



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

Decision F10-14

REGIONAL DISTRICT OF CENTRAL OKANAGAN

Celia Francis, Senior Adjudicator

November 4, 2010

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Summary: The RDCO requested under s. 56 that an inquiry not proceed in this case on the grounds that the information in dispute is the names and addresses of complainants about alleged bylaw infractions and thus clearly subject to s. 15(1)(d). It is plain and obvious that this exception applies and the respondent has not shown any basis on which an inquiry might have a different outcome. An inquiry will therefore not take place.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 56, s. 15(1)(d).

Authorities Considered: **B.C.:** Decision F07-04, [2007] B.C.I.P.C.D. No. 20; Decision F08-08, [2008] B.C.I.P.C.D. No. 26; Decision F08-11, [2008] B.C.I.P.C.D. No. 36; F07-04, [2007] B.C.I.P.C.D. No. 20; F07-02, [2007] B.C.I.P.C.D. No. 4; Order 00-01, [2000] B.C.I.P.C.D. No. 1>

1.0 INTRODUCTION

[1] The Regional District of Central Okanagan (“RDCO”) asks under s. 56 of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) that an inquiry not be held regarding the respondent’s request for review of the decision to withhold certain information. For reasons that follow, I have exercised my discretion to grant the RDCO’s request.

2.0 DISCUSSION

The access request

[2] The respondent requested information from the RDCO “regarding the names and addresses of the persons that complained about the vehicles and trailers I have sitting on my land that I am dealing with your law enforcement officer”. The RDCO treated this as a request under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) and refused access to information on the complainants under s. 15(1)(d) and s. 22(3)(b) of FIPPA. The RDCO told the respondent that it has a policy of not releasing the personal information of complainants. It added this:

This is particularly pertinent in that all of the Regional District’s bylaw enforcement is based on responding to complaints. To make the complainant’s name available to the accused would likely put a dampening effect on the number of complaints received regarding bylaw infractions, thus severely hampering the Region’s ability to enforce their duly enacted bylaws. [underlining in original]

[3] The respondent requested a review of the RDCO’s decision by this office. Mediation did not resolve the issues and the respondent requested an inquiry. At this juncture, the RDCO asked under s. 56 of FIPPA that an inquiry not be held.

Issue

Section 56(1) of the Act reads as follows:

Inquiry by Commissioner

56(1) If the matter is not referred to a mediator or is not settled under section 53, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

[4] A number of previous decisions have laid out the principles for the exercise of discretion under s. 56.¹ In Decision F08-11, I summarized the principles that govern the discretion in s. 56:

- the public body must show why an inquiry should not be held
- the respondent (the applicant for records) does not have a burden of showing why the inquiry should proceed; however, where it appears obvious from previous orders and decisions that the outcome of an inquiry will be to confirm that the public body properly applied FIPPA, the respondent must provide “some cogent basis for arguing the contrary”

¹ See, for example, Decision F07-04, [2007] B.C.I.P.C.D. No. 20; Decision F08-08, [2008] B.C.I.P.C.D. No. 26; and Decision F08-11, [2008] B.C.I.P.C.D. No. 36.

- the reasons for exercising discretion under s. 56 in favour of not holding an inquiry are open-ended and include mootness, situations where it is plain and obvious that the records fall under a particular exception or outside the scope of FIPPA, and the principles of abuse of process, *res judicata* and issue estoppel
- it must in each case be clear that there is no arguable case that merits an inquiry.²

[5] I have taken the same approach here.

The parties' arguments

[6] The RDCO argued that it is “plain and obvious” that the information in dispute falls under s. 15(1)(d) and s. 22(3)(b). The RDCO said it has a variety of bylaws, including a zoning bylaw that regulates the uses to which residents may put their properties within the RDCO. The RDCO has a “complaint-driven approach” to bylaw enforcement, by which it conducts investigations and, if necessary, begins enforcement proceedings, in response to complaints it receives from members of the public. The RDCO said that, in this case, it received complaints from third parties about the respondent’s use of his property. In response, its enforcement officer began a bylaw enforcement investigation to determine whether the provisions of the RDCO’s zoning bylaw were being contravened.³

