

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 288-1999
January 12, 1999**

INQUIRY RE: Requests for a record relating to superferry construction in the custody or under the control of the Job Protection Commission and the British Columbia Ferry Corporation

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1. Description of the review

This Order relates to an inquiry conducted by the Director of the Office of the Information and Privacy Commissioner (the Director) concerning two requests for review of decisions of the British Columbia Ferry Corporation and the Job Protection Commission to sever and withhold a report (the record) relating to the contract for the construction of two superferries. The Director also conducted a second inquiry concerning the same record, but involving a different applicant and the British Columbia Ferry Corporation.

I disqualified myself from this inquiry because of a personal interest. On April 7, 1998, I delegated authority to conduct reviews to the Director pursuant to section 49 of the *Freedom of Information and Protection of Privacy Act* (the Act) which provides as follows:

Delegation by commissioner

- 49(1) The commissioner may delegate to any person any duty, power or function of the commissioner under this Act, except
- (a) the power to delegate under this section,
 - (b) the power to examine information described in section 12(1) and (2) or 15 (Cabinet confidences and information harmful to law enforcement), and

- (c) the duties, powers and functions specified in section 42(1)(b), 43 or 58.
- (2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the commissioner considers appropriate.

Although section 49 authorizes delegation of authority to conduct inquiries under section 56 of the Act, it does not authorize delegation of my authority to make orders under section 58.

On May 14, 1998, the Director advised the applicants and the public bodies of the process to be followed:

I will be conducting this inquiry independent of the Commissioner who has disqualified himself from this matter because of personal interest. The Commissioner has had no involvement in the investigation or mediation of this matter and will have no involvement in the inquiry. He will be executing the order I recommend as a result of the inquiry, however, because section 49(1)(c) of the Act prohibits the Commissioner from delegating the authority to make orders under section 58 of the Act.

No objections were raised to the process outlined in this letter.

The Director completed the inquiry and prepared a report, a copy of which is attached to this Order. I took no part in the inquiry or the preparation of the report. After receiving the Director's report, I reviewed the submissions and the record in dispute. I have adopted the Director's recommendations without variation in this Order.

2. Order

I accept the recommendations of the Director of the Office of the Information and Privacy Commissioner set out in the attached report and make the following Orders:

I find that the British Columbia Ferry Corporation and the Job Protection Commission were authorized to withhold the information severed from part 4 of the record under section 13(1) of the Act. Under section 58(2)(b) of the Act, I confirm that the British Columbia Ferry Corporation and the Job Protection Commission were authorized to refuse access.

I find that the British Columbia Ferry Corporation and the Job Protection Commission were not authorized to withhold the information severed from page 10 of the record under section 13(1) of the Act. However, I find that the British Columbia Ferry Corporation and the Job Protection Commission were authorized to withhold the information severed from page 10 of the record under section 17 of the Act. Under section 58(2)(b) of the Act, I confirm that the British Columbia Ferry Corporation and the

Job Protection Commission were authorized to refuse access to the information severed from page 10 under section 17 of the Act.

I find that the British Columbia Ferry Corporation and the Job Protection Commission were authorized to withhold some, but not all, of the information severed from the record under section 17 of the Act. The Director of the Office of the Information and Privacy Commissioner has prepared a severed copy of the record to indicate which information must be disclosed and which information may be withheld. Under section 58(2)(a), I require the British Columbia Ferry Corporation and the Job Protection Commission to give the applicants access to those portions of the record which they are not authorized to withhold under section 17 of the Act. Under section 58(2)(b) of the Act, I confirm the decision of the British Columbia Ferry Corporation and the Job Protection Commission to refuse access to the remainder of the information withheld under section 17.

I find that the British Columbia Ferry Corporation and the Job Protection Commission were required to withhold some, but not all, of the information severed from the record under section 21 of the Act. The Director of the Office of the Information and Privacy Commissioner has prepared a severed copy of the record to indicate which information must be disclosed and which information must be withheld. Under section 58(2)(a) of the Act, I require the British Columbia Ferry Corporation and the Job Protection Commission to give the applicants access to those portions of the record which they were not required to withhold under section 21 of the Act. Under section 58(2)(c), I require the British Columbia Ferry Corporation and the Job Protection Commission to refuse access to the remainder of the information withheld under section 21.

David H. Flaherty
Commissioner

January 12, 1999