



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

Order 02-24

MINISTRY OF ATTORNEY GENERAL

Celia Francis, Adjudicator
May 23, 2002

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Summary: Applicant requested copies of correspondence from 1993. Ministry provided copies of records it was able to locate. Further searches yielded no more records. Ministry found to have complied with its s. 6(1) duty in searching for records.

Key Words: search for records – respond openly, accurately and completely.

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

Authorities Considered: B.C.: Order 02-19, [2002] B.C.I.P.C.D. No. 19.

1.0 INTRODUCTION

[1] The applicant submitted a request in October 2000 to the public body, the Ministry of Attorney General (“Ministry”), for correspondence he had sent in the 1990s to the Attorney General at that time, Colin Gabelmann. The Ministry responded in late November by providing copies of the requested correspondence. It wrote again in July 2001 to say that it had conducted another search and had found no more records.

[2] The applicant then requested a review of the Ministry’s response. He explained that he was interested in obtaining a copy of a certain letter he had written to Colin Gabelmann, apparently in 1993. Because of this letter, he said, the RCMP considered him to be a threat to a named federal political figure, as he had alleged misconduct on this person’s part. He wished to explain the allegations to the RCMP and clear his name “of false allegations” against him, he said.

[3] Because the matter did not settle in mediation, a written inquiry was held under Part 5 of the *Freedom of Information and Protection of Privacy Act* (“Act”). I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

2.0 ISSUE

[4] The issue in this case is whether the Ministry fulfilled its duty under s. 6(1) of the Act, specifically in searching for a particular record or records. Section 6(1) reads 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.

[5] Previous orders have established that the burden of proof in s. 6(1) matters is on the public body.

3.0 DISCUSSION

[6] **3.1 Standards for Searches** – The Information and Privacy Commissioner has discussed the standards for searching for records, and for describing those searches, in numerous orders, most recently at para. 9 of Order 02-19, [2002] B.C.I.P.C.D. No. 19. I will not repeat that discussion, but adopt the same principles here.

[7] **3.2 Ministry’s Search** – The Ministry described its search efforts in some detail, with support from affidavits by the two information and privacy analysts who had handled the applicant’s request. The Ministry explained how, after checking the Ministry’s correspondence tracking system, staff had searched for and found records responsive to the applicant’s request and had provided him with copies of those records. Another part of the Ministry which appeared likely to have records reported that it had nothing additional and a second search a few months later revealed nothing further.

[8] The Ministry said that it then searched a correspondence tracking system which pre-dated the current one and found a mention of two of the letters of interest to the applicant. If such letters still existed, it was likely they would be in off-site storage, the Ministry explained. One of the information and privacy analysts deposed that she reviewed accession file lists for off-site records storage boxes to determine which boxes to recall. The Ministry later reported that this analyst had recalled and reviewed the contents of several boxes, which included ministerial and general correspondence for the period 1993-1996 and which potentially contained responsive records, but had found no other responsive records.

[9] Most of the applicant's initial and reply submissions had no bearing on the issue in this case. Because of the correspondence he had exchanged with the Attorney General in 1993, he says in his initial submission, he came to the attention of the RCMP and underwent a psychiatric assessment. If he obtains the letters he is looking for, he says, he "can confront the RCMP in Ottawa, to have my name removed from those files and be exonerated [*sic*] from such blatant false allegations". He asks for the return of his letters "so that I can approach the Justice Minister, the Solicitor General and the RCMP and request to have these serious, unproven and illegal allegations removed from my police records, as I am a threat to no-one".

[10] In his reply submission, the applicant questions the Ministry's earlier lack of awareness of files in off-site storage and suggests that its staff should have searched those files months ago. He suggests that someone has stolen the letters he is looking for and that the RCMP now have copies. He wants the Information and Privacy Commissioner to order the federal Minister of Justice to investigate the alleged disappearance of the letters he is looking for.

Did the Ministry fulfil its s. 6(1) duty?

[11] The Ministry argued that its failure to search the older correspondence tracking system initially did not mean it did not search properly in the first place. Information and privacy staff had not been aware until later that not all correspondence entries had been successfully transferred from the old system to the new one. Other 1993 correspondence was still on-site, it said, and it had seemed reasonable to assume initially that the letters the applicant was looking for would be as well. An information and privacy analyst has since searched any files in off-site storage which were even remotely connected with the applicant's request. Staff know of no other areas which should be searched. The Ministry argued that it has made the efforts a fair and rational person would expect in locating and retrieving records.

[12] In my view, the Ministry has made reasonable efforts to search for responsive records. It identified potential areas for searching early on and carried out a number of searches. When it later learned of an area it had overlooked, the Ministry quickly corrected its oversight by carrying out further searches. It also fully described its search efforts, which I have summarized here. While there are indications that the Ministry at one time had the records the applicant is looking for, the Ministry has been unable to find them, despite much searching. I find that the Ministry initially failed in its s. 6(1) duty to conduct an adequate search, but that it has since discharged this duty. It is not necessary for me to order the Ministry to search again for responsive records.

4.0 CONCLUSION

[13] For the reasons given above, under s. 58(3)(a) of the Act, I confirm that the Ministry has complied with its s. 6(1) duty to respond to the applicant openly, accurately and completely.

May 23, 2002

ORIGINAL SIGNED BY

Celia Francis
Adjudicator