



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

Order 02-40

BRITISH COLUMBIA ARCHIVES

Celia Francis, Adjudicator
August 21, 2002

Quicklaw Cite: [2002] B.C.I.P.C.D. No. 40
Document URL: <http://www.oipc.bc.ca/orders/Order02-40.pdf>
Office URL: <http://www.oipc.bc.ca>
ISSN 1198-6182

Summary: Applicant requested review of BC Archives' failure to respond within s. 7 time limits and to take a time extension under s. 10. BC Archives found not to have met its ss. 6(1) and 7 duties but not found to have breached s. 10.

Key Words: every reasonable effort – respond without delay – respond openly, accurately, completely – time extension – duty to respond within 30 days.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 6(1), 7, 10.

Authorities Considered: B.C.: Order 01-47, [2001] B.C.I.P.C.D. No. 49; Order 02-38, [2002] B.C.I.P.C.D. No. 38.

1.0 INTRODUCTION

[1] The applicant requested records related to alcohol and drug issues from British Columbia Archives (“BC Archives”) in mid-December 2001. By the end of the following January, he had not received a response nor had he received notice under s. 10 of the *Freedom of Information and Protection of Privacy Act* (“Act”) of an extension of the time for a response. He then requested a review by this Office of BC Archives’ alleged failure to respond within the legislated time limit. BC Archives responded to the applicant’s request in early March 2002, but the applicant had meanwhile asked that its failure to take a time extension under s. 10, and to give notice of any extension, be added as an issue in the review.

[2] Because the matter did not settle in mediation, a written inquiry was held under Part 5 of the 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

[3] The issues in this case are whether BC Archives complied with its duty under ss. 6(1) and 7 of the Act to respond in time to the applicant's request and whether it complied with s. 10 of the Act. Previous orders have established that the burden of proof respecting these sections is on the public body.

3.0 DISCUSSION

[4] **3.1 Sections 6(1) and 7** – The wording of s. 7 was amended on April 11, 2002. As this request predates that amendment, I am considering the issues in this case in light of the wording in effect before the amendments. Sections 6(1) and 7 at the time 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.

Time limit for responding

7 The head of a public body must respond not later than 30 days after a request is received unless

- (a) the time limit is extended under section 10, or
- (b) the request has been transferred under section 11 to another public body.

[5] The applicant's submissions pointed out that he made his request on December 10, 2001 but that BC Archives did not respond until March 8, 2002.

[6] Much of BC Archives' initial submissions and evidence dealt with its various methods for providing access to its records and with the applicant's other requests both for records and to enter into research agreements under s. 35 of the Act. This information provides a backdrop to this case but is not germane to the issues before me regarding the applicant's request of December 10, 2001.

[7] BC Archives concedes that it did not meet the 30-day deadline under s. 7 of the Act which, in this case, was January 9, 2002, and that it was approximately two months late in responding. Nevertheless, it argued that it had made every reasonable effort to respond without delay to the applicant, given the volume of records in this case (approximately 1,200 pages, consuming staff time of approximately 36 hours to review and sever) and the number of other requests it was handling at that time (15 formal and

90 informal requests). BC Archives said that, at the time of this request, its Information and Privacy Section was staffed by the Information and Privacy Manager and a part-time analyst.

[8] BC Archives suggests that “any determination as to whether a public body has met its duty to respond to a request ‘without delay’ must take into account the demands on the resources of the public body, including demands resulting from other requests for records”. Most applicants are satisfied with the service they receive from BC Archives, it said, and few complain about delays. BC Archives supported its arguments with affidavit evidence from Mac Culham, its Information and Privacy Manager (paras. 4.38-4.48, initial submission; paras. 5-15, 20 & 21, Culham affidavit).

