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Order F17-33

CHARTERED PROFESSIONAL ACCOUNTANTS OF BRITISH COLUMBIA

Elizabeth Barker
Senior Adjudicator

June 28, 2017

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Summary: An applicant requested records from the Chartered Professional Accountants of British Columbia (CPABC). Specifically, he wanted information about the person he had nominated for a CPABC fellowship. CPABC refused to disclose some information under s. 13 (policy advice and recommendations) and s. 22 (harm to personal privacy) of FIPPA. The adjudicator found that s. 13 applied and confirmed CPABC's decision to refuse to disclose the information under that exception. There was no need to make a decision regarding s. 22.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 13(1), 13(2)(k), 13(2)(n).

Authorities Considered: BC: Order 02-38, 2002 CanLII 42472 (BCIPC); Order F07-17, 2007 CanLII 35478 (BC IPC); Order F10-15, 2010 BCIPC 24 (CanLII).

Cases Considered: *John Doe v. Ontario (Finance)*, 2014 SCC 36; *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665.

INTRODUCTION

[1] The applicant made an access request to the Chartered Professional Accountants of British Columbia (CPABC) under the *Freedom of Information and Protection of Privacy Act* (FIPPA). He asked for records related to CPABC's Member Recognition Committee. CPABC provided records but withheld some information under ss. 12(3)(b) (local public body confidences), 13 (policy advice and recommendations) and 22 (harm to personal privacy) of FIPPA.

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review CPABC's decision. During the review, the applicant narrowed his request to only the responsive records about one specific individual. For its part, CPABC decided it would no longer rely on s. 12(3)(b) to withhold that information. Mediation did not resolve the ss. 13 and 22 issues, however, and the applicant requested that they proceed to inquiry.

ISSUES

[3] The issues in this case are as follows:

1. Is CPABC authorized by s. 13 of FIPPA to refuse to disclose information to the applicant?
2. Is CPABC required by s. 22(1) of FIPPA to refuse to disclose information to the applicant?

[4] Section 57(1) of FIPPA states that the public body has the burden of proving that the applicant has no right of access to records or parts of records under s. 13(1). However, s. 57(2) places the burden on the applicant to prove that disclosure of personal information contained in the requested records would not unreasonably invade third party personal privacy pursuant to s. 22(1).

DISCUSSION

Background

[5] CPABC is the regulatory body for professional accountants in British Columbia. CPABC has the ability to elect members as "fellows" to recognize exceptional contributions to the profession.¹ During the years covered by the applicant's request, the procedure was for CPABC's Member Recognition Committee to review the fellowship nominations and reach a consensus on a list of recommended candidates.² The list was given to CPABC's Board of Directors who would decide. CPABC explains that the Board did not vote separately on each candidate, rather it voted on whether to approve the recommended list.

[6] The applicant is a CPABC member who has nominated another member to receive a CPABC fellowship. The applicant has made this same nomination several times and each time his nominee has been unsuccessful. He believes that the CPABC is not objectively applying the selection criteria.

¹ The designations are known as "FCPA designations" (i.e., fellow of the Chartered Professional Accountants).

² CPABC's March 3, 2016 decision letter and CPABC's initial submissions, para. 26.

Information in dispute

[7] The only information remaining in dispute in this case is about the individual that the applicant nominated for a fellowship. The withheld information is in discrete blocks of text on five pages taken from the “draft meeting notes” and “draft rough meeting notes” of CPABC’s Member Recognition Committee.³

Advice or Recommendations, s. 13

[8] CPABC is refusing to disclose the information in dispute under s. 13(1). The parts of s. 13 at issue in this case are as follows:

13(1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

(2) The head of a public body must not refuse to disclose under subsection (1)

...

(k) a report of a task force, committee, council or similar body that has been established to consider any matter and make reports or recommendations to a public body,

...

(n) a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.

[9] The purpose of s. 13 is to allow public bodies to engage in full and frank discussion of advice or recommendations on a proposed course of action by preventing the harm that would occur if the deliberative process of decision and policy-making were subject to excessive scrutiny. The Supreme Court of Canada explained the rationale for provisions that grant exceptions to disclosure of such information as follows:

The advice and recommendations provided by a public servant who knows that his work might one day be subject to public scrutiny is less likely to be full, free and frank, and is more likely to suffer from self-censorship. Similarly, a decision maker might hesitate to even request advice or recommendations in writing concerning a controversial matter if he knows the resulting information might be disclosed. Requiring that such advice or recommendations be disclosed risks introducing actual or perceived partisan considerations into public servants’ participation in the decision-making process.⁴

³ Pages 8, 14, 15, 47 and 48. I have reviewed the balance of the information in the records before me and I am satisfied that they do not pertain to the applicant’s nominee.

⁴ *John Doe v. Ontario (Finance)*, 2014 SCC 36 at para. 45.

