



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
— for —  
British Columbia

Order 01-32

**DISTRICT OF SAANICH & TOWNSHIP OF ESQUIMALT**

David Loukidelis, Information and Privacy Commissioner  
July 4, 2001

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**Summary:** Applicant made access requests, to the two public bodies, regarding communication of his personal information from one to the other. He received records from each, but alleged that both public bodies failed to conduct adequate searches for responsive records. Both public bodies were found to have conducted adequate searches for records as required by s. 6(1).

**Key Words:** duty to assist – adequacy of search – respond without delay – respond openly, accurately and completely – every reasonable effort.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, s. 6(1).

**Authorities Considered: B.C.:** Order 00-33, [2000] B.C.I.P.C.D. No. 35.

## 1.0 INTRODUCTION

[1] This decision deals with two separate requests for review, each of which raises the same issue under s. 6(1) of the *Freedom of Information and Protection of Privacy Act* (“Act”), *i.e.*, whether the public bodies have conducted adequate searches for records. Over a period of roughly six months, beginning in December of 1999, the applicant made four access requests under the Act for records related to the same matter. That matter is the disclosure, early in 1998, of the applicant’s personal information by employees of the Township of Esquimalt (“Esquimalt”) to employees of the District of Saanich (“Saanich”). Because he was unhappy about the disclosure, the applicant requested access to records related to that disclosure held by Saanich and by Esquimalt.

[2] Saanich and Esquimalt each responded to the access request. On January 6, 2000, Saanich disclosed some records to the applicant, but withheld some information under s. 22 of the Act. On May 1, 2000, Saanich responded to certain questions the applicant had raised in response to the material disclosed earlier. On May 11 and October 13, 2000, Saanich confirmed, in response to the applicant's concerns about the completeness of the response, that it had disclosed all records to him. In its October 13, 2000 letter, Saanich confirmed that it had since conducted an internal review to determine whether further records existed. Saanich later discovered, however, a small number of further records and disclosed them to the applicant on January 26, 2001, on the eve of this inquiry.

[3] Esquimalt's response, dated July 14, 2000, combined answers to questions raised by the applicant with disclosure of responsive records. Although it found some records and disclosed them, Esquimalt told the applicant that, in relation to several aspects of his request, no records had been found. Esquimalt subsequently confirmed, in an October 14, 2000 letter to the applicant, that it had "further reviewed with staff and former staff" what further records it might have, but that none had been found.

[4] The applicant ultimately requested, under s. 53 of the Act, a review of the adequacy of these responses. Because the matter was not resolved by mediation, I held a written inquiry under s. 56 of the Act. There is no objection to the issues being resolved in a single inquiry.

[5] I should note here that, as part of its initial submission, Esquimalt provided me with a number of records that disclosed mediation-related information. As permitted by this Office's policies and procedures respecting inquiries, the applicant consented in writing to the inclusion of that mediation-related material. As it turned out, I did not rely on that material in reaching my decision.

## **2.0 ISSUE**

[6] The only issue in this inquiry is the adequacy of the searches for records undertaken by Saanich and by Esquimalt in responding to the applicant's requests to each. Previous orders have established that the public bodies bear the burden of proving that they have fulfilled their obligations under s. 6(1) of the Act.

[7] In his reply submission, the applicant addresses issues of accuracy of information that "must be supplied" to him, a supposed prohibition against a public body's editing of information and his concern that "complete information" be disclosed immediately in the place of "destroyed records". The applicant's submissions also refer to a complaint he apparently made, under the Act, about disclosure of his personal information. These submissions do not concern the issue that is before me and I have not considered them.

### 3.0 DISCUSSION

[8] **3.1 Applicable Principles** – Section 6(1) of the Act reads as follows:

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.

[9] At p. 7 of his initial submission, the applicant says the onus is on Esquimalt – he does not say anything about Saanich – to “prove that it did everything possible to comply with Section 6(1)”. That is not the standard imposed by s. 6(1). The obligation to make every reasonable effort to assist an applicant does not translate into a requirement to “do everything possible”. Many orders confirm that, in searching for records, a public body must apply such efforts as a fair and rational person would expect to be undertaken. A standard of perfection is not imposed, but the public body’s search for records must be thorough and comprehensive. See, for example, Order 00-32, [2000], B.C.I.P.C.D. No. 35.

[10] **3.2 Were the Searches Adequate?** – Saanich has provided me with detailed evidence, in the form of affidavits sworn by three knowledgeable individuals, regarding the thoroughness of its searches for records. I am satisfied that the affidavits speak to sufficiently thorough searches, by a number of Saanich employees, in locations where responsive records might be expected to be found. I am satisfied that the search efforts met Saanich’s s. 6(1) searches obligations.

[11] This conclusion is not overcome, contrary to the applicant’s assertion, by the fact that Saanich discovered (and disclosed) seven more records over a year after the applicant’s initial access request. These records were found during one of Saanich’s follow-up searches during the mediation period. According to the affidavit of Shelley Soukoreff, who was responsible for records-filing and for some of Saanich’s search efforts, these records were not discovered earlier because they had been mis-filed. I am satisfied that, in this case at least, the mis-filing meant that, no matter how thorough the initial searches were, the later-discovered records were not in a location where one would reasonably expect to find them. Their subsequent discovery was fortunate, but it does not mean Saanich fell short of the mark in its initial search efforts. Whether the same conclusion will hold in other such cases remains to be seen in light of the circumstances presented there.

[12] The applicant is also skeptical that no records exist of telephone conversations between Esquimalt employees and Shelley Soukoreff about the applicant. Shelley Soukoreff deposed that she spoke with one Esquimalt employee and took notes of the conversation. She later wrote a memorandum based on information she received during that call, from the fax from Esquimalt referred to below and during three other telephone conversations she had with other Esquimalt employees. She deposed that, to the best of her memory, she threw out the notes of the first conversation and did not make notes of

the other conversations. Shelley Soukoreff also deposed that she had searched all relevant files to see if she could find any notes of telephone conversations, but had been unsuccessful. Other Saanich employees who were involved in the searches records similarly deposed that they had been unable to find any such notes.

[13] In Esquimalt's case, the applicant appears to believe that, because one of the responsive records shows that it was faxed by Esquimalt to Saanich, Esquimalt is wrong to say that it has "no information regarding the transfer of information to Saanich" from Esquimalt and that Esquimalt has no "information or record of authorization to release information to Saanich". It does not follow that, because a fax was sent by Esquimalt to Saanich, there must be records in the custody or under the control of Esquimalt about the sending of that information, including an authorization to send it. The person who sent the fax may well have been the person who decided to send it. That person may not have kept the fax transmission record. Not all information that comes into being as part of a public body's activities is recorded. I am satisfied, on the basis of Esquimalt's evidence, that it has adequately searched for records relating to the sending of the fax to Saanich.

[14] I am satisfied, based on the material before me, that Saanich and Esquimalt have each conducted an adequate search for records as required by s. 6(1) of the Act.

#### **4.0 CONCLUSION**

[15] Because I have found that Saanich and Esquimalt have each fulfilled their obligations under s. 6(1) of the Act, no order is necessary under s. 58(3) of the Act.

July 4, 2001

#### **ORIGINAL SIGNED BY**

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David Loukidelis  
Information and Privacy Commissioner  
for British Columbia