

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 303-1999
April 15, 1999**

INQUIRY RE: A decision by the City of Cranbrook to refuse access to employment contracts

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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 March 3, 1999 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 the City of Cranbrook (the City) to refuse access to records requested by the applicant.

2. Documentation of the inquiry process

The applicant wrote to the City on September 10, 1998, to ask for “[c]opies of the present personal contracts of the following city staff: [8 named individuals].” The City wrote to the applicant on October 7, 1998 to inform him that there were “no personnel contract[s] in existence” for four of the named staff and that access to the existing employment contracts for the other four city staff was refused on the basis that they were “personal in nature.”

The applicant wrote to the Office on November 16, 1998 to request a review of the City’s response to his access request. During mediation, the applicant indicated that he wanted his access request to include available related records for those staff for whom there was no employment contract. The City then provided the portfolio officer with a resolution or letters of appointment for four staff and position description records for two of these employees. The City has already provided the applicant with both position descriptions. Since the other records remained in dispute, the Office notified both parties that the inquiry would be held on March 3, 1999.

3. Issue under review and the burden of proof

The issue under review is whether the City appropriately used section 22 to withhold the records in dispute.

The City did not initially tell the applicant of the exception(s) used to refuse access but later informed my Office that it was relying on sections 22(1) and 22(3)(d) of the Act. (The City also cited several other sections, which are not exceptions under the Act.)

In its initial submissions for this inquiry, the City sought for the first time also to rely on section 17(1) of the Act. As I have said in previous Orders, a public body is expected to identify, in its response letter to the applicant, all exceptions to disclosure relied upon in making a disclosure decision. At the latest, this should be done before the inquiry begins. In this case, however, because of my decision on the application of section 17(1), I have considered the City's submissions on this issue.

Under section 57(1) of the Act, at an inquiry into a decision to refuse an applicant access to all or part of the record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part thereof. In this case the City has the burden of proving that section 17 may be applied to the information that it has withheld under that section.

Under section 57(2), if the record or part that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy. Accordingly, the applicant has the burden of proving that disclosure of the information the City has withheld under section 22 would not unreasonably invade the personal privacy of the third parties.

The relevant sections of the Act under review are as follows:

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
 - (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,

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- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
- ...
- (d) the personal information relates to employment, occupational or educational history,
- ...
- (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,
-
- (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,
- (f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body,
- ...
- (j) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body, not including personal information that is supplied in support of the application for the benefit or is referred to in subsection (3)(c).

Disclosure harmful to the financial or economic interests of a public body

- 17(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:
- ...
- (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
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4. The records in dispute

There are four contracts of employment: one consisting of five pages, two consisting of six pages each, and one consisting of nine pages, including cover pages (for two of them) and schedules. There are also three letters addressed to individual City employees (1968, 1996, 1998) and one copy of a 1983 resolution approving the appointment of the other employee. As mentioned above, two of the letters had attached to them position descriptions, which the City has provided to the applicant.

5. Review of the records in dispute

I have reviewed the records in dispute, which consist primarily of contracts of employment with individuals. There is no personal information in the employment contracts that should not be disclosed. In fact, there is very little personal information in them beyond total salaries to be paid.

6. The applicant's case

The applicant, a taxpayer in Cranbrook, is seeking what he regards as straightforward information about "all the terms and conditions that ... eight employees work under with the city, and I felt it was my right as a taxpayer to be aware of what employment contracts the city has.... I did not expect this much trouble when I asked the initial request. I always thought that the public had the right to know where their taxes are being spent and how!"

The applicant is also at present the chairman of the Board of School Trustees of School District No. 5 (Southeast Kootenay) and is aware of the swift way that his District responds to requests for senior management contracts.

I will treat below the submissions of the applicant on the application of section 22 of the Act.

7. The City of Cranbrook's case

As discussed further below, the City has relied in particular on sections 17 and 22 of the Act to refuse access to the personal information in dispute.

8. Discussion

I am somewhat surprised to be dealing with this issue in an inquiry since, almost four years after the Act applied to municipalities, the City of Cranbrook should have been well aware of its obligations to disclose employment contracts to applicants. My previous decisions in this area are quite clearcut.

