

ALBERTA

INFORMATION AND PRIVACY COMMISSIONER

ORDER 98-012

September 21, 1998

OFFICE OF THE PREMIER

Review Number 1362

I. BACKGROUND

[para 1] On September 15, 1997, the Applicant applied to the Office of the Premier (the "Public Body") under the *Freedom of Information and Protection of Privacy Act* (the "Act") for access to the following:

[A] copy of all correspondence with the Premier. This will include all letters that I have written to him, all letters sent to me from his office or department and all carbon copied letters sent to him by me. Please include all other material relating to this correspondence.

[para 2] Although no fee accompanied the request, the Public Body nevertheless conducted the search.

[para 3] Unsevered copies of the responsive records were provided to the Applicant by the Public Body on September 22, 1997. New information from the Applicant resulted in the Public Body's conducting another search. Unsevered copies of the records responsive to the clarified request were released to the Applicant on October 8, 1997.

[para 4] The Applicant believed that some records still had not been provided to the Applicant. On December 3, 1997, the Applicant requested a review of the Public Body's response.

[para 5] Mediation was authorized but was not successful. The matter was set down for inquiry on June 4, 1998.

II. RECORDS AT ISSUE

[para 6] The records at issue are a series of correspondence between the Applicant, the Premier, and the Premier's staff (the "Records"). The Applicant believes that the exchange took place in 1992. However, during the inquiry, the Applicant was unable to recall the exact dates of the correspondence. The Applicant was also not clear about the exact number of records that the Applicant believed were missing.

III. ISSUE

[para 7] There is one issue in this inquiry: Did the Public Body conduct an adequate search for the Records responsive to the Applicant's request, and thereby make every reasonable effort to assist the Applicant, as provided by section 9(1) of the Act?

IV. DISCUSSION OF THE ISSUE

[para 8] The Applicant believes the Public Body is withholding information. During the inquiry, the Applicant claimed that in 1992, the Applicant sent and received letters from the Public Body and the Premier, which have not been located by the Public Body in its search. During the inquiry, the Applicant also alluded to dissatisfaction with the manner in which the Premier and the Public Body responded in the exchange of correspondence.

[para 9] I informed the Applicant at the inquiry that this was a request for a review to determine if the Public Body complied with the requirements of section 9(1) of the Act, that the only remedies available are those under section 68, and that I do not have the jurisdiction to address the Applicant's complaints relating to the content of the correspondence.

[para 10] Section 9(1) of the Act reads:

9(1) The head of a Public Body must make every reasonable effort to assist applicants and respond to each applicant openly, accurately and completely.

[para 11] Section 67 of the Act, which establishes which party bears the burden of proof, is silent on the issue of the adequacy of a search. In Order 96-022, I said that a public body is in a better position to address the adequacy of its search; thus, the Public Body has the burden of proof here. Even though the Public Body has the burden of proof, section 7 imposes an obligation on the Applicant to sufficiently clarify its request such that the Public Body is able to locate the responsive records.

[para 12] The Public Body did not take issue with the specificity of the Applicant's request for access. Accordingly, I find the Public Body was provided with sufficient detail in the Applicant's initial access request to proceed with the search, without seeking further clarification.

[para 13] In Order 96-022, I adopted criteria for determining whether or not a public body has carried out a proper search. I said that a proper search has two components. The public body must (1) make every reasonable effort to search for the actual record requested, and (2) inform the Applicant in a timely fashion of what it has done.

[para 14] In Order 98-003, I also stated that a decision concerning an adequate search must be based on the facts relating to how the public body conducted its search in the particular circumstances.

[para 15] In this case, the Public Body's evidence is that it has exhausted its search efforts, and everything responsive to the request has been released to the Applicant.

[para 16] During the inquiry, the Public Body explained that all correspondence addressed to the Premier goes to either the correspondence branch on the fifth floor of the Legislature Building, the Premier's Executive Assistant, or to staff on the third floor of the Legislature Building. There are two databases that monitor all of the Premier's correspondence: the correspondence database and the invitations database. The invitations database tracks all requests for meetings with the Premier, received by telephone, personal inquiry, or written correspondence. The correspondence database tracks all documentation sent to the Premier but not to or from any other members of the Executive Council.

[para 17] When the Public Body received the Applicant's access request on September 15, 1997, it searched the correspondence database using the Applicant's last name. The search was then narrowed to the Applicant's first name, and then the Applicant's address.

[para 18] Based on this search the Public Body retrieved the following documents:

1. Letter dated September 27, 1994;
2. Memo dated August 3, 1995, with attachments; and,
3. Letter dated February 22, 1995.

[para 19] These documents were reviewed by the Public Body and, based on the Applicant's return address, the Public Body determined that the letter dated September 27, 1994, was not responsive to the request. On September 22, 1997, the other two documents, including attachments, were forwarded to the Applicant.

