has not produced. He asserts that none of the responsive records would have been transitory. I note that the complainant does not explain why it would be reasonable to expect that further records should exist or where they would be located. He speculates that the Ministry was corresponding with other public bodies regarding communications that he had with those public bodies during a particular period but does not provide evidence to support his conclusion.<sup>8</sup>

### *Analysis*

[18] I find that the Ministry took a methodical approach to its search for responsive records. It identified nine program areas for the purposes of the search and contacted all of the employees whose responsibilities related to the subject matter of the complainant's requests, or who otherwise would be likely to know of the existence of any responsive records. It requested each of these individuals to search for any records in their possession. The Ministry subsequently revisited its search efforts and tried to identify any other officials, who it might have overlooked in the first search. It identified employees in seven other program areas and one of them produced records. The Ministry provided affidavit evidence of its search efforts and a detailed description of the search efforts conducted by each program area. I accept that evidence and find that the combined search efforts were logical and comprehensive.

[19] The one issue that the Ministry has not explained is why it selected the nine program areas that it targeted in its initial search. Following from that, it has also failed to explain why it did not identify, at the start, the seven other program areas that it involved in the later search. The Ministry has not identified what new information, if any, led to the decision to expand the scope of the search. It is significant that one of these seven program areas did produce records responsive to the request.

[20] Consequently, the Ministry has failed to demonstrate that its initial search efforts were sufficiently complete to meet the threshold of a reasonable search, given that it later found responsive records in another department that it failed to search initially. Nevertheless, it subsequently remedied this deficiency by expanding the search and producing responsive records. The Ministry has

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<sup>7</sup> Ministry's initial submission, paras. 38-42.

<sup>8</sup> Complainant's response submission, paras. 33, 41.

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persuaded me that there is no reason to believe that there are any further responsive records that are in its custody.

[21] The complainant insists that there must be further responsive records, but he has not convinced me that there are other program areas within the Ministry that should be searched. He did not specify any other unsearched program areas where records might be held. He has not identified any particular documents that he can prove to be in existence or that should have been in existence. He alleges that there should be unspecified additional minutes, notes or directions but has not provided sufficient detail that would inform any further search efforts. His submission consists of unsupported vague speculation that does not raise reasonable grounds to conclude that additional responsive records exist or where they may be stored.

[22] I note that the issue of whether there may have been records responsive to the request that the Ministry destroyed prior to receiving the request is not before me. The only matter at issue is whether the Ministry conducted a reasonable search for records that existed at the time of the request. I make no finding or provide no comment on whether the Ministry properly treated those putative records as transitory.

[23] Therefore, I find that the Ministry initially did not conduct a reasonable search for records, but, after it searched the additional seven program areas, it met the test for compliance with s. 6(1).

[24] As I have found that the Ministry ultimately conducted an adequate search in accordance with s. 6(1), there is no further remedy warranted in this case.

## **CONCLUSION**

[25] For the reasons given above, under s. 58 of FIPPA, I confirm that Ministry has conducted an adequate search for records in accordance with s. 6(1).

June 26, 2023

### **ORIGINAL SIGNED BY**

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Jay Fedorak, Adjudicator

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