The City has submitted that the applicant, at the time of his request, was and is a member of the CUPE negotiating committee with which the City is involved in ongoing salary and other contract negotiations. With respect, the reasons for a request, or the

personal or professional status of an applicant, are irrelevant criteria for processing a request for access to information under the Act, when an applicant is asking for information that should routinely be made public.

In his reply submission, the applicant swore an affidavit to the effect that he made his access request without the knowledge or support of his local union. The President of his local also swore an affidavit to the same effect, adding that the Union accepts no responsibility for the applicant's actions in this matter, since the Union did not authorize him to do so. While all of this is interesting, it has no direct relevance to the decision that I have to make under the Act.

Section 17: Disclosure harmful to the financial or economic interests of the City

The City submits that disclosure of the employment contracts in dispute “would also unduly restrict the ability of the City Administrator to negotiate confidential agreements with senior staff, thus harming the financial or economic interests of the City.”

There are two main answers to this submission. The first is that section 17, in my view, is intended to apply to general information rather than personal information. The regime under the Act controlling the disclosure of personal information of third parties is in section 22, which I discuss below. As also noted below, the Act specifies that the income of public servants is disclosable to any applicant in order to make public bodies more accountable to the public (section 2).

With respect to section 17, I wrote in Order No. 75-1996, January 4, 1996: “In my opinion, this section protects information about ongoing or completed negotiations with, for example, unionized or excluded employees rather than information contained in agreements reached as a result of such negotiations. Thus Surrey would have the right to protect its negotiating position with a manager or a union, but not the terms of a contract.” (pp. 4-5) In this case, the records do not contain any information about the City's negotiating position with an employee. Rather, the records simply confirm established terms and conditions for the employment of eight staff.

Therefore, I find that disclosure of these records would not harm the City's financial or other interests under section 17 of the Act.

Section 22: Disclosure harmful to personal privacy of third parties

Section 22(2)(a): Disclosures for the purpose of public scrutiny

The applicant submits, essentially, that “the disclosure is desirable for the purpose of subjecting the activities of the [City of Cranbrook] to public scrutiny.” I agree that this is a relevant circumstance that the head of the City must consider in reaching its decision

on whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy.

Section 22(3)(d): Employment, occupational or educational history

As mentioned earlier, the City belatedly relied on this section for refusing access to the records. In its submissions, however, the City did not mention this exception or advance any arguments in support of its position.

Section 22(3)(f): A third party's income

The City submits that it can withhold the personal information in dispute on the basis of this subsection, because it contains the incomes of four City staff. This subsection might have some relevance, if the persons in question were not also officers, employees or members of the City staff. See section 22(4)(e) below.

Section 22(4)(e): Information about position, functions or remuneration of an employee

The applicant argues, essentially and correctly, that it is not an unreasonable invasion of a third party's personal privacy to disclose personal information, if the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body, such as the City of Cranbrook.

I also agree with the City's submission that, given my decision on the application of this subsection, "the Employment Contracts need not be released in their entirety but only those portions of the Employment Contracts dealing with the position, functions or remuneration need to be revealed and the rest of the Employment Contracts which do not deal with these matters could be severed." That is the essence of my decision below. The only personal information that should not be disclosed is the employees' home addresses, included in some of the records.

I also agree with the City "that a public servant does not totally give up privacy rights as an employee of a public body." That should have been perfectly clear from my previous Orders on such matters. See Order No. 161-1997, May 1, 1997, pp. 5-6.

Section 22(4)(f): Financial and other details of a contract to supply goods or services and

Section 22(4)(j): Discretionary benefits of a financial nature

The applicant submits that both of these provisions support disclosure of the records. However, I do not need to address these issues because of my decision regarding the application of section 22(4)(e) of the Act.

9. Order

I find that the City of Cranbrook was authorized under section 22 of the Act to refuse access to employees' home addresses where they appear in the records. Under section 58(2)(b) of the Act, I confirm the decision of the City of Cranbrook to refuse access to employees' home addresses withheld on the basis of section 22 of the Act.

I find that the City of Cranbrook was not authorized under section 17(1) or required under section 22 of the Act to refuse access to the records in dispute. Under section 58(2)(a) of the Act, I require the City of Cranbrook to give the applicant access to the records withheld under section 17(1) or section 22 of the Act, other than the information about employees' home addresses.

David H. Flaherty
Commissioner

April 15, 1999