



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order 02-18

MINISTRY OF ATTORNEY GENERAL

David Loukidelis, Information and Privacy Commissioner
May 13, 2002

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Summary: The applicant requested records relating to the Ministry's handling of a complaint that he had made to the Ministry. The Ministry conducted an adequate search for records and is authorized by s. 14 to refuse to disclose information to the applicant.

Key Words: solicitor client privilege – legal advice.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 14.

Authorities Considered: B.C.: Order 00-26, [2000] B.C.I.P.D. No. 29; Order 00-27, [2000] B.C.I.P.D. No. 30.

1.0 INTRODUCTION

[1] In 2001, the applicant made an access request to the Ministry of Attorney General (“Ministry”), under the *Freedom of Information and Protection of Privacy Act* (“Act”). The request was for “any and all notes produced by then Attorney General Andrew Petter’s office” in relation to a complaint that the applicant or his incorporated business had made. The request specified the period between June 12, 2000 and October 16, 2000. The Ministry found and disclosed some records, and partially withheld others under ss. 13, 14 and 22 of the Act.

[2] The applicant requested a review, under Part 5 of the Act, of the Ministry’s decision. In his request for review, the applicant indicated that he believed further records existed in the Ministry’s custody or control.

[3] Through mediation by my Office, the Ministry, on two separate occasions, disclosed further information and records to the applicant. Because of these further disclosures, the applicant's request for review was narrowed to whether s. 14 authorizes the Ministry to refuse to disclose information, and whether the Ministry complied with its duty, under s. 6(1) of the Act, in searching for records.

2.0 ISSUE

[4] These are the issues I must consider here:

1. Did the Ministry conduct an adequate search for records as required by s. 6(1) of the Act?
2. Is the Ministry authorized by s. 14 of the Act to refuse to disclose records?

[5] Under s. 57(1) of the Act, the Ministry bears the burden of establishing that s. 14 applies, while previous orders have established that the Ministry also bears the burden of proof on the first issue.

3.0 DISCUSSION

[6] **3.1 Adequacy of the Ministry's Search** – Section 6(1) of the Act reads 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.

[7] It is well established that this section requires a public body to conduct an adequate search for records that respond to the access request. The public body must undertake such search efforts as a fair and rational person would find acceptable in all the circumstances. This does not impose a standard of perfection. See, for example, Order 00-26, [2000] B.C.I.P.D. No. 29.

[8] The Ministry has, to my satisfaction, established that it conducted an adequate search for records here. An affidavit sworn by Carol Elliott establishes that, in responding to the applicant's request, Ministry staff in a broad range of Ministry offices searched for responsive records. Carol Elliott is an Information and Privacy Analyst with the Ministry. She deposed that searches were undertaken in the office of the Attorney General, the Ministry's Court Services Branch, the office of the Deputy Attorney General and the Ministry's Legal Services Branch. As her affidavit indicates, the decision to search these locations within the Ministry was based on the nature of the requested records and on the judgement of experienced Ministry staff as to where any responsive records might be located within the Ministry. It is clear that extensive searches were undertaken in these various locations. I find that the Ministry's search efforts meet the s. 6(1) standard described above.

[9] The applicant appears to believe that the Ministry failed to search adequately because of references, in some of the records that the Ministry disclosed to him, to letters dated September 6, 2000 and October 2, 2000. The Ministry submits that these are the dates on which drafts of the letter the Ministry eventually sent to the applicant, in answer to his complaint, were circulated within the Ministry for comment. This appears to have caused confusion, the Ministry says, because it had initially withheld the letter's drafts entirely under s.13 of the Act, but later decided to disclose them. I accept this explanation. The references in some of the disclosed records to September 6, 2000 and October 2, 2000 do not establish that other records exist.

[10] I find that the Ministry has fulfilled its s. 6(1) duty to conduct an adequate search for records.

[11] **3.2 Solicitor Client Privilege** – Section 14 of the Act protects information that is “subject to solicitor client privilege”. The Ministry has withheld all or parts of three memorandums, as well as excerpts from a Ministry correspondence-tracking document and excerpts from the Ministry's correspondence-tracking system, known by the acronym CLIFF.

[12] The first memorandum is dated October 9, 2000. It was sent by Robert Lapper, Assistant Deputy Attorney General, to George Copley, Q.C., Senior Counsel with the Ministry. The second memorandum, dated October 11, 2000, is from George Copley to Robert Lapper. The third is an October 16, 2000 memorandum from the correspondence writer within the Legal Services Branch of the Ministry. The Ministry's correspondence-tracking document is dated October 17, 2000, and the excerpts from CLIFF, the Ministry's correspondence-tracking system, are dated October 10 and 16, 2000.

[13] Of the two kinds of common law solicitor client privilege incorporated under s. 14, the Ministry relies on that which protects confidential communications between a lawyer and client relating to the seeking or giving of legal advice. It argues that the two memorandums written by Lapper and Copley are, in their entirety, confidential communications between a lawyer and client that are directly related to the seeking or formulating or giving of legal advice.

[14] In support of its claim of privilege, the Ministry relies on an affidavit sworn by George Copley. My review of the Lapper and Copley memorandums, and George Copley's affidavit evidence, leaves me in no doubt that these two documents are, in their entirety, privileged communications between lawyer and client. As I indicated in Order 00-27, [2000] B.C.I.P.D. No. 30, the fact that a lawyer who is giving legal advice to the Ministry is employed by the Ministry does not mean there is no solicitor-client relationship between that lawyer and the Ministry.

[15] In requesting legal advice from George Copley, which Copley gave in his memorandum to Robert Lapper, Lapper was seeking legal advice on behalf of the Ministry. A solicitor-client relationship clearly existed between George Copley and the Ministry. It is also plain, on the material before me – including the contents of the two

memorandums – that they are confidential communications directly related to the seeking and giving of legal advice.

[16] I am also satisfied that the October 10 and 16, 2000 CLIFF notations that the Ministry withheld under s. 14 contain confidential communications between lawyer and client. I have reviewed the severed notations and am satisfied that they would disclose communications between Lapper and Copley related to the seeking and giving of legal advice, as reflected in Lapper memorandum and the Copley memorandum. The same conclusion applies to the information withheld by the Ministry from the correspondence-tracking document dated October 17, 2000 and the memorandum from the correspondence writer for the Ministry's Legal Services Branch.

[17] I find that s. 14 authorizes the Ministry to refuse to disclose the information it withheld under that section.

4.0 CONCLUSION

[18] For the reasons given above, I make the following orders:

1. Under s. 58(3)(a) of the Act, I confirm that the Ministry has performed its duty under s. 6(1) to assist the applicant by conducting an adequate search for records; and
2. Under s. 58(2)(b) of the Act, I confirm the Ministry's decision that s. 14 authorizes it to refuse to disclose information to the applicant that the Ministry withheld under that section.

May 13, 2002

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia