



REFUSAL TO CONDUCT AN INQUIRY

under section 64.1 of the *Freedom of Information and Protection of Privacy Act*

Re: Island Regulatory and Appeals Commission

June 25, 2014

A Complainant requested that the Information and Privacy Commissioner review an alleged breach of privacy by the Island Regulatory and Appeals Commission (the “Public Body”). The complaint originates from a phone message an employee of the Public Body left for the Complainant at a third party organization. I can only review the decisions and actions of public bodies; I have no jurisdiction to review actions of a third party organization.

The Complainant sent a fax to the Public Body from a third party organization regarding two residential rental matters. An employee of the Public Body called the third party organization and left a phone message for the Complainant that read, “Your application is incomplete and can’t be processed. Please call for more information.”. It is not clear when the call was made, but the message appears to have been delivered to the Complainant. The Complainant faxed the missing information to the Public Body within four hours of the first fax. The Complainant says that the Public Body has the Complainant’s e-mail address and phone number, and that the employee had used the phone number to call the Complainant in the past. The complaint is that the employee should not have called or left a phone message for the Complainant with the third party organization.

The Public Body conducted its own internal investigation into the incident and submitted a report containing the details of its findings. The Public Body confirms that it received an application from the Complainant by fax, but it was missing a required document. The Public

Body advises that without this document it could not process the application. The matter was time-sensitive because the application and documents had to be sent to the Public Body within a limitation period. The Complainant's fax did not include an e-mail address or phone number, but the fax header included the name of the third party organization. The Public Body advises that the third party organization occasionally calls the Public Body for information or advice on residential rental matters on behalf of tenants. The employee called the third party organization, and the person responding knew the identity of the Complainant and advised the employee that the Complainant would likely be right back. In addition to her name, the employee identified herself as an employee of the Public Body, as she believed the Complainant would not recognize her name.

The Public Body submits that the disclosure was necessary and reasonable to enable the Public Body to carry out its purposes under the *Rental of Residential Property Act*. The Public Body does not consider its actions to be a violation of Part II of the *Freedom of Information and Protection of Privacy Act* (the "FOIPP Act"), but reports that it reminded its staff of best practices of leaving phone messages.

I invited the Complainant to respond to the Public Body's internal investigation. In seeking an extension, the Complainant advised "there are things not right" in the Public Body's response. I gave the Complainant four opportunities and extensions by mail, by e-mail and by phone. More than 90 days have passed since the first invitation to provide a response, but the Complainant is not willing or able to provide any submissions or evidence.

With only bald assertions without any particulars from the Complainant, I have no evidence to contradict the position of the Public Body. The Complainant's faxes are the initiating documents for two new matters, as opposed to being part of an ongoing matter. I am not aware of any ongoing matters before the Public Body, but I am aware of a public report on a matter that was before the Public Body involving the Complainant more than two years ago. The public report has a file retention notice that says it will retain the file for two years. I do not fault the Public Body for either not retaining or not retrieving the Complainant's contact information.

Section 64.1 of the *FOIPP Act* gives the Commissioner the discretion to refuse to conduct an inquiry if the circumstances warrant:

64.1 The Commissioner may refuse to conduct an inquiry pursuant to section 64 if, in the opinion of the Commissioner,

...
(b) the circumstances warrant refusing to conduct an inquiry.

A public body may use and disclose personal information for a purpose consistent with the purpose for which the information was collected or compiled. I read the Public Body's investigation report and reviewed copies of the Complainant's faxes. The Public Body had to contact the Complainant to process the application, time was of the essence and there was no phone or e-mail information on the fax. The Complainant has not backed up or elaborated on the statement that the Public Body had an e-mail address and cell phone number. From the content of the records, the use and disclosure of the personal information were limited, necessary and directly connected to the purpose of processing the Complainant's application.

I have no evidence to contradict any facts or findings of the Public Body. Based on the information I have before me, the facts and findings set out by the Public Body are reasonable and within the law. It is my opinion that the circumstances warrant refusing to conduct an inquiry. Pursuant to section 64.1 of the *FOIPP Act*, I refuse to conduct an inquiry.

Maria C. MacDonald
Information and Privacy Commissioner

Postscript re Judicial Review: Under section 62 of the FOIPP Act, upon receiving a request for review, I am to advise all parties of the review procedures. When I perform adjudicative functions, my decisions may be reviewed by the Court on judicial review.