

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 84-1996
February 22, 1996**

INQUIRY RE: The adequacy of the Vancouver Police Department's search for an applicant's records

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1. Introduction

As Information and Privacy Commissioner, I conducted an inquiry on December 28, 1995 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request by the applicant for a review of the adequacy of a search by Vancouver Police Department (the public body) for the applicant's records.

2. Documentation of the review process

The applicant first requested her records from the Vancouver Police Department on January 10, 1995. After clarification of the request, the Vancouver Police Department responded in March 1995 that it was unable to locate any records. The applicant requested a review of that response by the Office of the Information and Privacy Commissioner (the Office) in April 1995. During the following review period, the Vancouver Police Department provided the applicant with copies of its own internal memoranda about the applicant, as well as copies of its letters to the applicant. The Vancouver Police Department also provided copies of the applicant's security check records which it had previously obtained from the applicant's employer and sent to her. The Office closed the review file on the understanding that the applicant had received what she wanted.

More correspondence occurred among the Vancouver Police Department, the Office, and the applicant and, in October 1995, the applicant once again requested a review of the Vancouver Police Department's inability to locate its own copies of her criminal record check. The Office reopened the file and on November 29, 1995 issued a Notice of Written Inquiry to take place on December 28, 1995. The Vancouver Police Department, as the party with the burden of proof,

made its initial submission on December 15, 1995, the applicant replied on December 27, and the Vancouver Police Department made a brief rebuttal on December 28, 1995.

3. Issue

The issue in this case is whether the Vancouver Police Department conducted an adequate search for the applicant's records in response to her request of January 10, 1995. The relevant section of the Act is as follows:

6(1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

4. The applicant's case

The episode that led to this request for review began when the applicant made a request to the Vancouver Police Department for a criminal record search conducted in December 1991 as part of an application for employment. Some confusion resulted as to what could or could not be disclosed to her, leading to several more meetings with police officers. The applicant believes that she was given some indications that she had a criminal record when in fact she has none. (Affidavit of the Applicant, paragraph 8) She believes that this had a possible negative impact on her work with an employment agency.

The applicant also states that the police lost her file in connection with the original criminal record check. She is unhappy about the fact that there is no written record of any conversation between the Vancouver Police Department and her employer with respect to her not having a criminal record:

It is submitted that the actions of the Vancouver Police Department did not constitute a reasonable search for records relating to the applicant but rather an exercise of mishandling of information and communicating implicitly confidential information to the applicant's employment agency. (Submission of the Applicant, paragraph 11)

The applicant continues to contest the reasonableness of the search for her records by the police. In her judgment, the Vancouver Police Department's "records retrieval system as outlined in argument affidavits is so inadequate as to badly serve members of the public such as the applicant." (Submission of the Applicant, paragraph 12)

5. The Vancouver Police Department's case

The Vancouver Police Department essentially argues that it carried out a reasonable search in the context of this case. It relies for the meaning of section 6(1) of the Act on my Order No. 30-1994, November 30, 1994, pp. 6, 11, where I discussed the meaning of "reasonable effort," relying in part on the British Columbia Information and Privacy Office's *Freedom of Information and Protection of Privacy Act Policy and Procedures Manual*.

The Vancouver Police Department submits that “every reasonable effort has been made to locate the records requested by the Applicant.” The details are set out in an affidavit from a Staff Sergeant. (Submission of the Vancouver Police Department, paragraphs 5 and 6, and Affidavit of Neil V. Thompson) Any records that it may have held would have been destroyed in accordance with its document disposal schedules, before the applicant made her formal request for access on January 10, 1995. So even if her record had not been lost, it would have been destroyed in accordance with routine procedures. (Submission of the Vancouver Police Department, paragraph 10)

6. Discussion

One of the most positive benefits of the advent of the Act for municipal police forces in this province has been a dramatic improvement in records management by the police. Significant expenditures have been incurred in order to introduce appropriate record management procedures, in some cases where little or none existed before. I am well aware of this point on the basis of site visits that I have undertaken to at least half of the municipal police forces since the Act came into force for them in the fall of 1994.

My judgment about the reasonableness of the search undertaken by the Vancouver Police Department for the applicant’s records is based on the detailed affidavits prepared by a Staff Sergeant and the Information Manager. I am of the view that these efforts were considerably beyond the call of duty, given the competing priorities of the police for the maintenance of law and order.

It is unfortunate that the Vancouver Police Department in fact lost the applicant’s criminal record check on two occasions, in each case contacting the employer for a copy of what it had already sent to the company. (Affidavit of Neil V. Thompson, paragraphs 10, 12, 13, and 15) It now has policies and procedures in place for the retention and disposal of records that should minimize the likelihood of future occurrences of this sort. But the information-intensive character of municipal police work leaves the police and their civilian staff with substantial problems of records management. I have seen no evidence that the Vancouver Police Department is unaware of these problems, or unresponsive to them, at the individual or systemic level.

7. Order

Section 58(1) requires me to dispose of the issues in this inquiry by making an order under this section.

I find that the search conducted by the Vancouver Police Department in this case was reasonable within the meaning of section 6(1).

Under section 58(3)(a), I require the Vancouver Police Department to perform its duty under section 6(1) to make every reasonable effort to assist the applicant. However, as I have

found that the search conducted was reasonable, I find that the Vancouver Police Department has complied with this order and discharged its duty under section 6(1) of the Act.

David H. Flaherty
Commissioner

February 22, 1996