

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 270-1998
November 12, 1998**

INQUIRY RE: An applicant's request for review of a decision of the University of British Columbia to refuse to confirm or deny the existence of a record

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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 October 5, 1998 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision of the University of British Columbia (UBC) to refuse to confirm or deny the existence of records responsive to the applicant's request.

2. Documentation of the inquiry process

The applicant's request dated June 24, 1998 asked for "copies of all and any records the University of British Columbia has pertaining to its communications with Holy Family Hospital regarding ... [a third party]." In a letter dated July 2, 1998, UBC responded that "pursuant to section 8(2)(b) of the Act, UBC neither confirms or denies the existence of such records." In a letter dated July 7, 1998 the applicant requested a review of UBC's response. The ninety-day statutory time period expired on October 5, 1998. In a letter dated August 13, 1998 the applicant requested this matter proceed to inquiry. The notice of inquiry was issued on September 11, 1998.

3. Issue under review and the burden of proof

At the inquiry, the Information and Privacy Commissioner will review the public body's application of section 8(2)(b) of the Act to the applicant's request of June 24, 1998. Section 8 of the Act states:

Contents of response

- 8(1) In a response under section 7, the head of the public body must tell the applicant
- ...
- (c) if access to the record or to part of the record is refused, the reasons for the refusal and the provision of this Act on which the refusal is based,
- (2) Despite subsection (1) (c) (i), the head of a public body may refuse in a response to confirm or deny the existence of
- ...
- (b) a record containing personal information of a third party if disclosure of the existence of the information would be an unreasonable invasion of that party's personal privacy.

The applicant argued that section 6(1) of the Act was in dispute. Section 6(1) states:

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.

....

UBC states that it is premature to set an inquiry on the adequacy of search, in the circumstances where it has refused to confirm or deny the existence of records. It states that section 8(2)(b) is a complete and open response that satisfies section 6 of the Act.

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Section 57 is silent with respect to the application of sections 6 and 8 of the Act by a public body. With respect to section 6 of the Act, as I decided in Order No. 110-1996, June 5, 1996, the burden of proof is on the public body. As I decided in Order No. 260-1998, September 10, 1998, the public body is in the best position to discharge the burden of proof under section 8.

4. The record in dispute

The record at issue in this case is a file note made by a UBC employee, as described in my immediately preceding order (Order 269-1998, November 12, 1998).

5. The applicant's case

I have carefully reviewed the submissions of the applicant and commented on them below to the extent that I found it necessary to do so in reaching my decision.

6. The University of British Columbia's case

The University refuses to confirm or deny the existence of personal information which, if it exists, "clearly contains information that the University is prohibited from disclosing under section 22(3)(d) of the Act."

7. Discussion

Readers should refer to my immediately preceding order for further background on this particular order.

Section 8(2): Despite subsection (1 (c)(i), the head of a public body may refuse in a response to confirm or deny the existence of ...(b) a record containing personal information of a third party if disclosure of the existence of the information would be an unreasonable invasion of that party's personal privacy.

UBC submits that it is clearly authorized by this section to refuse to disclose to the applicant the extent of any personal information it may have about the employment history of the third party. I agree with this statement in principle. (See Order No. 110-1996, June 5, 1996) In this case, however, the only third-party employment history in the record in dispute was provided to UBC by the applicant. In these unusual circumstances, as discussed in Order 269-1998, disclosure of the file note at issue would not be an unreasonable invasion of the third party's personal privacy.

Section 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.

UBC's position that a discussion of the adequacy of a search in this inquiry is premature, because it is entitled to neither confirm nor deny the existence of records. I agree that UBC "is at liberty to neither confirm nor deny the existence of such information without the need to conduct a search for the record." I further agree that a refusal under section 8(2)(b) of the Act satisfies the public body's duty to the applicant under section 6(1).

8. Order

I find that the search for records conducted by the University of British Columbia in this case was a reasonable effort within the meaning of section 6(1) of the Act.

I find that the head of the University of British Columbia is not authorized by section 8(2) of the Act to refuse to confirm or deny the existence of a record containing personal information of a third party. Under section 58(3) of the Act, I require the head of the University of British Columbia to confirm the existence of the record.

David H. Flaherty
Commissioner

November 12, 1998