



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

February 11, 2011

Vincent Gogolek  
Director of Policy & Communications  
BC Freedom of Information and Privacy Association  
#103 - 1093 West Broadway  
VANCOUVER BC V6H 1E2

Dear Vincent Gogolek:

**Re: Complaint - Duty required by Act (adequate search/BC Ferries request)  
Office of the Premier File OOP09108;  
OIPC File F09-40331**

I write in response to a November 27, 2009 complaint filed with the Office of the Information and Privacy Commissioner ("this office") by your colleague Darrell Evans. The complaint was that the Office of the Premier ("OOP") failed in its duty under s. 6(1) under the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), to conduct an adequate search in response to FIPA's access request. I apologize for the length of time it has taken to reply to your complaint.

In accordance with s. 49 of FIPPA, the Commissioner has delegated the authority to me under s. 42(2) of FIPPA to investigate the complaint. In conducting this investigation, I am exercising the delegated power to investigate, make findings and dispose of your complaint.

On September 8, 2009, Darrell Evans requested records related to the Premier's October 22, 2008 announcement of a 33 percent reduction of BC Ferries fares and the restoration of cancelled routes. On October 14, 2009, the OOP responded by providing FIPA with responsive records. The records did not include background information related to the Premier's announcement.

In Mr. Evans's letter of November 27, 2009, he noted that one of the released documents was a letter to the Premier from the President and CEO of BC Ferries, David Hahn. In his letter, Mr. Hahn stated that he was writing in response to the Premier's proposed seat sale. Mr. Hahn's letter was dated October 20, 2008, two days before the Premier's announcement. Mr. Evans argued that this letter was suggestive that there would have been some internal discussions in the OOP prior to the Premier's announcement and, consequently, that there should be records documenting any discussions. In other words, the letter was evidence that the OOP should have more records responsive to FIPA's request.

I asked the OOP to describe the search it conducted in response to FIPA's access request and to respond specifically to the claim that Mr. Hahn's letter was evidence that more records existed.

I received a written response from the Deputy Minister to the Premier and Cabinet Secretary, Allan P. Seckel, Q.C. Mr. Seckel is the delegated head of the OOP for the purposes of FIPPA.

Mr. Seckel confirmed that a search was conducted that included the OOP's Microsoft Outlook program for emails, shared network drives, personal drives, CLIFF (a correspondence tracking system), TRIM (an electronic record management system) and on-site files. The search was conducted by personnel from the Executive Branch, Correspondence, the Deputy Minister to the Premier's Office, the Deputy Minister's Policy Secretariat, and Cabinet Operations.

With respect to Mr. Hahn's letter to the premier, Mr. Seckel provided the following explanation:

To add clarity and assist in your office's investigation, the government has contacted Mr. Hahn and can confirm the "proposal" Mr. Hahn refers to in his letter was oral, hence why no records in relation to such a "proposal" were located.

Section 6(1) of FIPPA requires public bodies to "make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely."

In Order 00-26, former Commissioner Loukidelis stated:

As I confirmed in Order 00-15, this requires a public body, in searching for records, to make such effort as a fair and rational person would find to be acceptable in all the circumstances. While s. 6(1) does not impose a standard of perfection, a public body's efforts must be thorough and comprehensive. A public body should, in an inquiry such as this, candidly describe all potential sources of records and give reasons for any decision not to look into any of those sources. It should also describe, in reasonable detail, the efforts it actually made to search for records, including by describing the sources checked, how it actually did the searches and how much time it spent on the searches.

Based on Mr. Seckel's description of the OOP's search efforts and his explanation for the absence of any records related to the Premier's October 22, 2008 announcement, I find that the OOP has made every reasonable effort to respond completely and has fulfilled its duty under s. 6(1) of FIPPA. Accordingly, this investigation has been concluded and our file is closed.

If you have any questions about my findings or about my investigation, please call me at (250) 356-2529.

Sincerely,



Patrick Egan  
Senior Investigator

cc: C. Elbahir, Manager, Access and Records Services  
IAO, Shared Services BC, Ministry of Citizens' Services