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Place: Vancouver
File: F14-55830
Ref: 100683

In the Matter of:

**The *Freedom of Information and Protection of Privacy Act*,
R.S.B.C. 1996, c. 165**

And in the Matter of:

An Adjudication Under Section 62

Requested by K.K. on January 7, 2014

Reasons for Decision

of the

Honourable Madam Justice Gerow

Counsel for the Commissioner:	Catherine J. Boies Parker
On her own behalf:	K.K.
Written Submissions Received: (on behalf of the Commissioner)	April 30, and July 4, 2014
Written Submissions Received: (on behalf of the applicant)	n/a

[1]   Ms. K applied pursuant to s. 62 of the *Freedom of Information and Protection of Privacy Act*, R.S.B.C.1996, c. 165 [*FIPPA*], for a review of decision of the Information and Privacy Commissioner not to disclose certain documents she had requested.

[2]   On March 28, 2014, I sent a memorandum to counsel for the Commissioner and Ms. K requesting submissions on the application of s. 3(3) of the *FIPPA*, and setting out a timeline for submissions.

[3]   Counsel for the Commissioner provided the submissions to the Court within the specified time period but was unable to serve Ms. K with the submissions. There were a number of attempts made to serve Ms. K by courier and registered mail, none of which were successful.

[4]   Ms. K has not provided any submissions to the Court as requested.

[5]   On June 25, 2014, I sent a memorandum to counsel for the Commissioner and Ms. K at her address for service stating I had not received any submissions from Ms. K and asking for further submissions as to what further steps should be taken.

[6]   Counsel for the Commissioner sent a response dated July 4, 2014. No submissions have been received from Ms. K.

[7]   Counsel for the Commissioner submits the request for the review should be treated as abandoned by Ms. K, and that no further steps should be taken.

[8]   Section 65 of *FIPPA* governs the conduct and outcome of reviews and provides:

> (1) An adjudicator has the powers, duties and functions given to the commissioner by sections 54.1, 55 and 56 (1), (4) and (7), and sections 56 (2), (3), (5), (6) and (8) and 57 apply to an inquiry conducted by an adjudicator.

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> (2) On completing an inquiry, an adjudicator has the same duty to dispose of the issues, the same powers to make orders and the same duty to notify others of those orders, as the commissioner has under section 58 (1), (2), (3) (a) to (d), (4) and (5).

> (3) Sections 59 and 59.01 apply to an order of an adjudicator.

[9]   Section 56(1) provides that the adjudicator may conduct an inquiry and decide all questions of fact and law arising in the inquiry. Section 56(6) provides an inquiry must be completed within 90 days subject to s. 56(8). Section 56(7) provides the adjudicator may adjourn the inquiry to enable resolution of the matter. Section 56(8) provides that any period of adjournment will not be considered in calculating the time under s. 56(6).

[10]   The Commissioner has refused access to the requested records pursuant to s. 3(1) of the *FIPPA*, and the burden is on Commissioner to prove there is no right of access.
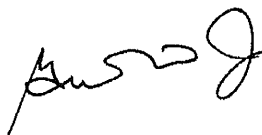
[11]   Ms. K has not participated in the Inquiry despite requests. The options are to conduct the Inquiry without her participation or discontinue the Inquiry.

[12]   I agree with the Commissioner that to carry on with the Inquiry without Ms. K's participation is an inappropriate use of public resources.

[13]   Some prior adjudications appear to have proceeded in the absence of submissions from the applicant, although submissions were received later and considered. However, I agree with the Commissioner that the better course of action is to treat the request for review as abandoned and discontinue it.

[14]   If Ms. K no longer has an interest in the requested records, there is no basis for the Inquiry to proceed. If she is interested but has missed the deadline through inadvertence, it would be unfair to proceed without her submissions.

[15]   Accordingly, I am discontinuing the Inquiry, on the basis that Ms. K may apply to reopen it.