OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order 01-48

CITY OF SURREY

David Loukidelis, Information and Privacy Commissioner
October 17, 2001

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Summary: Applicants sought copies of any letters written to the City by an individual about whom the applicants had made a noise complaint. The City refused access to any portion of the two responsive letters, citing ss. 22(1), 22(2)(f), 22(3)(b) and 22(3)(h). The City later reconsidered its decision at the applicants' request, but continued to deny access, relying further on ss. 15(1)(a), (f) and 15(2)(b) of the Act. The City also later raised s. 19(1). The City is required to withhold the telephone number, fax number and e-mail address of the letters' author, but must disclose the rest of the letters to the applicants. None of the exceptions relied on by the City authorizes or requires it to withhold the applicants' own personal information.

Key Words: personal privacy – unreasonable invasion – opinions or views – submitted in confidence – unfair exposure to harm – unfair damage to reputation – disclosure harmful to law enforcement – exposure to civil liability – disclosure harmful to individual or public safety – threaten – mental or physical health – safety – reasonable expectation of harm.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 15(1)(a), 15(1)(f), 15(2)(b), 19(1)(a), 22(1), 22(2)(f), 22(3)(b) and 22(3)(h).

Authorities Considered: B.C.: Order 00-01, [2000] B.C.I.P.C.D. No. 1; Order 00-42, [2000] B.C.I.P.C.D. No. 46; Order 00-52, [2000] B.C.I.P.C.D. No. 56; Order 01-07, [2001] B.C.I.P.C.D. No. 7; Order 01-15, [2001] B.C.I.P.C.D. No. 16.

1.0 INTRODUCTION

[1] This is by no means the first access to information case to arise out of a dispute between neighbours. As was the situation in Order 00-01, [2000] B.C.I.P.C.D. No. 1, it appears the applicants and the third party – who live next door to each other – have had a

series of disputes since they became neighbours over two years ago. At one point, the applicants complained to the City of Surrey ("City") about noise they alleged the third party was making. It appears that, some time after the applicants complained, a City employee told them that the third party had written letters to the City about their complaint. Those letters were sent, it seems, because the City had written to the third party, on June 23, 2000, and told him about the complaint. That letter invited the third party to correct any mistaken information or bring any "extenuating circumstances" to the City's attention, so that the comments could "be entered on the file" for the purposes of the investigation. The third party wrote two letters to the City that respond to the applicants' request. They are both addressed to the City's By-law and Licensing Section. The first is dated July 8, 2000 and the second is dated July 17, 2000.

[2] The applicants made an access request to the City, under the *Freedom of Information and Protection of Privacy Act* ("Act"), for those letters. The City received that access request on August 16, 2000. In its September 6, 2000 response, the City said it would not disclose the letters, because they were excepted from disclosure under ss. 22(1), 22(2)(f), 22(3)(b) and 22(3)(h) of the Act. The applicants apparently consulted their lawyer, who advised them to ask the City to reconsider its decision about this response. The applicants did that on September 18, 2000. Their request for reconsideration included the following:

> In telephone conversations with By-law Officer Dave Berar on Wed. July 26 and Mon. August 14, specific reference was made to the two letters and short portions were directly quoted. In fact, enough information about the contents of these letters was provided for us to conclude that they contained false information which impugned our integrity and defamed us.
>
> Defamation of character and impugning of integrity using false information are serious matters and we have every right to defend ourselves against such attacks, by correcting the record.

[3] The City responded, on September 29, 2000, by continuing to deny access. At that time, it told the applicants that it was now also relying on ss. 15(1)(a), 15(1)(f) and 15(2)(b) of the Act, which the City said "all deal with disclosure harmful to a law enforcement issue." In its reconsideration letter, the City offered to contact the third party "and to request the third party's approval to release the records." The applicants did not take up the City's offer.

[4] The City's confirmation of its earlier decision caused the applicants to request a review, under s. 52 of the Act, of the City's decision to deny access. Because the matter did not settle during mediation, I held a written inquiry under s. 56 of the Act.

2.0 ISSUE

[5] The issues to be addressed here are as follows:

1. Is the City authorized by s. 15(1)(a), 15(1)(f) or 15(2)(b) of the Act to refuse access?

2. Is the City authorized by s. 19(1) of the Act to refuse access?

3. Is the City required by s. 22(1) of the Act to refuse to disclose personal information to the applicants?

[6] Both the Notice of Written Inquiry and Portfolio Officer's Fact Report that this Office issued to the parties say that the City has also applied s. 19 of the Act and that it is an issue in this inquiry. No party objected to this and I have considered it below.

