

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 280-1998
December 3, 1998**

INQUIRY RE: An applicant's request for review of a decision of the University 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 November 17, 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 (the University) that records responsive to a request were outside the scope of the Act since they were under section 3(1)(c) of the Act, as amended.

2. Documentation of the inquiry process

On July 6, 1998 the applicant requested the following information: "copies of all and any correspondence between the University of British Columbia and the Office of the Information and Privacy Commissioner pertaining to my case during the period of April 15, 1998 to 26 July, 1998. In particular, I would like to have a copy of UBC's covering letter for documents 000026 and 000028."

On July 9, 1998 the University responded "[w]e regret to inform you that upon review of the Act, UBC will not be providing you with access to the information requested as the records fall outside the scope of the Act, as set out in section 3(1)(c)."

In a letter dated August 19, 1998 the applicant requested a review of the University's response. On October 19, 1998 the applicant requested that this matter proceed to an inquiry before the Commissioner. The Notice of Inquiry was issued on October 23, 1998. The ninety-day statutory period expired on November 17, 1998.

3. Issue under review and the burden of proof

For this inquiry, I am required to review the University's application of section 3(1)(c) of the Act.

Section 3(1)(c) of the *Freedom of Information and Protection of Privacy Act* (as amended by section 52 of the *Police Amendment Act*, SBC 1997, c. 37) states:

3(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

...

(c) a record that is created by or for, or is in the custody or control of, an Officer of the Legislature that relates to the exercise of that officer's functions under an 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 section 3(1)(c) of the Act by a public body. As I decided in Order No. 170-1997, June 12, 1997, the University is in the best position to discharge the burden of proof under section 3(1)(c) of the Act.

4. The records in dispute

The records in dispute are correspondence between the University of British Columbia and the Office pertaining to a previous request for review (see Order 269-1998, November 12, 1998).

5. The applicant's case

The applicant attempts to establish that there are several more issues at stake in this inquiry than the one that I am dealing with, including allegations that my Office is biased against him and that some of my staff have engaged in witness tampering and subornation of perjury. With respect, I disagree. There is only one issue before me in this inquiry.

The applicant further submits that, because the University allegedly released to him in 1997 certain of its correspondence with my Office, it is thereby prevented, somehow, from relying on section 3(1)(c) in the present inquiry. With respect, I disagree. These are, in my view, separate matters. I need to deal with the issue before me in this inquiry.

6. The University of British Columbia's case

I have presented below the University's submissions on the application of section 3(1) of the Act.

7. Discussion

Section 3(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following: ... (c) a record that is created by or for, or is in the custody or control of, an Officer of the Legislature that relates to the exercise of that officer's functions under an Act;

The University has relied extensively on my findings in Order No. 170-1997, June 12, 1997, which concerned the proper application of section 3(1)(c) of the Act.

The University points out that the records at issue in this inquiry involve correspondence between one of my Portfolio Officers and Legal Counsel for the University concerning a request for review involving the applicant in this inquiry.

The legislative intent of section 3(1)(c) of the Act is to protect the investigative and quasi-judicial core functions of an Independent Officer of the Legislature. An exchange of correspondence between my office and a public body is clearly covered by the language of section 3(1)(c), "a record that is created by or for...."

I find that the records in dispute are properly excluded from the scope of the Act pursuant to section 3(1)(c).

8. Order

I find that the records in dispute fall outside the scope of the Act on the basis of section 3(1)(c).

I find that the University of British Columbia has properly applied section 3(1)(c) of the Act and is authorized to refuse access to the records withheld under that section. Under section 58(2)(b), I confirm the decision of the University of British Columbia to refuse access.

David H. Flaherty
Commissioner

December 3, 1998