



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

Order F05-23

**MINISTRY OF ATTORNEY GENERAL**

Celia Francis, Adjudicator

July 12, 2005

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**Summary:** Applicant requested records related to a property. Ministry responded nine months later. Ministry found not to have fulfilled its duties under ss. 6(1) and 7. Ministry ordered under s. 58(3)(c) to refund fees applicant paid.

**Key Words:** duty to assist – respond without delay – respond openly, accurately and completely – every reasonable effort – confirm, excuse, refund or reduce fees.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, 6(1), 7, 58(3)(c).

**Authorities Considered: B.C.:** Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order 04-30, [2004] B.C.I.P.C.D. No. 31; Order 04-31, [2004] B.C.I.P.C.D. No. 32; Order 04-32, [2004] B.C.I.P.C.D. No. 33; Order 01-35, [2001] B.C.I.P.C.D. No. 36; Order 03-06, [2003] B.C.I.P.C.D. No. 6; F05-21, [2005] B.C.I.P.C.D. No. 29; F05-022, [2005] B.C.I.P.C.D. No. 30.

**Cases Considered:** *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [2002] S.C.J. No. 55, 2002 SCC 53.

## 1.0 INTRODUCTION

[1] This order is a companion to Orders F05-21<sup>1</sup> and F05-022<sup>2</sup> which I am issuing concurrently with this order. All three concern the same applicant and related records, although the public bodies are different.

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<sup>1</sup> [2005] B.C.I.P.C.D. No. 29.

<sup>2</sup> [2005] B.C.I.P.C.D. No. 30.

[2] As the Ministry of Attorney General and the Ministry of Public Safety and Solicitor General processed the applicant's requests concurrently, the chronology for the response, mediation and inquiry processes in this case is the same as that outlined in Order F05-22.

[3] 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. Although the Ministries responded jointly to the request as records overlapped, a separate inquiry took place for each ministry.

## 2.0 ISSUES

[4] According to the notice for this inquiry, the issues before me in this case are as follows:

1. Did the Ministry make every reasonable effort under s. 6 to respond to the applicant openly, accurately, completely and without delay?
2. Did Ministry fail to respond in accordance with the timelines for a response set out in s. 7 of the Act?

[5] In its initial and reply submissions, the applicant asked for a remedy under s. 58(3)(c) of the Act, that is, that the fees be excused, refunded or reduced in this case. The public body asked for an opportunity to make representations on this matter, as it had not been listed as an issue in the notice for this inquiry. I decided to consider the applicant's request and therefore gave AG an opportunity to provide additional representations on whether a fee refund or reduction under section under s. 58(3)(c) was an appropriate remedy.

[6] Accordingly, the third issue is:

3. Is this an appropriate case under s. 58(3)(c) in which to excuse, reduce or refund the fees?

## 3.0 DISCUSSION

[7] **3.1 Compliance with Sections 6(1) and 7** – The Information and Privacy Commissioner has considered a public body's compliance with ss. 6(1) and 7 in numerous orders, for example, Order 02-38<sup>3</sup>, Order 04-30<sup>4</sup>, Order 04-31<sup>5</sup> and Order 04-32<sup>6</sup>. I have applied here, without repeating it, the approach taken in those orders.

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<sup>3</sup> [2002] B.C.I.P.C.D. No. 38.

<sup>4</sup> [2004] B.C.I.P.C.D. No. 31.

<sup>5</sup> [2004] B.C.I.P.C.D. No. 32.

<sup>6</sup> [2004] B.C.I.P.C.D. No. 33.

[8] The relevant parts of ss. 6(1) and 7 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(1) Subject to this section and sections 23 and 24 (1), the head of a public body must respond not later than 30 days after receiving a request described in section 5(1).

(2) The head of the public body is not required to comply with subsection (1) if

(a) the time limit is extended under section 10, ...

(4) If the head of a public body determines that an applicant is to pay fees for services related to a request, the 30 days referred to in subsection (1) do not include the period from the start of the day the head of the public body gives the applicant a written estimate of the total fees to the end of the day one of the following occurs: ...

(c) the applicant agrees to pay the fees set out in the written estimate and, if required by the head of a public body, pays the deposit required.

[9] AG made submissions on this inquiry jointly with the Ministry of Public Safety and Solicitor General. I describe them fully in Order F05-22 and will not repeat them here. The applicant's submissions were also the same in both cases. My comments and findings in this case are the same as the ones I made in that order.

[10] **3.2 Is it Appropriate to Excuse, Reduce or Refund the Fee?** – The arguments on this matter are the same as those in Order F05-22.

[11] Section 58(3)(c) reads as follows:

**Commissioner's orders**

58(3) If the inquiry is into any other matter, the commissioner may, by order, do one or more of the following: ...

(c) confirm, excuse or reduce a fee, or order a refund, in the appropriate circumstances, including if a time limit is not met; ...

[12] My comments and findings in this case are the same as in Order F05-22.

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**4.0 CONCLUSION**

[13] For the reasons described in Order F05-22, under s. 58 of the Act, I order AG to refund to the applicant the fees the applicant has paid in this case.

July 12, 2005

**ORIGINAL SIGNED BY**

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Celia Francis  
Adjudicator