SUPREME COURT OF BRITISH COLUMBIA REGISTRY
May 20, 2009

No. S-093711   - Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

RE: In the matter of the JUDICIAL REVIEW PROCEDURE ACT, R.S.B.C., 1996 c.241
and the FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT,
R.S.B.C, 1996, c. 165 (as amended), and in the matter of Order No, F09-06 of the
Delegate of the Information and Privacy Commissioner of British Columbia

BETWEEN:

UNIVERSITY OF BRITISH COLUMBIA   -   PETITIONER

AND:

OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER FOR BRITISH COLUMBIA,
STANLEY TROMP, UBC PROPERTIES INVESTMENT LTD.,
DISCOVERY PARKS INCORPORATED, UNIVERSITY OF
BRITISH COLUMBIA FOUNDATION, UGCC HOLDINGS
INC., UBC RESEARCH ENTERPRISES INC., B.C. RESEARCH
INC., AND UBC INVESTMENT MANAGEMENT TRUST -

RESPONDENTS

PETITION TO THE COURT

THIS IS THE PETITION OF:

UNIVERSITY OF BRITISH COLUMBIA

ON NOTICE TO:

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER FOR BRITISH
COLUMBIA;
STANLEY TROMP;
UBC PROPERTIES INVESTMENT LTD.;
DISCOVERY PARKS INCORPORATED;
UNIVERSITY OF BRITISH COLUMBIA FOUNDATION;
UGCC HOLDINGS INC.;
UBC RESEARCH ENTERPRISES INC.;
B.C. RESEARCH INC.; and

UBC INVESTMENT MANAGEMENT TRUST

AND ON NOTICE TO:
THE ATTORNEY GENERAL OF BRITISH COLUMBIA

Let all persons whose interests may be affected by the order sought TAKE NOTICE that the petitioner applies to court for the relief set out in. this petition.

APPEARANCE REQUIRED

IF YOU WISH TO BE NOTIFIED of any further proceedings, YOU MUST GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court within the Time for Appearance and YOU MUST ALSO DELIVER a copy of the "Appearance" to the petitioner's address for delivery, which is set out in this petition.

YOU OR YOUR SOLICITOR may file the "Appearance". You may obtain a form of "Appearance" at the registry.

IF YOU FAIL to file the "Appearance" within the proper Time for Appearance, the petitioner may continue this application without further notice.

TIME FOR APPEARANCE

Where this petition is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

Where this petition is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

TIME FOR RESPONSE

IF YOU WISH TO RESPOND to the application, you must, on or before the 8th day after you have entered an appearance,

(a)   deliver to the petitioner

(i)   2 copies of a response in Form 124, and

(ii)   2 copies of each affidavit on which you intend to rely at the hearing, and

(b)   deliver to every other party of record

(i)   one copy of a response in Form 124, and

(ii)   one copy of each affidavit on which you intend to rely at the hearing.

(1) The address of the registry is:

800 Smithe Street
Vancouver, BC V62 2EL

(2) The ADDRESS FOR DELIVERY is:

Fasken Martineau DuMoulin LLP
2900 - 550 Burrard Street
Vancouver, B.C. V6C 0A3

Fax number for delivery is 604-631-3232

(3) The name and office address of the Petition's Solicitor is:

Fasken Martineau DuMoulin LLP
2900 - 550 Burrard Street
Vancouver, B.C. V6C 0A3 Telephone: 604631 3131.
(Reference: Geoff Cowper 252579.00192)

The Petitioner applies for an order that:

1.   Order F09-06 issued by a Delegate of the Information and Privacy Commissioner of British Columbia and dated April21, 2009 be set aside;

2.   This Court direct the Delegate of the Information and Privacy Commissioner of British Columbia to reconsider and determine the application of section 3(l) and 4(l) of the Freedom of information and Protection of Privacy Act to the records at issue;