[7] Under s. 57(1) of the Act, the City bears the burden of establishing that it is authorized by s. 15 or s. 19 to refuse to disclose information. Under s. 57(2) of the Act, the applicants have the burden of proving that the City is not required by s. 22(1) to refuse to disclose the third party's personal information.

3.0 DISCUSSION

[8] **3.1 Can the City Rely On Section 15?** – According to the City, disclosure of *any* portion of the two letters covered by the applicant's request would "harm a law enforcement matter" within the meaning of s. 15(1)(a). It would also "endanger the life or physical safety of a law enforcement officer or any other person" within the meaning of s. 15(1)(f). The City also relies on s. 15(2)(b), which authorizes a public body to refuse to disclose information where the disclosure could reasonably be expected to expose someone to "civil liability". The relevant portions of s. 15 read as follows:

> **Disclosure harmful to law enforcement**
>
> 15 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
>
> (a) harm a law enforcement matter,
>
> …
>
> (f) endanger the life or physical safety of a law enforcement officer or any other person,
>
> (2) The head of a public body may refuse to disclose information to an applicant if the information
>
> …,
>
> (b) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or a person who has been quoted or paraphrased in the record, or … .

[9] The City did not give any reasons for its decision to rely on these aspects of s. 15. Its reconsideration letter only said that it would be "prudent" for the City to withhold the records under those provisions.

[10] In this inquiry, the City relies on an affidavit, and associated argument, of its freedom of information co-ordinator (to whom I refer below as the "co-ordinator"). She deposed that she was "concerned about possible physical harm to any of the individuals involved", that opinion being "formed from the information in the letters and the by-law report regarding violence and ongoing vexations between the two neighbours." She also referred, without giving any details, to "discussions with the City's By-law Officer." Last, she referred to a telephone conversation with one of the applicants, during which she formed the impression that the applicant "was preoccupied with the records and with obtaining them at the earliest possible moment."

[11] The co-ordinator's affidavit refers to the "volatility of the situation" and the "potential" for endangering life or physical safety, as contemplated by s. 15(1)(f). The City argues, on this basis, that "there was sufficient cause to reasonably expect that disclosure of the records could endanger life or safety." Although the City does not state whose life or safety might be endangered, I infer its concern is for the third party.

[12] As regards s. 15(1)(a), the co-ordinator deposed that she "believed that the release of this information had significant potential to harm a law enforcement matter through inflaming and possibly escalating the situation." The City does not specify which information in the records "had significant potential" to "inflame" or "escalate" whatever "situation" is referred to or how this could harm a law enforcement matter.

[13] Last, the City says that s. 15(2)(b) applies because the applicant's September 18, 2000 request for a reconsideration of the City's original denial of access "implied that a lawsuit would be the outcome and was the main purpose for them [the applicants] pursuing the two letters."

[14] I will deal separately with each of these three aspects of s. 15.

Harm to A Law Enforcement Matter

[15] In Order 00-01, I accepted that local government bylaw enforcement investigations under what is now the *Local Government Act* qualify as "law enforcement" investigations for the purposes of s. 15(1)(a). This does not, however, mean that anything to do with bylaw complaint investigations can be withheld under s. 15(1)(a). The section only applies to information the disclosure of which could reasonably be expected to harm a law enforcement matter. In order to rely on this section, the public body must establish that a law enforcement "matter" exists and must also establish a reasonable expectation of harm from disclosure. In Order 00-42, [2000] B.C.I.P.C.D. No. 46, I said the following about the reasonable expectation of harm tests used in the Act:

> The feared harm must not be fanciful, imaginary or contrived and evidence of speculative harm will not satisfy the test, although it is not necessary to establish a certainty of harm. The quality and cogency of the evidence presented must be commensurate with a reasonable person's expectation that disclosure of the requested information could cause the harm specified under s. 17(1).

[16] The City says that disclosure of "this information" – whatever information in the letters this may refer to – has a "significant potential" to harm an unidentified law enforcement matter "through inflaming and possibly escalating the situation". This is not a sufficient basis for reliance on s. 15(1)(a).

