

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 101-1996  
May 14, 1996**

**INQUIRY RE: A decision by BC Hydro to release third party information contained in a record requested by an applicant**

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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 in Victoria on April 22, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision by BC Hydro (the public body) to release all of the information in a letter that it had written to a consulting engineer who was working for the third party.

**2. Documentation of the inquiry process**

On November 10, 1995, the applicant requested all records relating to the "subdivision application submission from Silver Star Developments and the subsequent design provided for them from B.C. Hydro". BC Hydro advised Silver Star Mountain Resorts Ltd. (Silver Star) that the information was going to be released. On January 4, 1996, Silver Star agreed to the release of all of the information except for the dollar amounts shown in a letter dated May 3, 1989 from BC Hydro to Wayne McGrath, a professional engineering consultant to Silver Star. BC Hydro in turn advised Silver Star that it did not agree that the dollar amounts could be withheld under section 21. On February 7, 1996, Silver Star advised my Office that it wished to have this decision reviewed.

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

The issue under review is whether the release of the dollar amounts from the record in dispute would be harmful to business interests of Silver Star and thus should be withheld under section 21 of the Act, which reads:

***Disclosure harmful to business interests of a third party***

21(1) The head of a public body must refuse to disclose to an applicant information

- (a) that would reveal
  - (i) trade secrets of a third party, or
  - ...
- (b) that is supplied, implicitly or explicitly, in confidence, and
- (c) the disclosure of which could reasonably be expected to
  - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
  - ...
  - (iii) result in undue financial loss or gain to any person or organization, or
  - ....

Under section 57(3)(b) of the Act, an inquiry into a decision 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 thereof. In this inquiry, it means that Silver Star has to prove that the applicant has no right of access to the information in dispute.

#### **4. The information in dispute**

The information in dispute is contained in a letter from BC Hydro to a Wayne McGrath, dated May 3, 1989, which appears to be a quote for service by BC Hydro. It includes amounts which represent contributions by the developer to the cost of an electrical installation.

#### **5. The applicant's case**

The applicant is evidently trying to learn why a duplex with suites on a serviced lot could not be provided with power without the lot owner making an additional expenditure on a transformer. Discussions with the developer and BC Hydro have not led to an adequate explanation of why this situation had occurred.

#### **6. Silver Star Mountain Resort's case**

Silver Star argues that the non-disclosure of the financial information in dispute is supported by the three parts of the section 21 test under the Act. I have discussed the relevant portions of its submission below.

#### **7. BC Hydro's case**

I have discussed its submission below.

## 8. Discussion

***Section 21(1)(b): The head of a public body must refuse to disclose to an applicant information ... (b) that is supplied, implicitly or explicitly, in confidence,***

BC Hydro's position in this inquiry is that the dollar amounts set out in the record in dispute do not fall within the protection of section 21, because the information was supplied by BC Hydro and not by Silver Star Mountain Resort. Thus BC Hydro determined that it has an obligation under the Act to release the records to the requester.

The difficulty facing Silver Star in this inquiry is that section 21 establishes a three-part test, each of which must be met to claim the exception successfully. Whatever the merits of Silver Star's submissions on issues of trade secrecy and harm and financial loss, it is the matter of information being "supplied in confidence" that is the crux of this inquiry.

Silver Star's position is that the financial information is not simply a quote provided by a public body but rather information that "must be placed in the context of the relationship" among the resort, its consulting engineer, and BC Hydro:

In the local community and at B.C. Hydro's Vernon Regional Office, it can, we respectfully suggest, be readily accepted that the information between these three parties passed freely but on the basis of nondisclosure with anyone outside of this relationship. This ready acceptance is based on ten years of Mr. McGrath's position as Resort's professional engineering consultant and B.C. Hydro's Regional Office dealing with McGrath/Resorts on numerous particular utility matters both large and small.

With respect to this argument, it is relevant that the record in dispute contains four separate items of financial information: the total cost for electrical service to certain lots, less the contribution by the developer for "civil work," and less the cost of equivalent overhead transformers. The resulting amount is the developer's cash contribution. All of these data are the final product of the work of BC Hydro. Silver Star did not provide me with any evidence or argument to the effect that it had supplied any of this information to Hydro as required by section 21(1)(b).

Thus the information in dispute does not meet this portion of the section 21 test as having been supplied, implicitly or explicitly, in confidence. (See Order No. 45-1995, June 13, 1995, p. 7) Accordingly, BC Hydro is required to give the applicant access to the records in dispute.

I find that Silver Star has not met its burden of proof under section 57(3)(b) of the Act and that the head of BC Hydro is neither authorized nor required to refuse access under section 21.

### ***Silver Star's related arguments***

Counsel for Silver Star finds it unacceptable for its 1989 information "that was never intended to be public" to be disclosed on an *ex post facto* basis under the relatively new Act. Counsel also objects to the fact that the information in dispute would be kept confidential if obtained from a private electrical contractor. The reality is, however, that Hydro is a public body under the Act

and not a private contractor. Moreover, the Legislature in its wisdom decided to apply the Act on a retrospective basis to all records held by public bodies.

## **9. Order**

Under section 58 (2)(a) of the Act, I require the head of BC Hydro to give access to the information in the record in dispute to the applicant.

May 14, 1996

David H. Flaherty  
Commissioner