

IN THE MATTER OF:

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

AND IN THE MATTER OF:

**AN ADJUDICATION UNDER SECTION 62,
REQUESTED BY F.G.B. ON JUNE 19, 1998**

**REASONS FOR DECISION
OF THE
HONOURABLE MADAM JUSTICE LEVINE**

[1] On June 19, 1998, F.G.B. requested a review by an adjudicator of certain matters relating to his dealings with the Office of the Information and Privacy Commissioner.

[2] This is the third adjudication requested by F.G.B. pursuant to section 62 of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, as amended. The first request was made October 15, 1997, in response to which my decision was issued August 4, 1998. The second request was made January 22, 1998 and my decision was issued March 1, 1999. In both previous cases, counsel for the Commissioner and F.G.B. submitted extensive written submissions.

[3] In this case, the Commissioner made preliminary written objections to F.G.B.'s request for adjudication in a letter dated November 30, 1998. With that letter, he provided copies of the documents referred to in F.G.B.'s request.

[4] After a preliminary review of F.G. B.'s request and the material provided to me by the Commissioner, I wrote to both parties on February 25, 1999. I enclosed for F.G.B.'s review a copy of the Commissioner's letter dated November 30, 1998 and directed that [F.G.B.] provide me with his written submissions in response by March 24, 1999. I indicated that I would accept further submissions from both parties if new issues or factual allegations were raised in

submissions that required reply. I received no response from F.G.B. On April 7, 1999, I again wrote to the parties and asked F.G.B. if he would let me know if he intended to make submissions and if so, when I might expect to receive them. I have received no response or submissions from F.G.B.

[5] On May 5, 2000, counsel for the Commissioner wrote to me and requested that I proceed to decide this matter by dismissing it as abandoned by F.G.B. or for the reasons given in the preliminary objections submitted by the Commissioner on November 30, 1998.

[6] Having received no response from F.G.B. to my requests for his submissions, it is now appropriate to dispose of his request for adjudication on the basis of the material I have received.

[7] I have again reviewed F.G.B.'s request for review, the material submitted by the Commissioner and the Commissioner's preliminary objections to this request for adjudication.

[8] I am of the view that F.G.B.'s request is properly dismissed on the grounds outlined by the Commissioner in his letter of November 30, 1998.

[9] Five of the items requested by F.G.B. in his letter of June 19, 1998 are corrections to his personal information under section 29 of the *Act*. The Commissioner objects to these requests on the grounds that the records to which F.G.B. requests corrections are records to which the *Act* does not apply.

[10] Section 3(1)(c) exempts from the application of the *Act*:

a record that is created by or for, or is in the custody or control of an officer of the Legislature and that relates to the exercise of that officer's functions under an *Act*;

[11] It is well established that records in the custody or control of the Information and Privacy Commissioner that relate to the operational functions of his Office as an officer of the Legislature are excluded from the application of the *Act* by section 3(1)(c): [*Mr. H.*] v. *Information and Privacy Commissioner* (6 September 1996), Esson (then C.J.S.C.) as Adjudicator; [*Mr. R.*] v.

Information and Privacy Commissioner (30 June 1997), Levine J. as Adjudicator; *[Mr. R.] v. Information and Privacy Commissioner* (22 September 1997), Bauman J. as Adjudicator; *[Mr. G.] v. Information and Privacy Commissioner* (10 November 1997), Bauman J, as Adjudicator; *F.G.B. v. Information and Privacy Commissioner* (4 August 1998), Levine J. as Adjudicator.

[12] The Commissioner's operational functions include monitoring compliance by other public bodies, investigating complaints, promoting public awareness of the *Act* and deciding on applications made under section 43 of the *Act* whether to authorize other public bodies to disregard access requests (*F.G.B.* (4 August 1998)). Records created in carrying out these functions may include:

...case management or tracking sheets or lists, notes and working papers (including draft documents) of the Commissioner or his staff, and any other case specific records received or created by the Commissioner's office in the course of opening, processing, investigating, mediating, settling, inquiring into, considering, taking action on or deciding a case. (*[Mr. R.]* (30 June 1996)).