3.   This Court direct the Delegate of the information and Privacy Commissioner of British Columbia to determine the matter according to proper legal principles;

4.   The Petitioner be granted costs of this Petition; and,

5   The Petitioner be granted such further or other relief as this Court may consider appropriate.

The petitioner will rely on:

6.   Rules 10 and 51A, Rules of Court;

7.   Judicial Review Procedure Act, R.S.B.C. 1996, c. 241;

8.   Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165;

9.   Administrative Tribunals Act, S.B,C. 2004, c. 45;

10.   University Act, R.S.B.C. 1996, c. 468; and

11.   Business Corporations Act, S.B.C. 2002, c. 57.

At the hearing of this petition will be read the affidavit of Sharen Edgar sworn May 20, 2009, a copy of which is served herewith.

The grounds on which this application is brought are as follows:

1.   The Delegate of the Information and Privacy Commissioner of British Columbia erred in jurisdiction and law, and breached the principles of procedural fairness and natural justice, in relying on material that he found to be facts that had not been put before the Delegate as evidence in the Inquiry, and in finding that the University of British Columbia ("UBC") had control over records (the "Records at Issue") held by UBC Properties Investment Ltd. ("UBCPIL"), UBC Research Enterprises Inc. ("UBCRE") and UBC Investment Management Trust ("IMANT") for the purposes of sections 3(1) and 4(1) of the Freedom of Information and Protection of Privacy Act.

The facts upon which this petition is based are as follows:

2.   This is an application for judicial review of Order F09-06 (the "Decision") of the delegate of the Information and Privacy Commissioner of British Columbia (the "Delegate"), which arises out of an Inquiry held July 6, 2007 (the "Inquiry") under section 56 of the Freedom of Information and Protection of Privacy Act ("FIPPA").

3.   The background facts on which the Inquiry was based and the issues in the Inquiry were set out in the Notice of Inquiry dated June 13, 2007 and the Portfolio Officer's Fact Report dated June 13, 2007.

4.   The Portfolio Officer's Fact Report sets out the following:

(a)   On November 14, 2006, the Applicant submitted an access request for the most recent annual report, the salaries and expense figures of the president or CEO or highest ranking employee of the entity for the most recent fiscal year, and minutes of all meetings of the entity's governing body for 2006 to the date of the request from, amongst others, UBCPIL, UBCRE and IMANT.

(b)   On December 20, 2006, UBC responded advising that UBCPIL, UBCRE and IMANT, along with other entities, were separate legal entities and not subject to FIPPA.

(c)   Mediation was not successful and the matter proceeded to the Inquiry.

5.   UBC provided four affidavits in support of its Submissions in the Inquiry:

(a)   the affidavit of Angus Livingstone, Managing Director of the University Industry Liaison Office ("UILO"};

(b)   the affidavit of John Hepburn, Vice-President, Research of UBC;

(c)   the affidavit of Byron Braley, then Associate Vice-President, Treasury of UBC; and

(d)   the affidavit of Hubert Lai, University Counsel and then Associate Vice-President-Government Relations of UBC.

6.   Mr. Livingstone deposed to the nature and make-up of UBCRE, to the nature of the relationship between UBC and UBCRE, and to details about the Records at Issue of UBCRE.

7.   Mr. Braley deposed to:

(a)   the nature and make-up of UBCPIL, the nature of the relationship between UBC and UBCPIL and details about the Records at Issue of UBCPIL; and,

(b)   the nature and make-up of IMANT, the nature of the relationship between UBC and IMANT and details about the Records at Issue of IMANT.

8.   Mt. Lai deposed to:

(a)   the nature and make-up of UBCPIL, the nature of the relationship between UBC and UBCPIL and details about the Records at Issue of UBCPIL;

(b)   the nature and make-up of UBCRE, the nature of the relationship between UBC and UBCRE, and details about the Records at Issue of UBCRE; and,

(c)   the nature and make-up of IMANT, the nature of the relationship between UBC and IMANT and details about the Records at Issue of IMANT.

