

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 294-1999
February 17, 1999**

INQUIRY RE: A review of the decision by the City of Vancouver to withhold records subject to solicitor-client privilege, and a review of the adequacy of the City's search for records responsive to the applicant's request

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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 December 1, 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 by an applicant of the City of Vancouver's (the City) application of section 14 to records in the custody of the City's lawyer. The applicant also requested a review of the adequacy of the search that the City had conducted for records responsive to his request.

2. Documentation of the inquiry process

On September 10, 1998 the applicant requested "all records in File No. 01919-64 in the custody of [the City's lawyer]."

The City responded on September 24, 1998. Some records were provided to the applicant, but a two-page letter was withheld under section 14 of the Act. The applicant requested a review of the City's decision to withhold the record and questioned the adequacy of the search.

Notices of Inquiry were sent to the parties on November 10, 1998.

3. Issues under review and the burden of proof

There are two issues under review in this inquiry. The first is whether the City appropriately applied section 14 to the record in dispute. The second is whether the City

conducted an adequate search for records responsive to the applicant's request. The relevant sections of the Act read 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.

....

Legal advice

14. The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(1), where access to information in the record has been refused under section 14, it is up to the public body to prove that the applicant has no right of access to the record or part of the record. Section 57 is silent with respect to a request for review about the duty to assist under section 6 of the Act. In Order No. 110-1996, June 5, 1996, I decided that in these cases, the burden of proof is on the public body.

4. The record in dispute

The record in dispute is a two-page letter from the City to its lawyer.

5. The applicant's case

I have discussed relevant aspects of the applicant's submissions below.

6. The City of Vancouver's case

I have discussed below relevant aspects of the City's submissions.

7. Discussion

For the record, I note that this is another in a seemingly interminable series of access requests from this particular applicant that have gone to inquiry during the last five years during which I have served as Commissioner. I state this to explain to readers the sparse nature of the background information and discussion.

Section 6(1): Duty to assist applicants

The applicant appears to believe that the City has not disclosed all of the records due to him from the files of a solicitor for the City; in his view, "it is inconceivable that

the City did not provide [name], its lawyer, in my wrongful dismissal case, with the following documents.” He then proceeds to list a series of documents.

The applicant further submits that “from beginning to end, [the City has] acted in bad faith in this case,” and includes references to the searches for records responsive to his request.

Because of its ongoing relationship with this applicant, the City has maintained careful records of its dealings with him, which it has summarized for me in its submissions and in accompanying exhibits and *in camera* material. The City states that the applicant asked for a specific file and received it, minus the record in dispute.

Section 14: Legal advice

I have carefully reviewed the record in dispute. In it, an employee relations advisor of the Human Resources Services of the City of Vancouver instructs an outside counsel to represent the City in an arbitration of a grievance involving the applicant, and provides counsel with information relevant to the grievance. Since this record falls so clearly within the scope of solicitor-client privilege, I do not intend to discuss the matter further. The record relates both to the contemplated litigation privilege, and the solicitor-client privilege that the applicant discusses in his submissions. The applicant’s further allegations of fraud, deceit, dishonest conduct, perjury, and trickery and sham contrivances against the City and its employees are not matters that I can deal with under the Act.

8. Order

I find that the search for records conducted by the City of Vancouver was adequate within the meaning of section 6(1) of the Act. Under section 58(3)(a) of the Act, I require the City to perform its duty to assist the applicant. However, since I have found that the City has made every reasonable effort to search for records, I find that the City of Vancouver has complied with this Order and has discharged its duty under section 6(1) of the Act.

I find that the City of Vancouver was authorized under section 14 of the Act to refuse access to the record in dispute. Accordingly, under section 58(2)(b) of the Act, I confirm the decision of the head of the City of Vancouver to refuse access.

David H. Flaherty
Commissioner

February 17, 1999