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**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 283-1998  
December 11, 1998**

**INQUIRY RE: A Decision by the District of West Vancouver to refuse access to information related to the Upper Level Lands Steering Committee**

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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 September 16, 1998 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of an applicant's request for review of a decision by the District of West Vancouver (the District) to refuse access to records related to the work of the Upper Level Lands Steering Committee (the Steering Committee).

**2. Documentation of the inquiry process**

On November 28, 1997 the applicant submitted the following request for access to records to the District:

I hereby request all minutes, documents, plans, submittals [*sic*], alternatives, photographs, studies, and all other documents or [*sic*] the Upper Level Land Steering Committee. From inception until Dec 1997.

The District disclosed records in three phases: 91 pages of records at the end of January 1998, 343 pages at the end of February 1998, and nine more pages at the beginning of March 1998. In the first disclosure, the District applied no exceptions. In the second, it withheld approximately 80 complete records under sections 13 and 22 of the Act and severed information in one or two other items. In the third disclosure, the District applied section 22 to some information. The applicant requested a review of the District's decision in mid-March 1998.

Mediation led to the disclosure of approximately 500 more pages of records. The District severed some information in these records under sections 13, 17, 21, and 22 of the Act. The parties consented to various extensions of the review timelines throughout the mediation period, which began on March 23, 1998. In early August 1998, the applicant wished the matter to proceed to an inquiry. My Office issued a Notice of Written Inquiry to the District, the applicant, and 23 third parties.

### **3. Issue under review and the burden of proof**

The issue before me is the District's application of sections 13, 21, and 22 to portions of approximately twenty records related to the Steering Committee. The applicant also argued that section 25 was relevant. The applicant did not, however, dispute the District's application of section 17 to one record, so this issue is not before me in this inquiry.

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(1), where access to information in a record has been refused under sections 13 and 21, it is up to the public body, in this case the District of West Vancouver, to prove that the applicant has no right of access to the record or part of the record. Under section 57(2), if the record or part that the applicant is refused access to under section 22 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.

The relevant sections of the Act read as follows:

#### ***Policy advice or recommendations***

- 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)
- (a) any factual material,
  - ...
  - (i) a feasibility or technical study, including a cost estimate, relating to a policy or project of the public body,
  - ...
  - (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,
  - ...

- (m) information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy, or

....

***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

...

- (ii) commercial, financial, labour relations, scientific or technical information of a third party,

- (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,

- (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

- (iii) result in undue financial loss or gain to any person or organization, or

....

- (3) Subsections (1) and (2) do not apply if

- (a) the third party consents to the disclosure, or

....

***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

- (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,
  - (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,
  - ...
  - (e) the third party will be exposed unfairly to financial or other harm,
  - (f) the personal information has been supplied in confidence,
  - ....
- (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,
  - ....

***Information must be disclosed if in the public interest***

25(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

- ...
- (b) the disclosure of which is, for any other reason, clearly in the public interest.

**4. Procedural objections**

The District objected to the applicant submitting a further reply submission in response to the District's reply. I agree with the District's position and have not relied on the additional reply submission in rendering a decision in this inquiry.

**5. The records in dispute**

The records in dispute consist of the withheld portions of approximately twenty records:

- steering committee meeting minutes, memoranda, charts, maps and other records;

- expressions of interest from members of the public volunteering to serve on the Upper Level Lands Steering Committee; and
- correspondence from outside businesses.

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

The applicant is a resident of the District of West Vancouver. He informs me that the information in the records in dispute pertains to land use planning by the District for the upper elevations of undeveloped land on mountains which lie above the 1200 foot contour. Such land has previously been protected from development on the basis of a 1973 District policy.

In 1996 the District Council appointed a Steering Committee, which consists of its staff, public members appointed by the Council, and representatives of British Pacific Properties (the largest owner of property in the area). The applicant fears that plans are underway that would permit further development of a large pristine area. In his view, the public are not being kept fully informed of what is transpiring with respect to the work of the Steering Committee, especially the options that it is considering. The applicant further asserts that British Pacific Properties is potentially the principal beneficiary of changes to the plans for the Upper Levels area of the District.