9.   IMANT provided the Affidavit of Philip Falls in support of its submissions in the Inquiry.

10.   Mr. Falls deposed to the nature and make-up of IMANT, to the nature of the relationship between UBC and IMANT and to details about the Records at Issue of IMANT.

11.   UBCPIL provided the Affidavit of Mr. Don Matheson in support of its submissions in the Inquiry.

12.   Mr. Matheson deposed that he had read paragraphs 3-11 of UBCPIL's initial submissions in the Inquiry and that to the best of his knowledge, information and belief, the facts in those paragraphs were true.

13.   Paragraphs 3-11 of UBCPIL's initial submissions in the Inquiry included information about the nature and make-up of UBCPIL, the nature of the relationship between UBC and UBCPIL and details about the Records at Issue of UBCPIL

14.   The Applicant made initial submissions in the Inquiry that are dated June 2007 (the "Applicant's Initial Submissions").

15.   The Applicant's Initial Submissions contained various references to website URLs.

16.   The Applicant made: supplementary submissions in the Inquiry that are dated February 25, 2008.

17.   UBC made Reply Submissions dated December 18, 2007.

18.   On. April 21, 2009, the Delegate issued the Decision, finding that the Records at Issue were under the control of UBC within the meaning of sections 3(1) and 4(1) of FIPPA and therefore subject to disclosure.

19.   The Delegate based his decision that the Records at Issue were under the control of UBC within the meaning of sections 3(1) and 4(1) of FIPPA primarily on the basis of the following:

(a)   the nature of the relationship between UBCPIL and UBC;

(b)   the nature of the relationship between UBCRE and UBC; and

(c)   the nature of the relationship between IMANT and UBC, and the nature of the relationship between the Record at Issue of IMANT and UBC.

20.   In the Decision, the Delegate relied, and based his decision, in part, on material

that he found to be facts that had not been put before the Delegate as evidence during the submission process in the Inquiry. Specifically, the Delegate relied on material that he found to be facts that had not been put before the Delegate from the following:

(a)   the website allegedly found at the URL: www.universitytown.ubc.ca ;

(b)   the UBCPIL website;

(c) the website allegedly found at the URL:
http://www.uilo.ubc.ca/pdf/UILOReviewProgressReport_2001.pdf ; and,

(d) the document allegedly found at the URL:
http://www.treasury.ubc.ca/assets/pdf/endowment07s.pdf

21.   The Delegate failed to provide the Petitioner with an opportunity to provide submissions on the material that he found to be facts that had not been put before the Delegate.

22.   The Petitioner says that in relying on, and proceeding to make his decision based, in part, on the material that he found to be facts that had not been put before the Delegate, the Delegate erred in jurisdiction and breathed the principles of procedural fairness and natural justice.

23.   The Petitioner says that the Delegate erred in law in finding that the Records at Issue were under the control of UBC within the meaning of sections 3(1) and 4(1) of FIPPA by;

(a)   incorrectly concluding that the nature of the relationship between UBCPIL and UBC justified a finding that the Record at issue of UBCPIL was under the control of UBC;

(b)   not properly considering whether the Record at Issue of UBCPIL was under the control of UBC:

(c)   incorrectly concluding that the nature of the relationship between UBCRE and UBC justified a finding that the Record at Issue of UBCRE was under the control of UBC;

(d)   not properly considering whether the Record at Issue of UBCRE was under the control of UBC;

(e)   incorrectly concluding that the nature of the relationship between IMANT and UBC justified a finding that the Record at Issue of IMANT was under the control of UBC;

(f)   not properly considering whether the Record at Issue of IMANT was under the control of UBC; and

(g)   not properly considering the legislated scope of FIPPA.

The Petitioner estimates that the application will take two (2) days to be heard.

Dated: May 20, 2009

D.G. Cowper

Solicitors for the Petitioner

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