

Date: 20030728

Place: New Westminster

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 C.F. ON DECEMBER 1, 2002

REASONS FOR DECISION

OF THE

HONOURABLE MADAM JUSTICE D. SMITH

I. Introduction

[1] On November 3, 2002, C.F. wrote to the Office of the Information and Privacy Commissioner (the "Commissioner") requesting copies of everything in the Commissioner's file #13223 pursuant to the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 (the "Act").

[2] The Commissioner replied to C.F. on November 21, 2002. C.F. denying access to the records he requested. The Commissioner explained that the "records were created by or for this Office and are therefore outside the scope of the Act by virtue of s. 3(1)(c)."

[3] In response, C.F. applied pursuant to s. 62 of the Act for a review of the decision made by the Commissioner in response to his access request.

[4] Section 62 of the Act provides for the appointment of an adjudicator to investigate and review decisions by the Commissioner regarding the disclosure of records in the custody or under the control of the Commissioner.

II. Background

[5] C.F. claims that members of the Vancouver Police Department (the "VPD") have terrorized and brutalized him over the years. According to C.F., he has generated a series of complaints against VPD members as a result.

[6] On April 24, 2001, C.F. wrote the Information and Privacy Unit of the VPD requesting a copy of a complaint he claims to have made against a detective. This complaint is alleged to have been made in late 1993.

[7] The Information and Privacy Unit of the VPD wrote C.F. on May 1, 2001, advising him that they were unable to locate any information with respect to his request.

[8] C.F. was not satisfied with this response. On May 7, 2001, he wrote the Commissioner to request a review of the

VPD's failure to locate the information. As a result of this request, the Commissioner opened file #13223 and assigned a mediator to attempt to resolve the dispute.

[9] According to the materials on file, the matter was successfully mediated and the file closed on August 7, 2001.

[10] C.F. then transferred his energies to the Commissioner, requesting copies of everything in file #13223 as indicated above. The Commissioner's response resulted in an application for adjudication under s. 62, and I was appointed as adjudicator.

[11] The refusal to disclose records relying on s. 3(1)(c) is subject to review by an adjudicator since it is a decision of the Commissioner as a head of a public body: **Mr. H. v.**

Information and Privacy Commissioner (September 6, 1996) Esson C.J. (as he then was) as Adjudicator, at para. 18.

[12] The issues raised by this adjudication are straightforward and have been addressed in many of the reported decisions by adjudicators from this Court: **Mr. H** (September 6, 1996); **Mr. R v. Information and Privacy Commissioner** (June 30, 1997), Levine J. as Adjudicator; **Mr. R v. Information and Privacy Commissioner** (September 22, 1997), Bauman J. as Adjudicator; **Mr. G v. Information and Privacy**

Commissioner (November 10, 1997), Bauman J. as Adjudicator; *Mr. M v. Information and Privacy Commissioner* (January 5, 1998), Smith J. as Adjudicator; *Mr. H v. Information and Privacy Commissioner* (May 7, 1998), Smith J. as Adjudicator; *F.G.B. v. Information and Privacy Commissioner* (March 1, 1999), Levine J. as Adjudicator; *F.G.B. v. Information and Privacy Commissioner* (May 17, 2000), Levine J. as Adjudicator.

III. Issue

[13] Are the contents of the Commissioner's file #13223 operational records that fall outside the scope of the disclosure requirements under section 3(1)(b) of the **Act**?

IV. Discussion

[14] C.F. made his request pursuant to section 4 of the **Act**.

That section indicates:

4 (1) A person who makes a request ... has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

[15] Schedule 1 to the **Act** includes a definition of "public body". It provides:

"public body" means

...

(b) an agency, board, commission, corporation, office or other body designated in, or added by regulation to, Schedule 2,...

[16] The Commissioner is included in Schedule 2 to the Act. As a result, the Commissioner is a "public body" for the purposes of the Act.

[17] Section 57 of the **Act** places the burden on the Commissioner to prove that C.F. has no right of access to the undisclosed record. The Commissioner relied on s. 3(1)(c) in his letter to C.F. of November 21, 2002.

[18] Section 3(1) establishes the scope of the Act and lists a number of records to which the **Act** does not apply. The section states:

3(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

...

(c) 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;

[19] Schedule 1 to the Act defines "record" as including: "books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical, or

other means, but does not include a computer program or any other mechanism that produces records".

[20] Any record specific to a case file is an operational record related to the exercise of the Commissioner's functions under the **Act** and is therefore excluded from the legislative scheme pursuant to s. 3(1)(c): **Mr. R** (June 30, 1997), para. 16-18.

[21] Records specific to a case file were held by Levine J. to include the following:

Case management or tracking sheets and 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: *Adjudication Order No. 3*, at para. 16-18.

[22] Schedule 1 to the **Act** also defines "officer of the Legislature". The definition includes "the Information and Privacy Commissioner". In **Mr. H** (September 6, 1996), Esson C.J. held that the Commissioner's "officer's functions under an Act" include the duties, powers or functions of the Commissioner that he or she is capable of delegating to staff or consultants to enable the Commissioner to perform the duties of that office: at para. 20. This is significant

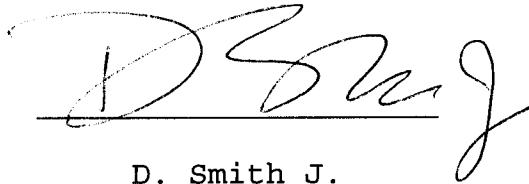
because the processing of C.F.'s request for disclosure of records was not carried out by the Commissioner personally, but by others to whom the task was delegated.

[23] Based on the provisions of the Act and the reported adjudications interpreting the Act, the contents of file #13223 will be outside the scope of the Act if they consist of records created by or for, or records that are in the custody or control of, the Commissioner in a manner that relates to the exercise of the Commissioner's function under the Act.

[24] I have reviewed the records withheld from C.F. in file #13223. The records concern notes made by the Commissioner's staff in the course of opening, processing, investigating, inquiring into, considering and deciding C.F.'s specific case file. They are clearly of an operational nature and are therefore excluded from the scope of the Act pursuant to s. 3(1)(c).

V. Conclusion

[25] For these reasons, I dispose of this adjudication pursuant to sections 58(1) and 65(2) of the Act by confirming the Commissioner's decision to refuse access to the records requested by C.F.

A handwritten signature in cursive script, appearing to read 'D. Smith J.', is written over a horizontal line. The signature is fluid and somewhat stylized.

D. Smith J.