The applicant wishes me to order disclosure of the records in dispute:

The district cannot expect there to be public confidence in its proceedings when they are conducted in secret and hidden even when disclosure has been sought. Public policy itself demands disclosure if for no other reason than to restore credibility to the process itself. (Submission of the Applicant, p. 19)

I have presented below the applicant's arguments with respect to the application of sections of the Act to specific records in dispute.

## **7. The District of West Vancouver's case**

The District informed me that the Steering Committee has not completed its deliberations and has not presented District Council with any of its draft policy options or recommendations. (Submission of the District, para. 11) I present its specific arguments below.

## **8. The Third Parties' Case**

One of the applicants for a position on the Steering Committee sent me notice that he objects to the disclosure of his unsuccessful application.

Two consulting companies engaged by the Steering Committee objected to the disclosure of certain confidential business information to the applicant. Catherine Berris Associates Inc. objected to the disclosure of unit pricing. Hugh Hamilton Limited objected only to the disclosure of the methodology used and the budgeting and costing of the work performed “in a highly competitive field.” The company agreed to the disclosure of other financial information. I note, with satisfaction, that the maps it produced for the District are also available for purchase and at the West Vancouver Public Library.

With respect to a record from British Pacific Properties, it has now consented to its disclosure to the applicant, and I have been notified that the disclosure has occurred. (Reply Submission of the Applicant, p. 7)

## 9. Discussion

***Section 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.***

The applicant repeatedly attempts to make an argument that since a representative of British Pacific Properties serves on the Steering Committee, the contents of its policy work is somehow already public and should be disclosed to him. The District Council decided on the membership of this Steering Committee, which itself has been meeting *in camera*. Those are appropriate choices for the District to make, which have no relevance to a decision on access to resulting records under the Act. It is well beyond my jurisdiction to have a view on whether such a committee was properly constituted. (Reply Submission of the Applicant, pp. 1-4)

I also have no information as to whether the presence of a representative of British Pacific Properties on the Steering Committee means that the company thus has direct access to the ongoing deliberations of the committee, including the options it may be considering. I hope the Steering Committee made its own rules on the confidentiality of its proceedings. If the applicant considers the composition of the Steering Committee to be unfair, he may file a complaint with the office of the Ombudsman, which is the agency charged with reviewing allegations of administrative unfairness.

The applicant especially seeks access to the minutes and working drafts of the Steering Committee. He also wants access to the minutes, notes, or reports of eight public meetings that the Steering Committee has held:

Without an understanding of the options being considered, the Applicant cannot reasonably be expected to provide comment or to determine what experts or other persons to employ to evaluate the environmental effects of changes to policy being considered. (Submission of the Applicant, p. 4)

Further, he submits that he has a right of access to the research done by the Steering Committee and the policy options that it is discussing, especially on the basis of section 13(2)(k) of the Act. Moreover, the District should exercise its discretion to disclose on the basis of section 13.

I should note that the applicant did receive the minutes, notes, and reports of the Steering Committee with the options severed.

The District has appropriately cited a number of my Orders with respect to the application of section 13 to draft policy advice or recommendations, including Order No. 212-1998, January 16, 1998, pp. 3, 4; Order No. 215-1998, February 23, 1998, pp. 3-4; and Order No. 231-1998, April 28, 1998. (Submission of the District, paras. 16 to 19) The District has also pointed out that the purpose of the Steering Committee is to make recommendations and to give advice to the District Council, which itself makes land use policy decisions. (Reply Submission of the District, para. 16)

The District submits that it has appropriately severed information, under section 13(1) of the Act, from records 7, 10, 21, 22, 23, 28, 30, 40, 41, 44, and 140: “The District submits that the severed records all deal with various options considered by the Committee in discharging its mandate to provide advice and recommendations to Council regarding land use on the Upper Levels lands.” (Submission, paras. 21 to 24) Based on my detailed review of the severances in the records in dispute, I find that the Steering Committee has the right, under section 13 of the Act, to conduct its business within a zone of confidentiality.

