



December 21, 2004

To the Parties:

Vancouver Island Health Authority (“VIHA”) under s. 56 of the *Freedom of Information and Protection of Privacy Act* (“Act”) regarding a request for review by an applicant under s. 52(1) of the Act—OIPC File Nos. 18354 and 18369

1. Nature of this Letter—This decision deals with VIHA’s request that I decline, under s. 56 of the Act, to proceed with an inquiry under Part 5 of the Act in relation to three access to information requests (“current requests”) described further below, that were made to VIHA under the *Freedom of Information and Protection of Privacy Act* (“Act”) by an individual (“respondent”).

For the reasons given below, I have decided to exercise my discretion, under s. 56 of the Act, not to proceed with an inquiry in this matter.

2. Background—I will first describe the context for this decision.

Original requests

On August 28, 2002, the respondent made an access request to VIHA under the Act. The request was for records contained in any file related to a complaint made by a third party. On November 4, 2002, VIHA responded to the applicant by denying access to information under s. 22 of the Act. On November 6, 2002, two days after VIHA responded, the respondent made a second access request under the Act, which VIHA treated as an update of the initial request. On December 5 and December 23, 2002, VIHA further responded by providing the applicant with records, severing some and withholding others under s. 22 of the Act and s. 46(2) of the *Adult Guardianship Act* (“AGA”). On January 6, 2003, VIHA again responded to the applicant by providing further details of its search and advising that it had not found any more records. I refer below to these two access requests, which were dealt with in Order 03-43, collectively as the “original requests”.

Because the Applicant was not satisfied with VIHA’s response or its search for records, the Applicant requested a review under Part 5 of the Act. The matter ultimately proceeded to an inquiry and, in Order 03-43, Adjudicator James Burrows held that the VIHA had fulfilled its duty under s. 6(1) of the Act in searching for records and that s. 22 of the Act required VIHA to refuse access to third party personal information in the disputed records. He decided that, in light of his conclusion regarding s. 22 of the Act, he did not need to address VIHA’s decision under the AGA.

Current requests

As indicated earlier, this decision relates to three access to information requests that the respondent made to VIHA. The first of these was dated May 19, 2003. In that request, the respondent indicated that she had been told that she would “have to make another request for information entered on the file after” her August 28, 2002 access request. She therefore specified that she “would like to access the whole file from May 23, 2002 to May 23, 2003”. In its August 1, 2003 response to this request, VIHA applied ss. 13 and 22 of the Act to some information. It also applied s. 46(2) of the AGA to some third-party information. VIHA noted that some of the records covered by the request had already been disclosed to the respondent in a previous access request and were therefore not included with VIHA’s response package.

The second of the further requests, dated June 26, 2003, asked VIHA to provide the respondent with a specified “complete file from May 23, 2002 to June 23, 2003”. On September 4, 2003, VIHA answered this request by disclosing responsive records, while severing third-party personal information under s. 22 of the Act and also severing information under s. 46(2) of the AGA. Once again, VIHA noted that some of the responsive records had already been disclosed to the respondent under an earlier access request and were therefore not included in the response.

The last of the respondent’s further requests, dated August 18, 2003, referred to the earlier request of May 19, 2003. This third request referred to an enclosure that the respondent described as “the appropriate permission form – already on file” and went on to say, referring to the May 19, 2003 request, that the respondent sought access to “this file in its entirety February 27, 2003 to present.” On September 2, 2003, VIHA answered this request by telling the respondent that it had conducted a search for records and concluded that “no file exists.” VIHA said it had been told that the records requested by the respondent would likely be located in another file, and that file had already been covered through VIHA’s response to the May 19, 2003 access request. It also indicated that some information might be in another file that was the subject of yet another access request by the respondent, to which VIHA indicated it was replying under separate cover.

In relation to the third of these requests, the respondent has raised the issue of whether VIHA, in searching for records, fulfilled its duty under s. 6(1) of the Act to search for records. In relation to the first two requests, the respondent has raised issues about VIHA’s decision to withhold information under the Act.

3. Discussion—Section 56(1) of the Act reads as follows:

Inquiry by Commissioner

56(1) If the matter is not referred to a mediator or is not settled under section 53, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

This section confers discretion as to whether to hold a Part 5 inquiry respecting a request for review. As I have noted in earlier decisions, there may be a variety of reasons why this discretion might be exercised in favour of not holding an inquiry. These will include the principles expressed in Order 02-57, [2002] B.C.I.P.C.D. No. 59, and Order 01-03, [2001] B.C.I.P.C.D. No. 3. In Order 02-57, I held that Simon Fraser University was

entitled to refuse to process an access request that clearly attempted to circumvent the effect of Order 01-16, [2001] B.C.I.P.C.D. No. 17, which involved the same records. I held that the second access request was an abuse of process and that the legal principle of *res judicata* also applied. In Order 01-03, I held that *res judicata* and the doctrine of *issue estoppel* prevented an applicant from making a second request for records that had previously been refused, with that refusal having been upheld by a decision of the previous Commissioner.

The essence of VIHA's argument, as I understand it, is that the information covered by the current requests is in all material respects the same as the information in the original request. Noting that its decision regarding the original request was upheld in Order 03-43, VIHA says there is no point in holding a Part 5 inquiry regarding the current requests, since the outcome would be the same.

To support its case, VIHA has provided me with copies of the records covered in Order 03-43 and copies of the records covered by the current requests. VIHA has provided particulars of how the kinds of information severed and withheld under the original request are essentially the same as the information withheld under the current requests. Essentially all of this information is information that would identify an individual who made a complaint. It has been withheld under both s. 22 of the Act and s. 46(2) of the AGA, as was the case in the decisions leading to Order 03-43.

I have compared the information that VIHA withheld from the two current requests under s. 22 of the Act with the information withheld in response to the original request. I have also—without considering myself, strictly speaking, bound to follow it—considered Order 03-43 (which the respondent has challenged in judicial review proceedings initiated in the last few weeks). Last, I have considered the parties' submissions in this matter.

The information that VIHA withheld from the records covered by the current requests is for all intents and purposes the same as that which it withheld under the original requests. Again, much of it is third-party personal information identifying a complainant (a complainant who has, in a submission presented in this proceeding, affirmed that she or he complained in confidence). The issues raised here are in all relevant respects the same as those addressed in Order 03-43. Nothing in the material before me, including the respondent's submission, offers any reason to think that the outcome, if a Part 5 inquiry were held into what are essentially updates to the original requests, would differ from the result in Order 03-43. I decline to hold a Part 5 inquiry in respect of the two current requests involving the withholding of information.

This leaves the third of the current requests, which raises the question of whether VIHA met its s. 6(1) duty. VIHA says this, in paras. 21-23 of its submission, about its search for records that responded to the third of the current requests:

For the purposes of request 2003-121, VIHA initially contacted Nancy Boyd, Intake Nurse for Continuing Care and Shirley Wallington, Regional Director, Decision Support Services for Central Island requesting that a search for the G.A.T. [Geriatric Assessment Team] file be conducted. On August 27, 2003, VIHA received an email from Diana Chenier, Long Term Care Nurse, Continuing Care Central Island advising that there is no separate G.A.T. file as requested. In addition, Lori Bird, the Regional Coordinator for VIHA's

Information and Privacy Office spoke with Diana Chenier and was again advised that there is no separate G.A.T. file or agency and that all records relating to the respondent and/or her mother had already been provided to Shirley Wallington, Director Decision Support in Nanaimo and Lori Bird, the Regional Coordinator in VIHA's central Information and Privacy Office. The respondent's mother was no longer receiving any services from VIHA therefore no new records had been created. In addition the Regional Coordinator was advised that any G.A.T. assessments would have been captured in either the Parksville Mental Health file or the Seniors and Ongoing Health file which were already subject to a formal access request by the respondent under that Act.

Concurrent with the mediation and inquiry process for 2002-132, the VIHA had received similar requests from the respondent including concerns that records were "missing" from the information already released in her past requests. In response to the respondent's ongoing concerns that files were "missing" the VIHA conducted another search for records as noted in paragraph number 21, not only to confirm that it had already received all records responsive to the respondent's access requests, but to make a further search for the documents which the respondent suspected might exist. Based on the further search the VIHA responded to 2003-121 by advising the respondent that no further records were located in respect of a separate G.A.T. file and that any records relating to G.A.T. would have been captured under her past request. The respondent remained dissatisfied and requested that the matter go forward for a formal inquiry (**copy of the September 12, 2003 and October 8, 2003 letters to the respondent from the OIPC is attached as Appendix 5**).

In addition, the Adjudicator for Order 03-43 found that VIHA had performed a reasonable search and that it had fulfilled its duty under s. 6(1) of the Act. VIHA states that the same principles and search efforts were conducted in relation to file 2003-121 which, as mentioned above, resulted in the Portfolio Officer for the OIPC confirming the adequacy of search for records responsive to this request. [bold in original]

The respondent has, I should note, consented to VIHA's inclusion in its submission of the two Portfolio Officer letters to which VIHA referred in bold text in the above passage.

Bearing in mind, again, that the current requests were in essence updates to the original requests, and having regard to both Order 03-43 and the material before me relating to VIHA's search efforts, I am satisfied that no inquiry should be held under Part 5 regarding the s. 6(1) issue.

Given the above, no Part 5 inquiry will be held and this office's file for the current requests will be closed.

Yours sincerely,

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia