



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER

British Columbia  
Canada

Order 00-05

**INQUIRY REGARDING RECORDS OF THE OFFICE OF THE POLICE COMPLAINT  
COMMISSIONER**

David Loukidelis, Information and Privacy Commissioner  
February 24, 2000

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**Summary:** Respondent public body had no responsive records in its custody or under its control. Police Complaint Commissioner under Part 9 of *Police Act* is an officer of the Legislature for purposes of the Act. Applicant provided with all records in custody or under control of B.C. Police Commission.

**Key Word:** Officer of the Legislature

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, s. 3(1)(c), Schedule 1

## 1.0 INTRODUCTION

This consolidated inquiry arises out of two requests for review, each of which stemmed from two access to information requests made by the applicant, on July 17 and September 3, 1999, to the “British Columbia Police Commission”. The first request sought, generally, access to

- records “pertaining to communications between the B.C. Police Commission and its counsel” and the Vancouver Police Department (“VPD”) and the Vancouver Police Board (“VPB”) and their lawyers” in relation to the applicant’s complaints against certain VPD members; and
- records of communications between the British Columbia Police Commission (“Police Commission”), “and its counsel”, and the Office of the Police Complaint Commissioner (“OPCC”) in relation to the applicant’s complaints, as just described.

The second request sought records of all communications about the applicant, or his complaints against VPD members, between the Police Commission's registrar and various lawyers, the VPD and the OPCC. It also covered records mentioned in two documents submitted by the applicant with his second request.

These requests elicited identical responses in each case from the OPCC and not the Police Commission. In each case the applicant was told that "the Office of the Police Complaint Commissioner is unable to provide access to the records you have requested". The reason cited, in each case, was that the "information is excepted from disclosure under section s. 3(1)(c)" of the *Freedom of Information and Protection of Privacy Act*.

In turn, the applicant requested reviews, under s. 52 of the Act, of these refusals to provide access to information. The ground given by the applicant was the same in both cases:

I am seeking this review on the ground that the Police Complaint Commissioner fundamentally misconstrued the Act. Section 3(1)(c) of the Act does not apply to the records in dispute. Moreover, a former complaint commissioner has released to me similar records in the past.

## 2.0 ISSUE

The original issue before me, as set out in the notice of written inquiry, is stated as being whether the records requested by the applicant are excluded from the Act by s. 3(1)(c). That section says the Act does not apply to

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.

In light of what is said below, this issue need not be considered in this inquiry.

## 3.0 DISCUSSION

**3.1 Are There Any Responsive Police Complaint Commissioner Records?** – The initial submission of the OPCC is, in part, at odds with its responses to the applicant. In the OPCC's responses to the applicant's requests, the OPCC said the applicant could not have access to "the records you have requested". This refusal was explicitly based on s. 3(1)(c) of the Act. At paragraph 15 of its initial submission in this inquiry, however, the OPCC said, "the OPCC has no records relating to ... [the applicant's] complaints". The OPCC pointed out that any responsive records "are in the custody or control of the B.C. Police Commission ... and have been provided ... in their entirety" to the applicant.

The OPCC *may* have dealt with the applicant's two requests on the basis that the Police Commission – which ceased to exist, except for transitional purposes, on July 1, 1998 – was a separate public body under the Act for the purposes of the applicant's requests. Whether it did this is not clear from the material before me. It is not, in any case,

necessary for me to decide, for the purposes of this inquiry, whether the Police Commission is a separate public body under the Act. I make no finding on that issue.

There is no issue in this inquiry as to the completeness of the response to the applicant. The Police Commission says that all records in its custody or control were provided to the applicant without any severances. This is attested to in two affidavits submitted in this inquiry. One affidavit was sworn by the Police Commission's registrar; the other was sworn by the OPCC's information and privacy coordinator. In his reply submission, the applicant said the Police Commission has not disclosed all relevant records, but expressly declined to make that an issue in this inquiry.

I have concluded that the s. 3(1)(c) issue does not arise on the facts before me. There is no dispute before me as to whether the OPCC has any records responsive to the applicant's two access requests. The applicant did not argue this and the evidence before me that the OPCC has no such records is not contradicted. The applicant's request for review related solely to the s. 3(1)(c) issue as regards the OPCC. No issue as to adequacy of search by the OPCC has been raised under s. 6(1) of the Act.

I am satisfied, in this case, that the OPCC initially made a "decision" for the purposes of s. 8 of the Act, *i.e.*, a decision to refuse access to records. It is clear, however, from the evidence before me that this decision should have been communicated to the applicant on the basis that the OPCC has no responsive records. The OPCC need not have cited s. 3(1)(c) as the basis for the refusals. In light of the evidence before me, I find that the OPCC was authorized to refuse access to records because there were no responsive records in the custody or under the control of the OPCC.

**3.2 Meaning of Section 3(1)(c)** – Although it is not necessary to do so for the purposes of this inquiry, I feel constrained to point out, for the applicant's reference, that his contention that the OPCC "fundamentally misconstrued" s. 3(1)(c) is wrong.

In his initial submission, the applicant argued that s. 3(1)(c) does not apply to the OPCC because the OPCC is not an officer of the Legislature, as defined in Schedule 1 to the Act, and is therefore not covered by s. 3(1)(c). The applicant based this argument on the following definition of the term "officer of the Legislature", from Schedule 1 to the Act:

"officer of the Legislature" means the Auditor General, the Commissioner appointed under the *Members' Conflict of Interest Act*, the Information and Privacy Commissioner or the Ombudsman.

The applicant's copy of the Act must be out of date. Effective July 1, 1998, the above definition was amended and now reads as follows:

"officer of the Legislature" means the Auditor General, the Child, Youth and Family Advocate, the Commissioner appointed under the *Members' Conflict of Interest Act*, the police complaint commissioner appointed under Part 9 of the *Police Act*, the Information and Privacy Commissioner, the Chief Electoral Officer or the Ombudsman.

There is no doubt, therefore, that the police complaint commissioner appointed under Part 9 of the *Police Act* is – and since July 1, 1998 has been – an officer of the Legislature for the purposes of s. 3(1)(c).

**3.3 Collateral Issue Raised by the Applicant** – In his submissions, the applicant raised an issue that was not set out in the notice of written inquiry. It relates to his contention that I should, under s. 47(4) of the Act, notify the Attorney General for British Columbia of information relating to commission of an offence against an enactment of British Columbia or Canada. Even if one assumes that issue could be dealt with in an inquiry such as this, the issue is not properly raised simply because it was not set out in the notice of written inquiry.

Quite apart from this procedural basis for rejecting the applicant’s argument, nothing in the material before me – including the nature of the vague allegations made by the applicant – suggests that I should exercise my discretion, under s. 47(4) of the Act, to disclose information to the Attorney General.

#### **4.0 CONCLUSION**

For the reasons given above, I find that the decision of the Police Complaint Commissioner to refuse access to records was correct, and under s. 58(2)(b) of the Act I confirm the decision to refuse access.

February 24, 2000

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David Loukidelis  
Information and Privacy Commissioner  
for British Columbia