

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 105-1996
May 27, 1996**

INQUIRY RE: A request for a list of records concerning the applicant that the Ministry of Social Services provided to the Ministry of Attorney General

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner on April 29, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request by the applicant for a list of all records concerning him that the Ministry of Social Services had provided to the Ministry of Attorney General.

2. Documentation of the inquiry process

On November 19, 1995 in a letter addressed to the Honourable Ujjal Dosanjh, Attorney General, and the Honourable Joy MacPhail, Minister of Social Services, the applicant requested that the two Ministries provide him with a list of all records that the Ministry of Social Services had sent to the Ministry of Attorney General.

On December 21, 1995 the Ministry of Attorney General responded by stating that such a list did not exist. On December 22, 1995 the Ministry of Social Services informed the applicant that access to the requested material had been provided through the court process and that any other material would be subject to solicitor-client privilege.

On January 3, 1996 the applicant wrote to the Office of the Information and Privacy Commissioner and requested a review of the Ministry of Attorney General's decision. In his request for review, the applicant indicated that the Ministry of Attorney General could either create a list or provide him with copies of the records it had received from the Ministry of Social Services. As the Ministry of Attorney General had never received a request for copies of the records, that issue was referred back to the Ministry of Social Services for response and will not be addressed in this inquiry.

On January 25, 1996 the applicant wrote the Office of the Information and Privacy Commissioner and requested a review of the Ministry of Social Services' response to his request. On March 22, 1996 the Ministry of Social Services clarified its original response to the applicant by stating that a list of the records provided to the Ministry of Attorney General does not exist.

3. Issue under review at the inquiry

The issue to be reviewed in this inquiry is whether the Ministry of Attorney General and Ministry of Social Services have a duty, under section 6 of the Act, to create a record in the form of a list of the records provided by the Ministry of Social Services to the Ministry of Attorney General. This section reads in part 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.

4. The burden of proof

Section 57 of the Act, which establishes the burden of proof on parties in an inquiry, is silent with respect to the duty to assist under section 6 of the Act. Since the public bodies are in a better position to address the issue of creating a record, the burden of proof for this inquiry will be on the Ministries. In this case, the Ministries must prove that they do not have a duty to create a list of the records transferred.

5. The case for the Ministry of Attorney General and the Ministry of Social Services

The Ministry of Social Services explains that it provided a lawyer in the Ministry of Attorney General with a number of records, occupying three shelves in a Barrister and Solicitor's Vancouver office, to defend court actions commenced by this applicant, but that no list of these records exists. Furthermore, all such materials, except those subject to solicitor-client privilege, were put before the court. (Submission of the Ministries, paragraphs 2.3, 2.5, 5.4)

The Ministries further state:

The Public Bodies have dealt with this Applicant on many previous occasions. Both Public Bodies have always been co-operative and responsive to the Applicant. This Applicant has been

a difficult and persistent applicant to deal with. The Public Bodies are put to a great deal of work and effort to assist and appease this specific Applicant. (Submission of the Ministries, paragraph 5.1)

In this connection, the Ministries referred me to my Order No. 86-1996, February 27, 1996, pp. 2, 3.

The Ministries essentially argue that they are under no obligation under section 6 of the Act to prepare a list of records for the applicant, since such a list does not exist in either hard copy or as a machine-readable record. They argue that the applicant's request "is not reasonable in the circumstances." (Submission of the Ministries, paragraphs 5.6, 5.8, and 5.9)

The Ministries state that it is difficult to determine what the applicant is seeking in his court actions: "It appears to be more process driven than result driven.... Since there were so many actions commenced by the Applicant and not knowing what applies or what does not, large amounts of material were sent by the Ministry of Social Services to the Ministry of Attorney General." (Submission of the Ministries, paragraph 5.10) Neither Ministry has a list of the documents forwarded or received: "The Ministry of Attorney General has not completed its review of the documents. The Applicant has yet to proceed with a course of action that would permit lawyers to prepare for the defence. The reason for this is that none of the actions commenced are clear as to what relief is sought or what action is desired." (Submission of the Ministries, paragraph 5.12)

6. The applicant's case

The applicant's submission primarily consists of charges against me of collusion, bias, prejudice, lying, persecution, and denial of rights to him.

7. Discussion

The Ministries submitted that this matter should not have proceeded to an inquiry, because it is still in mediation: "It would make more sense, and be a better expenditure of public monies, to have all matters that are outstanding with respect to this Applicant dealt with in one hearing." (Submission of the Ministries, paragraph 2.9) The facts are that the applicant made a request to both Ministries. Both Ministries responded by saying there was no list. The applicant made a request for review to this Office about the Ministry of Social Services' response to this issue. My Office accepted the review under section 52 and consolidated this inquiry to deal with this issue with respect to both Ministries. Unless there is agreement among the parties, such a review must be completed within ninety days under section 56(6). While I agree that it would have been better if all issues could have been dealt with together, I am required to complete an inquiry within the ninety-day period, if the matter is not settled by mediation.

The applicant is seeking a list that does not exist of materials intended to be used to defend court actions initiated by him against the Ministries. I agree with the Ministries that they are under no obligation to prepare such a list under section 6 of the Act. Moreover, the applicant may demand

that such a list be given to him as part of his litigation pursuant to Rule 26 of the Supreme Court Rules. (Submission of the Ministries, paragraphs 5.13 and 5.14)

8. Order

Section 58(1) of the Act requires me to dispose of the issues in an inquiry by making an order under this section.

I find that the Ministry of Social Services and the Ministry of Attorney General have made a reasonable effort to assist the applicant within the meaning of section 6(1).

Under section 58(3)(a), I require the Ministry of Social Services and the Ministry of Attorney General to perform its duty under section 6(1) to make every reasonable effort to assist the applicant. However, since I have found that there is no statutory obligation to create the list requested by the applicant, in the circumstances of this case, I find that the Ministry of Social Services and the Ministry of Attorney General have complied with this Order and discharged their duty under section 6(1) of the Act.

May 27, 1996

David H. Flaherty
Commissioner