[9] The Information and Privacy Commissioner has discussed in a number of orders the issue of a public body’s failure to respond within the legislated time lines set out in s. 7 and whether, in doing so, it has met its s. 6(1) duty. At paras. 19-23 of Order 02-38, [2002] B.C.I.P.C.D. No. 38, for example, the Commissioner rejected arguments from the public bodies which were similar to those made in this case. Where a public body has breached its duty to respond within the time required under s. 7, “It is simply not tenable”, the Commissioner said, “to say that a public body can still be found to have fulfilled its statutory duty to respond to an applicant ‘without delay’.” The Commissioner then pointed out that the s. 6(1) duty to respond without delay requires a public body to make every reasonable effort to respond before the time required under s. 7(1) and that a public body which has breached its s. 7(1) duty cannot be found to have fulfilled its s. 6(1) duty. The Commissioner made similar findings at paras. 43 and 59, of Order 01-47, [2001] B.C.I.P.C.D. No. 49.

[10] BC Archives admitted that it did not meet the s. 7 timelines and was two months late in responding. In the circumstances of this case, which echo those noted just above, I find that BC Archives did not meet its ss. 6(1) and 7 duties. Given that BC Archives has responded, however, there is nothing under s. 58 that I can order it to do. It is indeed regrettable that the applicant chose to press this matter to inquiry, with the accompanying burden on the resources of BC Archives and this Office, when there is clearly no useful remedy available to the applicant.

[11] **3.2 Failure to extend the timeline** – The wording of s. 10 was also amended on April 11, 2002. As above, I am considering the issues in this case in light of the wording of s. 10 in effect before the amendments. This section then read as follows:

Extending the time limit for responding

10 (1) The head of a public body may extend the time for responding to a request for up to 30 days or, with the commissioner’s permission, for a longer period if

- (a) the applicant does not give enough detail to enable the public body to identify a requested record,

- (b) a large number of records is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the public body, or
 - (c) more time is needed to consult with a third party or other public body before the head can decide whether or not to give the applicant access to a requested record, or
 - (d) a third party asks for a review under section 52 (2) or 62 (2).
- (2) If the time is extended under subsection (1), the head of the public body must tell the applicant
- (a) the reason,
 - (b) when a response can be expected, and
 - (c) that the applicant may complain about the extension under section 42 (2) (b) or 60 (1) (a).

[12] BC Archives acknowledges that it did not extend the 30-day timeline under s. 7, although it says that it could have done so under s. 10(1)(b). It says it rarely extends its request timelines, finding this to be a time-consuming process, and is able to respond to 90% of its requests within 30 days. BC Archives says that its normal practice is to update applicants on its progress with their requests and that applicants are normally patient. It says it is now extending its timelines for the applicant's current requests, and notifying the applicant of these extensions, as a result of its experience with the applicant. It reminds me that s. 10 is discretionary and that a public body does not have to extend the time, where the criteria are met. It argues that it has not breached s. 10 in this case (paras. 4.50-4.54, initial submission; paras. 70-73, Culham affidavit).

[13] The applicant points out in his initial submission that BC Archives did not extend the time line when it could have and says it did not respond to his requests for updates on the status of his request. BC Archives disputes this latter complaint at paras. 1-4 of its reply and says, in any case, this issue is irrelevant, although it also describes various attempts Mac Culham made to contact the applicant.

[14] The applicant concludes his initial submission by suggesting that "BC Archives has been knowingly, willfully, and repeatedly breaking the law by not responding within the legislated time period." He also suggests that BC Archives broke the law in not applying to this Office for an extension. His reply covers much the same ground. He says he has no complaint about an extension that BC Archives has taken in a subsequent request and that he should have received the same response with the request that is the subject of this inquiry.

[15] I agree with BC Archives that s. 10 is discretionary and that it is under no duty to extend under s. 10. Nevertheless, it would have been prudent for BC Archives to have taken an extension in this case, in order to avoid breaching its ss. 6(1) and 7 duties. As with the other issues in the inquiry, however, I cannot order BC Archives to do anything

under s. 58 of the Act and it is again regrettable that the applicant chose to pursue this matter to inquiry.

4.0 CONCLUSION

[16] Given that BC Archives has responded to the applicant's request, albeit late and without taking an extension, no order is called for under s. 58.

August 21, 2002

ORIGINAL SIGNED BY

Celia Francis
Adjudicator