[17] First, although it appears the City opened a bylaw complaint file for the applicants' noise complaint, the City has not provided any evidence to establish that there is an ongoing investigation or proceeding arising out of that complaint. To the contrary, the City provided me with a printout of the "Occurrence Report" kept by its bylaw enforcement officials. The August 14, 2000 entry indicates that a City official had contacted the applicants and had told them "there was nothing further that we could do" about the complaint.

[18] Further, on p. 1 of the applicants' reply submission, they say the following:

> On Aug. 14, the By-law Officer telephoned us to say, among other things, that his attempts at convincing the two …[RCMP Constables]… who had responded to our original complaint to provide mediation, something we strongly supported, had been rejected and that the police file had been closed. For anyone to describe what the Constables did on attending the complaint as anything more than a routine investigation is to profoundly misunderstand the meaning of mediation.

[19] The RCMP reference stems from the RCMP's attendance, on at least one occasion, to intervene between the male applicant and the third party.

[20] Nothing in the evidence before me establishes that there is an existing, or even contemplated, law enforcement investigation or proceeding by the City or the RCMP. Since there is no "law enforcement matter" in this case for the purposes of s. 15(1)(a), that section cannot apply. Even if there were a law enforcement matter, the City has not persuaded me that there is a reasonable expectation of harm through disclosure of the disputed records. I note, first, that the City has not pointed to any specific information within the records that allegedly could reasonably be expected to harm a law enforcement matter. Second, it is not enough to say that the decision-maker had, at the relevant time, a belief that disclosure would inflame and escalate a "situation". This does not meet the level of particularity or specificity of harm to the law enforcement matter – not just "the situation" – that is required under s. 15(1)(a).

Would Disclosure "Endanger the Life or Physical Safety" of Someone?

[21] The co-ordinator deposed as follows, in relation to this case as a whole:

> It was evident to me from the records in our files that this dispute between two neighbours was serious, prolonged and that the RCMP had been asked to intervene on at least one occasion. A verbal discussion with the City's By-law Officer involved confirmed my initial impression that this could become a volatile and potentially dangerous situation. My belief was strengthened by the Officer's indication to me that the RCMP had advised him, having spent one mediation session with the neighbours, that they would not attempt any further mediation

> efforts despite the By-law Officer's request that they do so, because the neighbours were not cooperative.

[22] At p. 3 of her affidavit, the co-ordinator deposed that she

> … was very much aware from reading the [disputed] letters and from the RCMP's attendance at a physical altercation, that the "physical harm" provisions of the legislation [ss. 15 and 19] applied in this request. However, at that time [of the City's original denial of access] I was reluctant to inflame the situation with references to either harm or safety.

[23] I have already referred to the co-ordinator's belief that the situation was volatile and dangerous. The City did not offer any evidence from the investigating bylaw officer about what he told the co-ordinator or about his direct knowledge of any risk of harm. For his part, the third party says that he fears that disclosure of the "information in my letters" may provoke an assault by the male applicant.

[24] The male applicant strenuously denies that disclosure of the letters could reasonably be expected to endanger anyone's life or safety. The following passage, which responds to the above quoted paragraph from the co-ordinator's affidavit, appears on p. 1 of the applicants' reply submission:

> This is a serious mis-characterization of the facts. We have actively advocated mediation at every opportunity: in discussions with the police on their attendance at our complaint, on several occasions in conversation with the By-Law Officer (July 26 and Aug. 14) and in two letters to …[the third party]…, one dated April 12 and the second sent by our lawyer on Aug. 8 on our instructions [the lawyer's letter is dated August 9, 2000]. In this second letter, a copy of which was supplied to the By-law Officer by fax on Aug. 14, we offered to pay the entire cost of professional mediation and to allow … [the third party] … to choose the mediator, this letter should have formed part of the files that Ms. Cantin refers to here and yet there is no reflection whatsoever of its existence in her comments. We therefore feel entitled to attach to this response a copy of the aforementioned letter which is vital to a fair understanding of this case.

[25] There is no doubt that relations between these neighbours – specifically, the third party and the male applicant – are bitter and that the two men are either unwilling or incapable of getting along. It is also clear that the RCMP were asked to attend on one occasion. The male applicant says this was at his request and that the police stepped away from the situation after what he describes as a "routine investigation". The City's bylaw enforcement files refer to the situation as a "neighbourhood dispute". An August 2, 2000 entry in the file indicates that a City bylaw enforcement representative met with the RCMP about the matter, that the RCMP indicated they had spent an hour with the two neighbours and that the RCMP suggested there was no point in mediating.

[26] As regards mediation, the applicants' lawyer wrote to the third party on August 9, 2000 and invited him to participate in mediation with the applicants. That letter refers to "unpleasant verbal exchanges, a breakdown in communications, intervention by the RCMP on one occasion, and ongoing bitterness." The letter also emphasizes that the

applicants "are convinced that it is essential to establish and maintain good relations with you." The letter refers to a "previous offer, made in a letter to you dated April 12, 2000", by the applicants to participate "in a constructive process of mediation." Last, the letter refers to the applicants' "determined and firm resolve to deal with this matter" and their willingness, as an indication of their good faith, to "bear the full cost of the mediation" and to agree to the third party's choice of mediator. It appears that the third party did not take up this offer.

[27] The evidence before me does not support the conclusion that disclosure of the letters could reasonably be expected to "endanger" anyone's life or safety, including the life or safety of the third party. Again, it appears there is a history of bad feelings between the third party and the male applicant and that they have, for some reason known only to them, considerable difficulty getting along. The fact is, however, that bad feelings and a single incident in which police were asked to attend, do not lead to a reasonable expectation of endangerment to life or safety through disclosure of the requested records. Unsubstantiated indications in the material before me that the RCMP have, either before or since their single visit to the neighbourhood, been asked to look into allegations of assault do not change this conclusion. Accordingly, I find that s. 15(1)(f) does not authorize the City to refuse to disclose the requested records.

Exposure to Civil Liability

[28] This is only the third case in which s. 15(2)(b) of the Act has been considered. In this case, the City argues that the applicants' September 18, 2000 request for a reconsideration "implied that a lawsuit would be the outcome and was the main purpose for them [the applicants] pursuing the two letters." This appears to be the main reason the City applied s. 15(2)(b) to the letters.

[29] In Order 00-52, [2000] B.C.I.P.C.D. No. 56, I commented, in passing, that evidence and argument as to the truth or falsehood of specific information in a record would be desirable for the purposes of determining if s. 15(2)(b) applies.

[30] Although the City offers no argument on whether either of the two letters in issue qualifies as "a law enforcement record" within the meaning of s. 15(2)(b), I accept that they are law enforcement records because they relate to the City's now-closed bylaw enforcement file. As is noted above, the third party sent both letters during the summer of 2000, apparently in response to the City's invitation to correct any mistaken information, or to provide any "extenuating circumstances", set out in its notice to the third party of the applicants' complaint. The City's evidence shows these records are part of its bylaw enforcement file. I am satisfied they are law enforcement records for the purposes of s. 15(2)(b).

[31] I am not, however, persuaded that s. 15(2)(b) applies. First, I disagree with the interpretation placed by the co-ordinator on the applicants' September 18, 2000 reconsideration request. As their letter explicitly states, the purpose of their request for records is to correct the record. It is reasonable to conclude this refers to correcting the records held by the City, not the public record through litigation. This motive is further

articulated in the applicants' submissions in this inquiry, although I place less weight on their assurances there as to their motive in seeking access. Second, although some of the things the third party says in the two letters are quite critical, he contends in the letter that there is truth to what he says. I find there is no reasonable expectation of exposure to civil liability from disclosure of these records and, therefore, that s. 15(2)(b) does not authorize the City to refuse to disclose the responsive records.

[32] **3.2 Threat to Health or Safety** – As I noted earlier, the City at some stage decided to rely on s. 19(1) of the Act. That section reads as follows:

> **Disclosure harmful to individual or public safety**
>
> 19 (1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to
>
> (a) threaten anyone else's safety or mental or physical health, … .

[33] It appears from the City's initial submission that it may have invoked s. 19(1) because s. 19(1) specifically authorizes the City to withhold "personal information about the applicant" if disclosure of that information could reasonably be expected to threaten anyone else's safety or mental or physical health. The entire s. 19(1) case advanced by the City is found on p. 4 of its initial submission, as follows:

> Again, this section applies because of the history of animosity and violence between the applicant and the third party that is recorded in the records.

