

ISSN 1198-6182

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 180-1997
August 7, 1997**

****** This Order has been subject to Judicial Review ******

**INQUIRY RE: A decision of B.C. Hydro to disclose records of correspondence with
Concerned Citizens of Squamish**

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on May 20, 1997 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review, from Concerned Citizens of Squamish (“Concerned Citizens”), of a decision of B.C. Hydro to release correspondence about that group’s objections to the development of real estate in the Squamish area by Gulf Pacific Investments (1982) Ltd. (“Gulf Pacific”).

2. Documentation of the inquiry process

On December 16, 1996 Gulf Pacific (through an agent) requested copies of all correspondence between B.C. Hydro and either of two named individuals. On January 14, 1997 B.C. Hydro wrote to those individuals informing them that the records would be released unless they could show reason why the records should be exempted from disclosure under the *Freedom of Information and Protection of Privacy Act*.

On January 28, 1997 two individuals replied, along with a third, as the “Concerned Citizens of Squamish” and objected to the release of the documents. On February 11, 1997 B.C. Hydro wrote to Concerned Citizens advising them the records were to be disclosed. Concerned Citizens then requested a review of this decision under section 52(2) of the Act.

3. Issue under review at the inquiry and the burden of proof

The issue under review is whether B.C. Hydro should use any of the exceptions set out in the Act to withhold any of the records at issue. The most relevant portions of section 22 are reproduced below:

Disclosure harmful to personal privacy

- 22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.
- (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether
 - ...
 - (e) the third party will be exposed unfairly to financial or other harm,
 - (f) the personal information has been supplied in confidence,
 - ...
 - (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.
- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
 - ...
 - (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,
 - ...
 - (d) the personal information relates to employment, occupational or educational history,
 - ...
 - (g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party,
 - (h) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation,
 -

- (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
 - ...
 - (e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff,
 - ...

Section 57 of the Act establishes the burden of proof on the parties in the inquiry.

Under section 57(3)(a), at an inquiry into a decision of the public body to give an applicant access to all or part of a record or part containing personal information that relates to a third party, it is up to the applicant to prove that the disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

Under section 57(3)(b), at an inquiry into a decision of the public body to give an applicant access to all or part of a record containing non-personal information that relates to a third party, it is up to the third party to prove that the applicant has no right of access to the record or part.

4. The records in dispute

The records in dispute comprise five letters between Concerned Citizens of Squamish and B.C. Hydro (or copied to B.C. Hydro). B.C. Hydro proposed to withhold one paragraph in a letter dated February 22, 1996.

5. Concerned Citizens of Squamish's case

Concerned Citizens objected to the disclosure of the records in dispute on the basis of an *in camera* submission. I am at liberty, however, to summarize those parts of their earlier submission to B.C. Hydro that are relevant to the present inquiry. B.C. Hydro had given Concerned Citizens notice under section 23 of the Act, which refers to sections 21 and 22. Concerned Citizens then took the view that both sections should be used to withhold the records. However, Concerned Citizens' position on the application of section 21 is not now applicable, since B.C. Hydro decided not to invoke it.

Concerned Citizens further asked me to use sections 17, 19, 22(2)(e), (f), and (h), and 22(3)(b), (d), (g), and (g.1) (now (h)) to prevent disclosure of the information in dispute.

6. Gulf Pacific's case

Gulf Pacific begins with the mistaken assumption that Concerned Citizens is a public body under the Act; that is not the case, even though it is a type of "public body"

in its functions as a public interest group. “Public body” is defined in schedule 1 to the Act as:

- (a) a ministry of the government of British Columbia,
 - (b) an agency, board, commission, corporation, office or other body designated in, or added by regulation to, Schedule 2, or
 - (c) a local public body
-

7. Discussion

The context for this inquiry is the work of a group of citizens and businesses who opposed a commercial development by Gulf Pacific in Squamish. Ultimately, Gulf Pacific elected not to proceed with the development.