[para 20] On October 1, 1997, the Applicant telephoned the Public Body and indicated that the documents provided did not satisfy the Applicant's request as the Applicant was aware of other documents that had been sent to the Premier's Office, but those documents were not included in the documents forwarded to the Applicant. At that time, the Applicant informed the Public Body that the Applicant also used another return address, which was then provided to the Public Body.

[para 21] The Public Body conducted another search of the correspondence tracking system, using the Applicant's other return address, but no further documents were located. The Public Body informed the Applicant of the results of the additional search on October 1, 1997.

[para 22] On October 6, 1997, the Applicant telephoned the Public Body and provided a more detailed description of the specific records being sought. The Applicant explained that the records dealt with comments made during the public forums of the Environmental Legislation Review. During this subsequent discussion, the Public Body also discovered that some of the information being sought involved the Applicant's requests for meetings with the Premier.

[para 23] Consequently, the Public Body conducted another search of the invitations database. On October 8, 1997, the following documents were retrieved and then forwarded to the Applicant the next day:

1. Letter from the Director of Scheduling & Appointments (the ~~Director~~) dated September 23, 1993;
2. Letter from the Director dated June 1, 1993, with attachments; and,
3. Letter from the Director dated March 3, 1993, with attachments.

[para 24] In Order 97-006, I stated that once a Public Body has clarified with the Applicant the nature of its request, it is then obliged to search its records to determine whether they contain information that would respond to the request.

[para 25] Based on the clarified request received in October 1997, the Public Body conducted a number of searches for records relating to this request, but found no additional records. In so doing, I find the Public Body has sufficiently discharged its obligation to respond to the clarified request and did so in a timely fashion, keeping the Applicant apprised of the search results.

[para 26] Nevertheless, the Applicant continued to telephone the Public Body throughout October and November, indicating that the documents provided were still incomplete.

[para 27] On November 14, 1997, the Public Body wrote to the Applicant, confirming that further file searches had not resulted in any further documents being located and that no documents had been purged or deleted from the Applicant's file.

[para 28] On November 27, 1997, the Applicant wrote to the Premier requesting another meeting.

[para 29] On December 3, 1997, the Director responded to the Applicant, indicating that all information on the file had been provided. The Director also advised the Applicant that the information being sought may exist in the Department of Environmental Protection since all documentation involving the Premier in his previous capacity as the Minister of Environment had been sent to the Provincial Archives. The Director informed the Applicant that the Public Body could not access files in the Provincial Archives, and the Applicant was referred to the

Department of Environmental Protection.

[para 30] During the inquiry, the Applicant informed me that the Applicant did not pursue the information request with either the Department of Environmental Protection or the Provincial Archives, since the Applicant was adamant that the missing records were written in 1992 by the Premier in his capacity as Premier and therefore should have been with the Public Body.

[para 31] In Order 96-022, I indicated that a public body has no obligation to include the Provincial Archives in the search request. As set out in section 14(1) of the Act, there is no mandatory requirement that a public body transfer a request to another public body. Accordingly, I do not find that the Public Body acted improperly in directly referring the Applicant to the Provincial Archives and/or the Department of Environmental Protection to pursue the Applicant's access request.

[para 32] Nevertheless, in a further attempt to assist the Applicant, I requested that the Portfolio Officer assigned to this file from my Office make enquiries with the Provincial Archives and the Department of Environmental Protection to determine if certain records being sought could be located in either of those places. After the inquiry, the Portfolio Officer and the Applicant compiled a list of seven documents that the Portfolio Officer would request from the Provincial Archives and the Department of Environmental Protection. As a result of the Portfolio Officer's enquiries, three of the seven records were found in the Department of Environmental Protection and were released, unsevered, to the Applicant.

[para 33] Contrary to the Applicant's recollection during the inquiry, I find that the records which the Applicant believes to have been withheld were written and sent in the latter part of 1991, and not in 1992. Accordingly, the records were sent from the Premier in his previous capacity as the Minister of Environmental Protection, and not as Premier, which explains why the information was not found by the Public Body in the many searches it conducted.

[para 34] Based on the evidence provided, I find that the Public Body conducted an adequate search for records responsive to the Applicant's request, and thereby made every reasonable effort to assist the Applicant, as provided by section 9(1) of the Act. Since three records were found in another department, and those records related to a period when the Premier was the Minister of Environmental Protection, I accept the Public Body's explanation as being reasonable as to why it could not find those records.

V. ORDER

[para 35] I make the following order under section 68 of the Act.

[para 36] The Public Body conducted an adequate search for the Records responsive to the Applicant's request, and thereby made every reasonable effort to assist the Applicant, as provided by section 9(1) of the Act.

Robert C. Clark
Information and Privacy Commissioner