[7] The RDCO said it does not disclose the identity of a bylaw infraction complainant, “unless required to do so by law (such as in the disclosure process if quasi-criminal enforcement proceedings are commenced)”. It said this practice is reflected in section 6.1.6 of its Policy and Procedures Manual which states that RDCO staff “do not give out the name of the person submitting the complaint”. The RDCO attached a copy of this policy as Appendix “A” to the affidavit of its Chief Bylaw Enforcement Officer. She confirmed the RDCO’s policy on bylaw investigations and deposed that she does not disclose the name of a bylaw complainant unless required by law to do so.⁴

[8] The RDCO referred to past similar cases, such as Decision F07-04, in support of its arguments. Like the public body in that case, the RDCO said it has a policy against revealing the identity of bylaw complainants and that in practice it treats such information confidentially. In the RDCO’s view, s. 15(1)(d) is “a complete answer” to the respondent’s request, although it also relies on s. 22(1). It said that the information in question was supplied in confidence and that no relevant circumstances favour its disclosure. The RDCO said the respondent’s request for review indicates that “he feels he has been poorly treated by the

² Decision F08-11, para. 8.

³ Paras. 8-10, RDCO’s submission.

⁴ Para. 11, RDCO’s submission; Mueller affidavit; Exhibit “A”, Mueller affidavit.

Regional District and others”. The RDCO notes however that Decision F07-02,⁵ a similar case, found that this factor would not change the outcome if an inquiry were held. In short, the RDCO argued, it is plain and obvious that the requested information is protected by s. 15(1)(d) and must be withheld under s. 22(1). This is consistent with previous decisions, such as Decision F06-04, Decision F07-01, Decision F07-02 and Decision F07-04, the RDCO concluded.

[9] Most of the respondent’s arguments in reply to the RDCO’s submission were not germane to the issue before me. It appears however that he objects to the RDCO’s “complaint driven” process because he thinks it improperly protects complainants. I also gather that, for a number of reasons, he considers he was “unjustly targeted” by the RDCO in this case and that an inquiry is therefore necessary.

Analysis

[10] The issue before me is whether there is an arguable issue that merits an inquiry, that is, whether it is “plain and obvious” that s. 15(1)(d) applies to the requested information.

[11] The relevant provisions are these:

Disclosure harmful to law enforcement

15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

(d) reveal the identity of a confidential source of law enforcement information

"law enforcement" means

- (a) policing, including criminal intelligence operations,
- (b) investigations that lead or could lead to a penalty or sanction being imposed, or
- (c) proceedings that lead or could lead to a penalty or sanction being imposed;

[12] The RDCO’s evidence shows these things:

- it has a policy of accepting bylaw complaints in confidence
- it does not disclose the name or other identifying information of complainants unless required to by law
- it may investigate complaints about alleged violations to see what if any “corrective action” is required

⁵ [2007] B.C.I.P.C.D. No. 4.

- it received complaints from third parties about the respondent's use of his property
- it began an investigation to determine if a zoning or other bylaw was being violated⁶

[13] The adjudicator in Decision F07-04 observed that, in Order 00-01,⁷ Commissioner Loukidelis found that municipal bylaw investigations are "law enforcement" for the purposes of s. 15(1)(d). She also noted that previous orders and decisions have said s. 15(1)(d) will apply to the type of information at issue in this case. The adjudicator then directed that no inquiry would take place in that case. I concluded the same thing in a similar case involving s. 15(1)(d) in Decision F06-04. Decision F07-01 also made a similar finding.

[14] The requested information in this case clearly falls under s. 15(1)(d). I acknowledge that the respondent does not have the burden of showing why an inquiry should not proceed. However, previous s. 56 decisions have stated that a respondent must nevertheless provide a cogent basis for arguing that an inquiry should proceed. The respondent has not done so here. His apparent dissatisfaction with the RDCO's investigation of the complaints against him does not provide any basis on which I could conclude that an inquiry on this matter would have a different outcome from previous orders and decisions on this topic.

[15] From the evidence in this case and based on past orders and decisions on this topic, I am satisfied that it is "plain and obvious" that s. 15(1)(d) protects the information. I find that there is no arguable issue in this case that merits an inquiry. Given this conclusion, I see no need to consider the s. 22(1) aspect of the RDCO's submission.

4.0 CONCLUSION

[16] For reasons given above, no inquiry will take place on this review. This office's file will therefore be closed.

November 4, 2010

ORIGINAL SIGNED BY

Celia Francis
Senior Adjudicator

OIPC File: F10-42493

⁶ Mueller affidavit and its Exhibit "A".

⁷ [2000] B.C.I.P.C.D. No. 1