

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 209-1998
January 8, 1998**

INQUIRY RE: The adequacy of a search for records by the Children's and Women's Health Centre of British Columbia

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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 (the Office) on July 31, 1997 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review by the applicant of the response by the Children's and Women's Health Centre of British Columbia (the Health Centre) to his request for records in its custody or under its control.

2. Documentation of the inquiry process

The applicant made a request in a memorandum dated December 12, 1996 and received by the Health Centre on December 13, 1996 for a copy of "a contract between the [public body] and ACML [Angus Consulting Management Ltd] Management West and any subsequent contracts which have been modified due to annual contract renewals, and a breakdown of the wages paid to ACML employees and any other monies paid by [the public body] to those ACML employees and ACML Management West." In a memorandum dated December 16, 1996, the Health Centre notified the applicant that the Health Centre would respond after January 8, 1997. In a letter dated January 24, 1997, the Health Centre responded by providing the applicant with eight letters without any severing.

Although not listed in the January 24th response to the applicant, a letter dated September 25, 1996 was also disclosed without severing.

On March 5, 1997 the Health Centre wrote to the applicant informing him that it was “obligated to contact the contracting company and make them aware of the request ... In this case, salary information was removed from the contract as the salaries pertained to specific employees in ACML.”

On March 16, 1997 the applicant wrote to my Office to request a review of the decision by the Health Centre not to provide him with all the information about “a breakdown of the wages paid to ACML employees and any other monies paid by the public body to those ACML employees and ACML Management West.” My Office opened this request for review on March 20, 1997. On June 18, 1997 the parties extended the period of the review to July 22, 1997.

On July 2, 1997 my Office gave notice to the applicant and the Health Centre of the written inquiry to be held on July 22, 1997. As the March 5, 1997 memo had been issued in error, and in fact no records had been withheld or severed by the Health Centre, the inquiry was limited to the adequacy of the search for the requested records. On July 17, 1997, with the consent of the parties, I adjourned the inquiry to July 31, 1997.

3. Issue under review and the burden of proof

The issue under review is whether the Health Centre fulfilled its duty to the applicant under section 6(1) of the Act by conducting an adequate search for records responsive to the applicant’s request. 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.

Section 57 of the Act establishes the burden of proof on the parties in an inquiry about a decision to refuse access. It is silent with respect to the adequacy of a search for records arising under section 6(1). Since public bodies are in a better position to address the issue of adequate search, I have determined in previous Orders that the burden of proof under this section is on the public body. (See Order No. 103-1996, May 23, 1996, p. 1)

4. Procedural objections

The applicant objects to the fact that this inquiry is limited to the reasonableness of a search and does not address other issues. Based on a review of the records which indicate that no severances have taken place, and the submissions of both parties, I am only prepared, at this inquiry, to consider the issue of the search for records. I have therefore disregarded both the applicant’s and the Health Centre’s submissions on other

matters. With respect to the applicant's list of alleged errors in the Portfolio Officer's fact report, these are all matters that I can address if the need arises during an inquiry. There is nothing in the applicant's list that has a bearing on the search issue.

5. The applicant's case

The core of the applicant's problem with the Health Centre appears to be that he did not receive certain salary information and a departmental organization chart that he requested. (Submission of the applicant, p. 8) In his view, the wages of ACML employees are not confidential information. It is his further view that the Health Centre must be keeping "up to date financial information on ACML employees. To claim as they [the Health Centre] have that this information does not exist lies in stark contrast to the pattern which emerges in the documents generated between these two parties to date." (Submission of the applicant, p. 9)

The applicant further submits that records that the Health Centre refused to provide were subsequently found not to exist. (Submission of the applicant, p. 10)

6. The Health Centre's case

The Health Centre has furnished me (and the applicant) with a detailed description of its efforts to find records responsive to the applicant's request. (Submission of the Health Centre, pp. 2 to 4) Its view is that it has exhausted all reasonable sources of relevant information.

It notes that the March 5, 1997 memo to the applicant, was based on an assumption that salary information contained in the September 25, 1996 letter had been withheld, when in fact it had been disclosed to the applicant. (Reply submission of the Health Centre, p. 2).

The Health Centre further asserts that while it maintains records of gross payments made to ACML, based on invoices submitted by the company, these invoices do not include the breakdown of fees that is being requested by the applicant.

With respect to the departmental organization chart, the Health Centre notes that this chart forms part of a proposal from ACML, that was not considered to be responsive to the applicant's request for contracts and related correspondence. The Health Centre has, however, indicated that it will forward a copy of the proposal, including the chart, to the applicant, subject to any restrictions required by the Act.

7. Discussion

The Health Centre has appropriately relied on my discussion of section 6 of the Act in previous orders. In this case the Health Centre has made “every reasonable effort to search for the requested records,” (Order No. 30-1995, January 12, 1995); has responded in a manner that “fair and rational people would expect to be made and find acceptable” (Order No. 30-1995); and has informed the applicant “in a timely way what it has done,” (Order No. 150-1997, February 13, 1997). (Submission of the Health Centre, pp. 4-5)

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 search conducted by the Children’s and Women’s Health Centre of British Columbia in this case was a reasonable effort within the meaning of section 6(1).

Under section 58(3)(a) of the Act, I require the Children’s and Women’s Health Centre of British Columbia to perform its duty under section 6(1) to make every reasonable effort to assist the applicant. However, since I have found that the search conducted was reasonable, I find that the Children’s and Women’s Health Centre of British Columbia has complied with this Order and discharged its duty under section 6(1) of the Act.

David H. Flaherty
Commissioner

January 8, 1998