Section 22: Disclosure harmful to personal privacy

It is central to my view to emphasize that the correspondence and records in dispute were written by people acting collectively as Concerned Citizens of Squamish and not by private individuals as such. The only privacy issue is whether the identities of the signatories for Concerned Citizens, and/or the names of individuals mentioned in the records themselves, can be protected from disclosure. In determining whether disclosure of the information would be an unreasonable invasion of a third party’s personal privacy, I had regard to the fact that the principals of Concerned Citizens had participated in public hearings over the proposed development in Squamish and, therefore, their names would have been a matter of public knowledge.

I agree with the submission of Gulf Pacific that Concerned Citizens of Squamish “are a public group and hence the release of their correspondence cannot be construed as an invasion” of the personal privacy of third parties. Neither Concerned Citizens, nor Gulf Pacific as such, have privacy rights in this inquiry. (See Order No. 47-1995, July 7, 1995, p.10) As Gulf Pacific argues, there is no evidence, explicit or implicit, that Concerned Citizens expressed itself in confidence.

The policy issue about disclosure

The purpose of the Act is to promote the accountability of public bodies to the public at large. What is at issue in this inquiry is the desirability of disclosing to the public, or at least to Gulf Pacific, the identities of the signatories for Concerned Citizens and the substance of submissions it made about matters in dispute in the controversy over the proposed shopping centre development. First, I note that B.C. Hydro believes that the records should be disclosed with the exception of a few lines of “personal information” contained in the letter of February 26, 1996. Secondly, there is nothing in the contents of the records themselves that has not likely been said in public debates in Squamish over the controversy. As noted below, I can find no basis in the Act to withhold any of these

records from Gulf Pacific. It is worth repeating that the purpose of the Act is to promote accountability by giving a right of access to the public, subject only to specific exceptions such as the need to protect individual privacy.

The records in dispute

The records in dispute comprise 14 pages, as follows:

- (1) Concerned Citizens of Squamish's letter to Premier Glen Clark, February 22, 1996, which was copied to the Chair of B.C. Hydro;
- (2) A four-page attachment to document 1 titled: "proposed Gulf Pacific shopping centre development." It is a memorandum from Concerned Citizens but without personal signatures;
- (3) A letter from the chair of B.C. Hydro to Concerned Citizens of Squamish, dated March 8, 1996;
- (4) A letter from the chair of Concerned Citizens of Squamish to the chair of B.C. Hydro, dated June 11, 1996;
- (5) A letter to the chair of Concerned Citizens of Squamish from the chair of B.C. Hydro, dated June 28, 1996.

B.C. Hydro decided to withhold six lines from item (1) because they contain personal information. In my view, none of this information can be withheld by B.C. Hydro on the basis of section 22 of the Act. Concerned Citizens alleges improprieties against five separate persons in these six lines. Four of these persons were public figures at the time the letter was written (three of these four are not mentioned by name), and the fifth was allegedly the campaign manager for a recently elected Squamish Councillor. Section 22(3) does not apply to any of this information. Further, the information concerning the elected Councillors can be disclosed on the basis of section 22(4)(e), since they are "members" of a public body.

Item (1) essentially consists of arguments about why B.C. Hydro should not be completing a land deal with a developer. It is signed by the chairperson, co-chairperson, residential section, and the business representative of Concerned Citizens. In my view, these individuals cannot claim privacy rights with respect to their activities on behalf of this organization.

Item (2) is similarly concerned, in more detailed fashion, with Concerned Citizens' reasons why the shopping centre development should not go forward. Internal evidence suggests that it was originally submitted to the Highway Department. The document is not signed by any signatories on behalf of Concerned Citizens.

Item (3) consists of an explanation of B.C. Hydro's general and specific positions in response to the allegations made by Concerned Citizens. Since it is a letter written by B.C. Hydro, Concerned Citizens is not in a position to control its disclosure; that is a matter for B.C. Hydro to decide, subject to the exceptions provided for in the Act.

