



B.C. Government and Service Employees' Union
A component of NUPGE (CLC)

August 4, 2011

Via fax: 250-387-1696

Elizabeth Denham
Information and Privacy Commissioner
PO Box 9038 Stn Prov Govt
4th Floor, 947 Fort Street
Victoria, BC V8W 9A4

Dear Ms. Denham:

Re: Request for review (Ministry file #292-30/CLB-2011-00012)

Pursuant to section 52 of the *Freedom of Information and Protection of Privacy Act* (the "Act"), I write to ask for a review of a decision related my request for records in the custody or under the control of Community Living British Columbia ("CLBC"). My request was assigned the above-noted file number by the Ministry of Labour, Citizens' Services and Open Government (the "Ministry").

Original request

On May 30, 2011, I asked for the following CLBC records:

1. Records showing:
 - ♦ the number of Emergency Requests for CLBC-funded supports for individuals and families in 2010 and 2011;
 - ♦ the dates when these Emergency Requests were made;
 - ♦ the status of these Emergency Requests (i.e. whether the requested funded supports have or have not been provided); and
 - ♦ with respect to the Emergency Requests that have been satisfied (i.e. the requested funded supports have been provided), the dates when these emergency requests were satisfied.
2. Records showing the number of individuals and families who have outstanding requests for funded supports and are currently waiting for funding on CLBC's Service Request Registry.
3. Records showing the number of individuals and families who made requests for CLBC-funded supports (excluding under the Personal Supports Initiative) for the years 2010 and/or 2011.

4. Records showing the number of individuals and families eligible for CLBC-funded supports (excluding under the Personal Supports Initiative) who received new funding for the years 2010 and/or 2011 (excluding funding for children in care transitioning from the Ministry of Children and Family Development).
5. Records showing the number of individuals and families who received funding for 2010 and/or 2011 for non-emergency situations (i.e. situations not meeting the criteria for raising health and safety concerns).

A copy of my original request is enclosed.

Ministry response

On July 21, 2011, Vicki Hudson, Manager, Justice/Social Team, Information Access Operations, responded to my original request. She advised, in part, as follows:

CLBC does not collect or maintain records containing information as you requested it.

With respect to parts # 1, 4 and 5, CLBC has considered whether FOIPPA requires them to create the records under section 6.... Although circumstances requiring creation of a record under section 6 do not apply, CLBC is looking into using existing data sources to respond to these portions of your request outside of FOIPPA. CLBC will respond directly on this matter.

With regard to points # 2 and 3, CLBC does not maintain service "waiting" lists for day and residential support programs. Each Request for Service is individually reviewed and addressed within the context of an individual's disability-related needs, available funds, existing services and other individual factors. Information related to individuals' requests for service is constantly updated and prioritized. Outstanding service requests are tied directly to a person's CLBC supports. Personal information such as individual case files must be protected in accordance with section 22 (harm to personal privacy) of FOIPPA...

Your access request...is now closed.

A copy of the Ministry's response is enclosed. I am asking for a review of this decision.

Reasons for requesting review

The following are my reasons for requesting a review.

Parts 1, 4 and 5 of original request

With respect to parts 1, 4 and 5 of my original request, the Ministry has indicated that CLBC does not collect or maintain records containing information as I requested it. The Ministry has also stated that circumstances requiring creation of a record under section 6 do not apply.

I take issue with this part of the Ministry's response for the following reasons.

First, section 6(1) of the Act requires CLBC to respond to my original request "completely." Yet I have received no information or evidence supporting the statement that CLBC does not keep records as I requested them. Thus, in my view, the response to my request is incomplete, and therefore inconsistent with section 6(1) of the Act.

Second, section 6(2) of the Act requires CLBC to create the records that I requested if the records can be readily created from a machine readable record. Again, I have received no information or evidence indicating that the requested records cannot be readily created. Thus, again here, the Ministry response is incomplete and runs afoul of section 6(1). Moreover, CLBC may be in breach of section 6(2).

Finally, information available on CLBC's website seems to support the conclusion that CLBC does, in fact, keep records as I requested them, or that those records can be readily created. For example, page 23 of CLBC's March 2010 service plan presents data related to the number of individuals and families who receive certain types of CLBC funding, and page 24 indicates that the sources of this data are "the PARIS service delivery management system and CLBC's accounting systems." If this data is kept or can be created via these sources, it seems entirely possible that the same is true with respect to the information requested in parts 4 and 5 of my original request.

Copies of pages 22 to 26 of CLBC's March 2010 service plan are enclosed. The complete service plan is currently available on CLBC's website.

Parts 2 and 3 of original request

With respect to parts 2 and 3 of my original request, the Ministry has indicated that CLBC does not collect or maintain records containing information as I requested it. The Ministry has also stated that CLBC does not maintain program "waiting" lists, and has suggested that the records requested constitute personal information.

I take issue with this part of the Ministry's response for the following reasons.

First, along the lines of my submissions above:

- ♦ I have received no information or evidence supporting the statement that CLBC does not keep records as I requested them, or indicating that the requested records cannot be readily created; and
- ♦ information available on CLBC's website (such as data and information in its March 2010 service plan) seems to support the conclusion that CLBC does, in fact, keep records as I requested them, or that those records can be readily created.

Second, public statements by CLBC representatives seem to indicate that CLBC does, in fact, keep (or could, in fact, readily create) records containing:

- ♦ the number of outstanding service requests (part 2 of my original request); and
- ♦ the number of requests for service in 2010 and/or 2011 (part 3 of my original request).

Specifically, this conclusion seems to be supported by statements made by Paul Sibley (CLBC Director of Regional Operations, Vancouver Coastal & North) in the following excerpt from a recent North Shore News article (enclosed):

Paul Sibley...denies that Community Living has a wait-list.

"A wait-list is a misleading term. **What we have is that we track people that have requests for service.** To call it a waitlist would suggest that people are not receiving services and quite frankly the majority of the people that have requests in for services are receiving (some) services."

CLBC uses the term "outstanding service request." The number of people that have an outstanding service request is not public information...[emphasis added].

Finally, I take issue with the suggestion that the records requested in parts 2 and 3 of my original request constitute personal information that may be withheld under section 22 of the Act. The Act defines "personal information" as "recorded information about an identifiable individual other than contact information" (see s.1 and Schedule 1). I have not requested any specific information about identifiable individuals. On the contrary, I have made two straightforward requests for aggregate statistics with no personal identifiers.

Request for review

On the basis of the information and submissions above, the relevant provisions of the Act, and the enclosed materials, I respectfully request a review of the Ministry's decision in this matter.

Please feel free to contact me with any questions or for further information.

Thank you for your consideration.

Yours truly,

Jonathan Chapnick
Staff Representative
Research

Encl.

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