



January 27, 2014

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

Dear Vincent Gogolek:

**Re: Complaint - Duty required by Act;  
Ministry of Health File HTH-2012-00228;  
OIPC File F13-53983**

I am writing in response to your complaint that the Ministry of Health (the Ministry) failed to conduct an adequate search for records as required by section 6 of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

The authority for the Commissioner to investigate such complaints is contained in section 42(2) of the FIPPA. As authorized by section 49 of FIPPA, the Commissioner has delegated the authority to me to conduct the investigation into your complaint. In conducting this investigation, I am exercising the delegated authority to investigate and dispose of your complaint.

### **Background**

On October 25, 2012, you made a request to the Ministry for "copies of all correspondence including but not limited to, e mails, phone records, BBM messages, etc., from April 1, 2012 to present between the former Minister of Health, the Hon. Michael de Jong, the current Minister, the Hon. Margaret MacDiarmid and their offices, and the Burnaby Hospital Community Consultation Committee or any members thereof." You further stated that "We are specifically requesting (but not limiting the request to) any e mail correspondence between the Ministers and this Committee and its members which took place through private or non-Ministry services (eg. Gmail, Hotmail, etc)."

On May 15, 2013 the Ministry responded to your request and enclosed copies of records located in response to your request.

On June 26, 2013, you complained to this office that the Ministry had failed in their search efforts to respond openly, accurately and completely as required by section 6 of FIPPA. In support of your complaint, you provided a copy of a Vancouver Sun news article dated October 25, 2012 that referred to, among other leaked e-mails, an e-mail sent to Honourable MacDiarmid at her personal e-mail address from a member of the Burnaby Hospital Consultation Committee on the subject of the consultation process. You did not supply this same document to the Ministry at the time of your request.

Following a telephone conversation with you on October 8, 2013, you clarified that the focus of your request related to "e mails similar to those referred to in the Vancouver Sun story." You also advised that your request included "not just the ones referred to by Minister MacDiarmid, but any others sent to or replied to by Minister de Jong and his staff."

Given that your complaint was made with respect to the Ministry of Health's response to your request for records, my investigation will include information exchanged between the Finance Minister de Jong and the Ministry of Health on the Burnaby Hospital Consultation Committee. Any records "sent to or replied to by Minister de Jong and his staff" related to this topic but not within the above noted parameters would be under the custody and control of the Ministry of Finance and will not form part of this complaint.

On that same date, I provided the ministry with the wording of your clarification with respect to records held by that ministry and a copy of the October 25, 2012 Vancouver Sun article.

### **Analysis**

The standard required in searching for records, is that a public body must do that which a fair and rational person would expect to be done or consider acceptable. The search must be thorough and comprehensive.

In addition to the initial search for records, the ministry conducted a second search based upon the clarification provided by you. The initial search was conducted by Lindsay Coburn who at the time of your request was the Ministerial Assistant to the Honourable Margaret MacDiarmid. In gathering records within the scope of your request, Ms. Coburn requested that all of the individuals named in the request conduct a search of both e-mail and hard copy files and provide the records to her. She also searched her own e-mail records and office files.

On January 21, 2014, I had a telephone conversation with former Minister MacDiarmid and she confirmed that at the time of the original request she personally searched both her home and government e-mail accounts and provided any information related to the Burnaby Hospital Consultation Committee.

The second search was conducted by Mario Miniaci, Ministerial Assistant to the Honourable Terry Lake, current Minister of Health. Mr. Miniaci advised that both archived and active electronic and hard copy records in the Minister's office were searched. With respect to the electronic search he used the following search criteria: "Burnaby", "Burnaby Hospital", "Burnaby Hospital Committee", "Fraser Health Burnaby", "Fraser Health Hospital Committee", and "Burnaby Hospital Community Consultation Committee." He advised that the search areas consisted of CLIFF and all e-mail accounts of office staff including the Minister.

At the time of your request, Ms. Lindsay, Ministerial Assistant to Honourable MacDiarmid, advised me that the office followed government record keeping policy. Specifically, she advised that e-mail records would be regularly reviewed and a determination made whether the record had substantive value (i.e. documenting a decision) or whether the record would be considered to have only transitory value. Based upon this assessment, e-mail records of substantive value would be printed and filed and e-mail records considered to be transitory would be destroyed.

The Ministry of Innovation, Technology and Citizens' Services' website provides a summary of the legislatively approved Transitory Records Schedule 102901 as follows:

Transitory records are records of temporary usefulness that are not an integral part of an administrative or operational record series, that are not regularly filed with standard records or filing systems, and that are only required for a limited period of time for the completion of a routine action or the preparation of an ongoing record.

Transitory records are not required to meet statutory obligations or to sustain administrative or operational functions. Originals or copies required for statutory, legal, fiscal, administrative or operational purposes will be retained in a regular filing system and disposed of separately in accord with the Document Disposal Act.

Ms. Lindsay further advises that, given the description of the specific record requested (the record referred to in the Vancouver Sun article), it is likely that if that record had been contained in the office files that it would have been considered transitory and disposed of accordingly.

### **Summary**

Based on the information that the Ministry has provided, I have sufficient information to conduct an assessment of the adequacy of its search efforts.

The standard of searches that the Commissioner has required in relevant Orders is one of reasonableness. The question is whether a reasonable person would consider that the public body has made a reasonable search of all file banks where it would be logical that files containing the requested records would be located. In this case, the Ministry has undertaken two searches for the requested records. I am satisfied that the Ministry has searched everywhere where it was reasonable to expect records would be located.

Therefore, I find that the Ministry has conducted an adequate search for records within the meaning of section 6 of FIPPA.

Under my delegated authority to investigate and resolve complaints, I consider this matter resolved and I will close this file. Please feel free to call me at 250-953-4131 or toll free at 1-800-663-7867 if you have any questions regarding this matter. By copy of this letter, I am advising the Ministry of my findings in this matter.

Sincerely,



Jacquie Edwards  
Investigator

Cc: M. Vanzetta