Item (4) consists of the specific responses of Concerned Citizens to the explanations offered by B.C. Hydro. It is signed by both the chairperson and business representative.

Item (5) is another reply from the Chair of B.C. Hydro to Concerned Citizens, this time addressed to its Chairperson.

Based on my review of the records in dispute, I find no reason under section 22 of the Act to withhold any of them from disclosure to Gulf Pacific. I am satisfied on the evidence that disclosure of the identities of the signatories and names of the individuals mentioned in the correspondence would not constitute an unreasonable invasion of their personal privacy, and that Concerned Citizens has not met its burden of proof. Further, there is no reason for B.C. Hydro to consider withholding them under sections 17 and 19 of the Act, as argued by Concerned Citizens. Section 17 is not applicable because Concerned Citizens is not a "public body." Section 19 is not applicable because there is no evidence in this case to support the argument that disclosure of the information could reasonably be expected to (a) threaten anyone else's safety or mental or physical health, or (b) interfere with public safety.

Procedural objections

Gulf Pacific raised several objections related to the submission of Concerned Citizens of Squamish. The first is that the submission arrived at my Office three days after the deadline for initial submissions. Gulf Pacific also argues that since Concerned Citizens apparently received Gulf Pacific's initial submission before sending its own submission, it amounts to a reply submission which my Office's procedures do not permit. Gulf Pacific asked me to make my decision only on the basis of its own submission.

In my view, there is considerable merit to Gulf Pacific's objections. The original deadline for initial submissions from all parties was 12 noon on April 28, 1997. Concerned Citizens asked for an extension to 12 noon on May 12, 1997 to give them sufficient time to meet with their legal representative. Despite the objections of Gulf Pacific, I granted that extension. Concerned Citizens did not contact my Office until they faxed a letter on the morning of May 14, 1997, indicating that they had sent their *in camera* submission by mail, on the understanding that the deadline did not apply to *in camera* submissions, which did not need to arrive until May 20, 1997. My Office had sent a copy of Gulf Pacific's submissions to Concerned Citizens by courier on May 13, 1997 for delivery on May 14, 1997. Concerned Citizens subsequently sent their submission by courier on the afternoon of May 14, 1997, and it arrived at my Office on May 15, 1997.

The Notice of Written Inquiry clearly indicated that initial written argument and evidence, including any *in camera* material, was to be filed before the stated deadline.

The Notice indicated that a party not making an initial submission is not permitted a reply submission and also advised the parties that if I had concerns about whether any material should be received *in camera*, they would be invited to make additional representations on that issue.

In the circumstances, I could decline to accept a submission made after the deadline for receipt of submissions. I could conclude, as Gulf Pacific has, that the submission of Concerned Citizens is a reply submission rather than an initial submission and decline to consider it. I could also invite argument from both parties as to whether I should accept the submission *in camera*. Although tempted to follow the latter course of action, I recognize that the additional delays which would result would only prejudice Gulf Pacific.

I have decided to accept the *in camera* submission from Concerned Citizens. Although I have given them the benefit of the doubt with respect to their apparent misunderstanding of the directions set out in the Notice of Written Inquiry, I do so because there is no prejudice to Gulf Pacific (as is apparent from my decision) and because, ironically, any other approach would prejudice Gulf Pacific. I am taking this opportunity to remind all parties that, absent extraordinary circumstances, submissions must be filed within the established times and only particularly sensitive material should be submitted *in camera*. In this inquiry, the rationale for an *in camera* submission is both weak and incoherent.

8. Order

I find that BC Hydro was not required under sections 21 or 22 of the Act to refuse access to any parts of the records in dispute and was not authorized under any other section of the Act to refuse access to the records in dispute. Accordingly, under section 58(2)(a) of the Act, I require the head of BC Hydro to give Gulf Pacific access to all of the records in dispute.

David H. Flaherty
Commissioner

August 7, 1997