



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

Order 04-24

PROVINCIAL HEALTH SERVICES AUTHORITY

Celia Francis, Adjudicator
September 2, 2004

Quicklaw Cite: [2004] B.C.I.P.C.D. No. 24
Document URL: <http://www.oipc.bc.ca/orders/Order04-24.pdf>
Office URL: <http://www.oipc.bc.ca>
ISSN 1198-6182

Summary: Applicant requested certain information on test results. The PHSA said it did not have records requested and that it was not obliged under s. 6(2) to create a record to respond to the request. The records do not exist in machine-readable form and the PHSA is not obliged under s. 6(2) to create a record.

Key Words: duty to assist – create a record.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 6(2).

Authorities Considered: B.C.: Order 01-31, [2001] B.C.I.P.C.D. No. 32.

1.0 INTRODUCTION

[1] The applicant made a request to the Provincial Health Services Authority (“PHSA”) for “details of the results of Clinical Microbiology Testing for the microbiology laboratory for the years 1988 to 2003”. He clarified that he wanted only the overall number of proficiency tests by year, together with a tally of correct and incorrect results for each year. The PHSA replied that, in order to comply with the request, it would have to

... create a record based on a review of individual pages of clinical microbiology proficiency testing covering a period of 15 years. Preparing the records would require the lab technician responsible for filing the reports to review the records and record the results of each test and tally the results.”

[2] It said that doing so would unreasonably interfere with its operations. It also said that, under s. 6(2) of the Act, it was not obliged to create such a record.

[3] The applicant complained to this Office about the PHSA's response, saying the PHSA should be able to provide the information "with a simple phone call". 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

[4] The issue before me in this case is whether the PHSA is required by s. 6(2) to create a record.

3.0 DISCUSSION

[5] **3.1 Application of Section 6(2)** – Section 6(2) reads as follows:

- 6(2) Moreover, the head of a public body must create a record for an applicant if
- (a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and
 - (b) creating the record would not unreasonably interfere with the operations of the public body.

[6] The Information and Privacy Commissioner has considered whether a public body is required under s. 6(2) to create a record in a number of orders, for example, Order 01-31, [2001] B.C.I.P.C.D. No. 32. Without repeating that discussion, I have taken the same approach in this decision.

[7] **3.2 Is the PHSA Required to Create a Record?** – The applicant views the PHSA as taking the untenable position that it need only release material that is machine-readable. He believes that it should be possible to obtain the information he wants through a telephone call to the microbiology laboratory. He stated that the PHSA has categorized testing results and reviews them periodically, and that he has been involved in such activities. (paras. 4-5, p. 2, and para. 4, p. 3, initial submission)

[8] The PHSA stated that its Clinical Microbiology Proficiency Testing results are not tabulated and recorded by year, but by survey or testing date, three times a year. It also said the records do not exist in the form of machine-readable records. The information the applicant seeks cannot therefore be created by the PHSA using its normal computer hardware, software and technical expertise. The PHSA argued that it is not required under s. 6(2) to create a record unless the source records are in a machine- readable format (paras. 4, 6-7, initial submission).

[9] The PHSA went on to say that to create a record manually to respond to the applicant's request would require a laboratory technologist to review, interpret and tabulate information in records. A technologist would have to work overtime to create such a record, the PHSA said, and it is not obliged under s. 6(2) to create such a record. The PHSA

supported these points with affidavit evidence from a technologist in its microbiology laboratory. She deposed that results are available from 1990 on and that it would take a technologist approximately 2-3 hours to review the records manually and tabulate the correct and incorrect results (paras. 8-9, initial submission; paras. 3-7, Book affidavit).

[10] The applicant disputed the PHSA's arguments in his reply and suggested that the PHSA "excessively attempts to hide behind the issue of 'machine readable' ". He also said that the PHSA had not shown that creating a record in this case would unreasonably interfere with its operations.

[11] As Order 01-31 and other orders have established, s. 6(2) imposes an obligation on a public body to create a record only in certain circumstances. The PHSA's evidence is that the source records do not exist in machine-readable form. I therefore agree with the PHSA that s. 6(2) of the Act does not require it to create a record. As the Commissioner noted at para. 11 of Order 01-31, in such cases, no more need be done.

[12] The applicant is of course free to submit a new request for records from which he himself could extract the information of interest to him.

4.0 CONCLUSION

[13] Because I have found that the PHSA is not required by s. 6(2) to create a record, no order under s. 58 respecting that issue is necessary.

September 2, 2004

ORIGINAL SIGNED BY

Celia Francis
Adjudicator