[13] The records of the Commissioner to which F.G.B. requests corrections are records created in the course of investigation and mediation of previous requests for review by F.G.B. under the *Act* or relate to a section 43 authorization issued against him. None of these records are subject to the *Act* and the Commissioner is therefore not required by the *Act* to respond to F.G.B.'s requests for correction.

[14] The remaining request made by F.B.G. in his letter of June 19, 1998 is for review of the time taken by the Commissioner's Office to respond to questions by F.G.B. about the Office's case management system. Information and records in the case management system are operational records excluded from the application of the *Act* by section 3(1)(c). Thus, neither the time taken nor the substance of the Commissioner's response to F.G.B.'s request is a proper subject for review.

[15] Thus, the *Act* has no application to the records to which F.G.B. requests correction or

access, I therefore dispose of this application for review, pursuant to sections 65(2) and 58(1) of the *Act*, by confirming the decisions of the Commissioner.

Risa E. Levine

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**Adjudication No 13 – Supplemental decision
July 5, 2000**

IN THE MATTER OF:

THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

AND IN THE MATTER OF:

**AN ADJUDICATION UNDER SECTION 62,
REQUESTED BY F. G. B. ON JUNE 19, 1998**

SUPPLEMENTAL

**REASONS FOR DECISION
OF THE
HONOURABLE MADAM JUSTICE LEVINE**

[1] On May 17, 2000, I issued Reasons for Decision dismissing the request made on June 19, 1998 by F.G.B. for review by an adjudicator of certain matters relating to his dealings with the Office of the Information and Privacy Commissioner.

[2] At the time those Reasons were issued, F.G.B. had not responded to my requests for submissions. F.G.B. wrote to me on May 24 and May 29, 2000, advising that he had not received my correspondence. I granted him further time to make submissions, which were received by me on June 14, 2000. Counsel for the Commissioner wrote to me on June 16, 2000, advising that the Commissioner would not seek to file a reply submission

[3] In my decision of May 17, 2000, I dismissed F.G.B.'s application for review on the grounds

that the records to which he requested corrections to his personal information or access are records of the Commissioner that are excluded from the application of the *Freedom of Information and Protection of Privacy Act* under section 3(1)(c).

[4] I have reviewed and considered F.G.B.'s submissions. It is clear that F.G.B. has a sophisticated understanding of the *Act*. He is also familiar with the previous decisions of adjudicators which have dealt with the distinction between the role of the Commissioner as an Officer of the Legislature and his role as the head of a public body, the role of an adjudicator and the ambit of section 3(1)(c) of the *Act*.

[5] Based on the provisions of the *Act* and the previous decisions on these questions, despite F.G.B.'s thorough submissions, my decision is confirmed.

[6] I did not address in my May 17, 2000 decision the request by F.G.B. that the Commissioner consent to review of this matter by the Ombudsman. An adjudicator may agree to review by the Ombudsman, pursuant to sections 61(2) and 50 of the *Act*.

[7] I am of the view that further review of this matter by the Ombudsman would not "expeditiously resolve the issues of this appeal at minimal expenses to F.G.B. and the taxpayers", as argued by F.G.B. F.G.B.'s requests to the Commissioner, which are the subject-matter of this review, are matters of detail that come at the end of a long process of review, investigation, mediation and orders issued by the Commissioner. A further review by the Ombudsman is not warranted.

[8] F.G.B. raises one particular matter in his submissions to which I respond with the following comment. He points out that when the Commissioner releases personal information from his case management systems, which pertains exclusively to the "operational functions" of his office as an Officer of the Legislature, it is possible that some of the released information might be incorrect or be an invasion of an individual's privacy. Given the structure of the *Act* and this decision, the individual may be without a remedy under the *Act*.

[9] While the release of such information may not be subject to the *Act*, the Commissioner will undoubtedly honour the purposes of the *Act* with respect to any release of information by his office: see *[Mr. H.] v. Information and Privacy Commissioner* (6 September 1996), Esson (then C.J.S.C.) as Adjudicator, at p.7. This comment should not be taken to suggest that the Commissioner has failed in any manner to honour the purposes of the *Act* in this case.

[10] In the result, my decision of May 17, 2000 is confirmed.

R.E. Levine