***Section 21: Disclosure harmful to the business interests of a third party***

The applicant objects to the severing of cost estimates, unit prices, and hourly rates from the records of consultants retained by the Steering Committee. The District states that it has severed third party business information from the released records.

The District had severed several records in this regard. One bidder explicitly stipulated that detailed cost estimates set out in its proposals were to remain confidential. It did so at the invitation of the District in its Request for Proposals (which I view as sound public policy under the Act). The District disclosed the total cost of the services rendered by this particular consultant but not the unit prices. The applicant is satisfied with the responses of this company, Hugh Hamilton Ltd. He also states that he does not require any further information pertaining to Catherine Berris Associates Inc. (Reply Submission of the Applicant, p. 5)

The District has severed information from records 12, 37, 38 and 118 on the basis of section 21 of the Act. In particular, it has released total charges and some sub-totals for Hugh Hamilton Ltd. but not the detailed amounts. I agree that the information severed is financial information of the third party that was submitted in confidence and

that its disclosure could cause harm to the financial interests of the third party. This meets the three-part test set out under section 21. I am aware, of course, that the applicant, in his reply submission, states that he is satisfied with the disclosure from both third parties.

***Section 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.***

The District has severed five records on the basis of this section. The applicant believes that this includes the names of persons involved in certain aspects of the planning process. The District informed me that the most significant examples of personal information in the records not released to the applicant are letters, applications, and résumés submitted by prospective members of the Steering Committee: “Those résumés contain information about the educational history, employment history and other personal particulars of individuals who applied to serve on the Committee.” (Submission of the District, para. 12)

The District submits that its severing of personal information from several records was carried out in compliance with section 22(3)(d) of the Act, especially as it pertains to private individuals offering to serve as a volunteer on the Steering Committee (some of whom were not selected). (Submission of the District, para. 28, 29) I agree with the submission of the District that disclosing the names of *unsuccessful* applicants for such service would be an unreasonable invasion of their privacy on the basis of section 22 of the Act.

The applicant has also agreed that he does not now seek the personal data of unsuccessful applicants. (Reply Submission of the Applicant, p. 5) But he does seek the personal data of the successful applicants now serving on the Steering Committee.

The District asked interested persons to complete a form titled “Expression of Interest to sit on the Upper Levels Lands Sector Plan Steering Committee.” Applicants filled out narrative responses to a series of common questions. There is an argument to be made under the Act for such records of *successful* applicants to be disclosed in the interests of accountability of a public body. But this would require advance notice to all applicants at the time of application that their responses could become a public record, so that the presumption against disclosure in section 22(3)(d) might be overcome. I find that these forms, or letters or résumés submitted in place of a form, pertaining to successful applicants, may properly be withheld under section 22(3)(d) of the Act.

The District has also severed names from records 57, 78, and 88. The names on the first two records appear to be those of district residents who had asked questions about the planning process and who received responses. These are correctly withheld on the basis of section 22 of the Act. The names on record 88 are those of individuals from



the public who volunteered unsuccessfully to serve on the Steering Committee. I find that their names and résumés can be similarly withheld.

The applicant has not met his burden of proof on the application of section 22.

***Section 25(1): Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information ... (b) the disclosure of which is, for any other reason, clearly in the public interest.***

The applicant believes that the records in dispute should be disclosed on the basis of section 25 of the Act, because it is clearly in the public interest to do so. In response, I agree with the submission of the District that “nothing in the circumstances of this matter comes close to approaching the degree of important and pressing urgency or importance that you [the Commissioner] have required in previous orders with respect to a s. 25 public interest disclosure.” (Reply Submission of the District, p. 8)

## **10. Order**

I find that in the application of each of the sections of the Act reviewed in the discussion above, the District of West Vancouver is either authorized (section 13(1)) or required (sections 21 and 22) to withhold the information or records which are at issue in this inquiry.

Accordingly, I confirm the decision of the head of the District of West Vancouver to refuse access to specific information under section 13(1), and I require the head to refuse access to specific information under sections 21 and 22.

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David H. Flaherty  
Commissioner

December 11, 1998