

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 274-1998
November 24, 1998**

INQUIRY RE: A decision by the Ministry of Attorney General regarding a request for records from the City of Surrey

**Fourth Floor
1675 Douglas Street
Victoria, B.C. V8V 1X4
Telephone: 250-387-5629
Facsimile: 250-387-1696
Web Site: <http://www.oipcbc.org>**

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 September 4, 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 the response given by the Ministry of Attorney General to the City of Surrey's request for records regarding certain operations of the Great Canadian Casino Company Ltd.

2. Documentation of the inquiry process

On January 23, 1998 the City of Surrey submitted a request under the Act to the Ministry of Attorney General. The City asked to be provided with "copies of any and all documentation regarding the operations of the Great Canadian Casino Company Ltd. at 13538 - 73 Avenue, Surrey, B.C., in the custody and control of the Gaming Audit and Investigation Office of the Ministry of Attorney General."

On January 27, 1998 the Ministry replied that under section 11 of the Act it was transferring the City's request to the British Columbia Lottery Corporation. The reason given was that the only records in the custody of the Gaming Audit and Investigation Office that specifically pertained to the Surrey outlet of the Great Canadian Casino Company Ltd. consisted of copies of records that originated with the British Columbia Lottery Corporation (the Corporation), whose interest in the records was greater than the Ministry's.

On February 3, 1998 the City objected to the Ministry's reply and stated that "[t]he City's request was not limited to records which meet the criteria listed in s.11(1) of

the *Freedom of Information and Protection of Privacy Act*.... [We] trust you will reconsider your duties under the *Act* and respond accordingly.”

On February 5, 1998 the Ministry replied that a search of the Gaming Audit and Investigation Office revealed the existence of records regarding the Great Canadian Casino Company as a whole. The Ministry’s position was that any records pertaining to the Company as a whole were outside the scope of the City’s request, because the City’s request was for records regarding the specific site in Surrey. The Ministry reiterated that, although the Gaming Audit and Investigation Office also held records specific to the Surrey location, those particular records had been produced by or for the British Columbia Lottery Corporation. Thus the Ministry had transferred the City’s request to the Corporation.

On February 25, 1998 the Ministry wrote to the City again and stated that the Gaming Audit and Investigation Office had conducted a second search and found no further records relevant to the City’s request.

On March 24, 1998 the City submitted a request to this Office for a review of the Ministry’s decision, stating that “[i]n particular, the City does not accept the Ministry’s determination that certain documents are outside the scope of the City’s request.”

On June 23, 1998 I extended the deadline for the inquiry from June 25, 1998 to July 31, 1998. It was again extended by consent of the parties to August 14, 1998 and again to September 4, 1998. On August 13, 1998 Notices of Written Inquiry were sent to the parties. On August 19, 1998 the City requested a two-week adjournment, because it had made an application to the B.C. Supreme Court, which was to be heard on August 24, 1998. If successful with the application, the City would be in a position to use the discovery process which could render this inquiry process moot. The Ministry opposed the City’s request, since this inquiry concerns the Ministry’s duty to assist the applicant under section 6 of the Act, arguing that there is no issue concerning the withholding of information.

I decided that the City’s application to the B.C. Supreme Court was not relevant to this inquiry and that it would proceed as scheduled on September 4, 1998.

3. Issue under review and the burden of proof

The issue before me is whether the Ministry complied with its duty to assist under section 6 of the Act by interpreting and responding to the City’s request for records openly, accurately, and completely.

The relevant section of the Act is 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, which establishes the burden of proof on parties in an inquiry, is silent with respect to a request for review about the duty to assist under section 6 of the Act. I decided in Order No. 110-1996, June 5, 1996, that in these circumstances the burden of proof is on the public body.

4. The records in dispute

The City's request was for all documentation about the casino operation in Surrey, including information on gaming machines, financial statements, and about the computer links between the gaming machines and the British Columbia Lottery Corporation.

5. The City of Surrey's case

The City submits that the Ministry has not properly discharged its duty under section 6 of the Act, that it has improperly narrowed the scope of its request, and has withheld information contrary to the Act.

6. The Ministry of Attorney General's case

I have presented below the most relevant submissions of the Ministry.

7. Discussion

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.

The Ministry submits that an issue in this inquiry is whether it interpreted the scope of the applicant's request in a reasonable manner as required by section 6 of the Act. In Order No. 30-1995, January 12, 1995, I accepted the definition of "every reasonable effort" as an "effort which a fair and rational person would expect to be done or would find acceptable. The use of 'every' indicates that a public body's efforts are to be thorough and comprehensive and that it should explore all avenues...." In Order No. 30-1995, I accepted the definition set out in the government's Policy and Procedures Manual, D3.3@2, as relevant to section 6(1), as well as to section 28 of the Act. (Submission of the Ministry, para. 4.02)

The Ministry has explained the respective roles of the Gaming Audit and Investigation Office of the Ministry, the B.C. Gaming Commission, and the B.C. Lottery Corporation. Its position is that the relevant records held by the Gaming Audit and Investigation Office originated with the Corporation, which had received an identical

request from the applicant. (Submission of the Ministry, paras. 4.07 to 4.09) Thus the Ministry, in its view, correctly employed section 11(1) of the Act to transfer the request to the originating public body. The Ministry also advised the applicant that it had no additional records relating to this request. (Submission of the Ministry, paras. 4.10 and 4.12) Finally, the Ministry informed the applicant that it was also transferring the request to the Gaming Commission, because it had learned that the latter had records relevant to this request. (Submission of the Ministry, para. 4.17)

Based on the detailed submissions of the search efforts that the Ministry undertook to be responsive to this request, I fully agree that it has met its duty to the applicant under section 6 of the Act. (Submission of the Ministry, para. 4.21) I also find that the Ministry's "determination of which records would be responsive to the Request are what fair and rational people would find acceptable." (Submission of the Ministry, para. 4.25)

An additional issue in this inquiry is whether the Ministry inappropriately narrowed the scope of the applicant's request, which was for records pertaining to a specific location in Surrey. The City's submission is that all information regarding the Great Canadian Casino Company Ltd. "relates to and impacts the operations at the Surrey site and accordingly should be released." (Submission of the Applicant, p. 3)

I note that the applicant wrote to the Ministry on February 3, 1998 to state that the City's request was "not limited to records which meet the criteria listed in section 11(1) of [the Act], as amended," and that the Ministry responded the same day by asking the City's Assistant Solicitor to clarify what other records he thought the Ministry should have. The Ministry submits that the Assistant Solicitor "refused to provide such clarification and would only restate the Request verbatim as originally stated in the Applicant's letter dated January 23, 1998." (Submission of the Ministry, paras. 4.11, 4.12, and the Affidavit of Cynthia Callahan) The Ministry points out that the applicant is entitled under the Act to submit a broader request, and submits that it has interpreted the access request in a reasonable manner and in a manner that fair and reasonable people would find acceptable. (Submission of the Ministry, para. 4.26) I agree.

8. Order

I find that the Ministry of Attorney General responded to the applicant openly, accurately, and completely, has made every reasonable effort to assist the applicant, and has discharged its duty under section 6(1) of the Act.

David H. Flaherty
Commissioner

November 24, 1998