[10] Section 13 has been the subject of many orders that have said that the exception applies not only when disclosure of the information would directly reveal advice and recommendations, but also when it would allow accurate inferences about the advice or recommendations.⁵

[11] The process for determining whether s. 13 applies to information involves two stages.⁶ The first is to determine whether the disclosure of the information would reveal advice or recommendations developed by or for the public body. If so, then it is necessary to consider whether the information falls within any of the categories listed in s. 13(2). If it does, the public body must not refuse to disclose the information under s. 13(1).

Parties' submissions

[12] CPABC submits that disclosing the information in dispute would reveal advice or recommendations developed by or for CPABC. Its Executive Vice President of Regulation explains that the Membership Review Committee annually reviews the fellowship nominations and reaches a consensus on a list of recommended candidates.⁷ The list is forwarded to the Board of Directors for a decision. CPABC explains that during the three years in question, the Board did not vote separately on each candidate, rather it voted on whether to approve the recommended list. CPABC also says that none of the types of information listed in s. 13(2) apply.

[13] The applicant says that the information in dispute falls under ss. 13(2)(k) and (n).⁸

Analysis and findings, s. 13

[14] The withheld information is in the Membership Review Committee's meeting notes.⁹ It reveals what the members of the committee said to each other as they discussed the strengths and weaknesses of the various nominees. There is no doubt in my mind that disclosing this information would allow one to accurately infer the recommendations the Membership Review Committee provided to the Board of Directors about who should receive a fellowship.

[15] The notes also record the Committee members' opinions about the various nominees and their professional accomplishments. In *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*¹⁰

⁵For example: Order 02-38, 2002 CanLII 42472 (BCIPC); Order F10-15, 2010 BCIPC 24 (CanLII).

⁶ Order F07-17, 2007 CanLII 35478 (BC IPC) at para 18.

⁷ CPABC's March 3, 2016 decision letter.

⁸ The balance of his submissions do not address the matters at issue in a s.13 analysis.

⁹ The first page of each set of meeting notes is labeled "Highly Confidential" and the footer on each page says "confidential".

¹⁰ 2002 BCCA 665 at para. 113.

[College] the British Columbia Court of Appeal said that “advice” includes an opinion that involves exercising judgment and skill to weigh the significance of matters of fact, including expert opinions on matters of fact on which a public body must make a decision for future action. The opinions here are “advice” in the way it has been defined by *College*.

[16] In summary, all of the withheld information is part of the CPABC’s deliberative process for determining who will become a fellow of the CPABC. I find that disclosing this information would reveal recommendations and advice developed by the Committee for the Board.

[17] The applicant’s submits that s. 13(2)(k) applies. It is not apparent to me in what way these meeting notes are a “report” and the applicant does not elaborate. The word “report” in the context of s. 13(2)(k) has not previously been discussed or defined. However, Ontario’s *Freedom of Information and Protection of Privacy Act* contains its own s. 13(2)(k) which uses almost identical language. The Ontario Information and Privacy Commissioner defines the word “report” to mean “a formal statement or account of the results of the collation and consideration of information. Generally speaking, this would not include mere observations or recordings of fact.”¹¹ I adopt this definition as a sound one that is equally applicable in the context of BC’s s. 13(2)(k).

[18] In this case, I find that draft and rough draft meeting notes do not contain the level of formality required of a “report” under s. 13(2)(k). They are notes recording what committee members said about candidates, and they lack the attention to grammar and formatting one expects of a report. There is no evidence that when the Member Recognition Committee “reports” its recommendations to the Board of Directors it provides such notes. The evidence is that they provide a list of recommended nominees. I conclude that the meeting notes are not a “report” and s. 13(2)(k) does not apply.

[19] I have also considered the applicant’s submission that s. 13(2)(n) applies. However, the Member Recognition Committee’s meeting notes definitely do not contain “a decision, including reasons”. They contain the back and forth discussion and deliberations one would expect from a group trying to reach consensus on a list of nominees. I find that s. 13(2)(n) does not apply.

[20] In conclusion, I find that disclosing the information in dispute would reveal the advice and recommendations developed by the Member Recognition Committee for CPABC’s Board of Directors. The information in dispute does not fall within any of the types of information listed in s. 13(2). Therefore, CPABC may refuse to disclose it to the applicant under s. 13(1).

¹¹ For example: Order PO-2681, 2008 CanLII 31802 (ON IPC) and Order PO-3111, 2012 CanLII 58082 (ON IPC).

Disclosure Harmful to Personal Privacy, s. 22

[21] It is unnecessary to consider whether disclosure of the information would be an unreasonable invasion of third party personal privacy under s. 22(1), given my finding that CPABC may refuse to disclose the information under s. 13(1).

CONCLUSION

[22] For the reasons provided above, I make the following order under s. 58(2) of FIPPA:

1. I confirm CPABC's decision to refuse to give the applicant access to the information in dispute pursuant s. 13(1).

June 28, 2017

ORIGINAL SIGNED BY

Elizabeth Barker, Senior Adjudicator

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