[34] The City does not specify which "records" disclose a "history of violence", *i.e.*, whether the City's bylaw files disclose such a history or whether other records establish this. Nor has the City proved that any violence has in fact occurred, on anyone's part. Certainly, those of its bylaw enforcement records that the City provided to me in this inquiry do not refer to violence, although it is clear the RCMP were asked to attend on one occasion. The male applicant says, again, that the RCMP attended in response to his complaint, but no detail is given about what his "complaint" was. There are uncorroborated assertions that an investigation into an alleged assault was at some time requested, but these claims are vague and unhelpful.

[35] In assessing the City's reliance on s. 19(1), I have also considered the argument and evidence that it advances in relation to s. 15(1)(f), as discussed above. Having carefully considered s. 19(1), I am driven to the conclusion that the City is not entitled to rely on that provision. As I have said before – in cases such as Order 01-15, [2001] B.C.I.P.C.D. No. 16 – public bodies should act with care and deliberation where the health or safety of third parties may be implicated. The City clearly has done that in this instance, but this is not, in my view, a case where s. 19(1)(a) applies. I therefore find that the City is not authorized to refuse to disclose the disputed records under s. 19(1)(a).

[36] **3.3 Unreasonable Invasion of Personal Privacy** – A public body must refuse to disclose any personal information to an applicant where the disclosure would

unreasonably invade a third party's personal privacy. The relevant portions of that section 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
>
> …,
>
> (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,
>
> …,
>
> (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, … .

[37] The co-ordinator deposed, at p. 2 of her affidavit, that after "extensive review of the records in question and consultation with the City Clerk (the Head), we opted to withhold the requested records in their entirety under Section 22 of the Act, which protects personal privacy." The City offered, in its reconsideration letter, to contact the third party, to see if he would consent to disclosure. The City did not, however, seek representations from the third party under s. 23 of the Act. I infer that this is because the City had decided to withhold the records, thus making any s. 23 process optional.

[38] According to the City, the presumed unreasonable invasion of personal privacy created by s. 22(3)(b) applies here. The co-ordinator deposed as follows, at p. 2:

> I believed the personal information was compiled and identifiable as a possible violation of law, in that the Bylaws Section continued to investigate the noise

> complaint and the matter had not been concluded. As I understand it, the definition of law in this instance includes bylaw enforcement where it could lead to a "penalty or sanction being imposed".

[39] The co-ordinator also deposed, at p. 3, that she "believed that disclosure of these records could reasonably be expected to reveal a third party's personal evaluation or character reference", within the meaning of s. 22(3)(h). She considered what she believed to be the relevant circumstances and decided that s. 22(2)(f) applied. She deposed as follows, at p. 2:

> Because of the nature and tone of the letters, and because both letters ended by imploring the City's Bylaws and Licensing Officer to "advise the … [applicants] of our rights", I believed the letters had been submitted by … [the third party] … to the City Bylaws Section with an expectation of confidence. In my opinion, had he not meant for the letters to go only to the City Bylaws and Licensing Officer … [the third party] … could have provided copies of both letters to the … [applicants].

Whose Personal Information Is This?

[40] The City has not directly addressed the question of whose personal information is found in the records. At p. 4 of its initial submission, the co-ordinator says she does not "in any way wish to diminish an applicant's right to his or her personal information." This tacitly acknowledges that, as my review of the letters indicates, the letters contain the applicants' personal information as well as the third party's personal information. In fact, it is fair to say that most of the letters' contents consists of the applicants' personal information, not the third party's. To be sure, the letters contain the third party's personal information, including his name, address, telephone number and fax number. His e-mail address is also included.

[41] The third party's first letter, dated July 8, 2000, clearly responds to the City's June 23, 2000 letter, which told him the City had received concerns about "loud music emanating from your residence." In his first letter, the third party said it was intended to "serve as my formal written reply to the allegations set out in your correspondence" and requested it be entered in the file. The letter goes on to deny the noise allegation and most of it is devoted to informing the City's investigator of circumstances the third party considered had "a bearing" on the applicants' complaint.

[42] None of the description of those allegedly relevant circumstances qualifies, in my view, as the third party's personal information. To the contrary, that discussion describes, in some detail, events in which the applicants were involved with the City. That discussion is clearly the applicants' personal information. It describes things that they supposedly did in dealings they had with the City. Other aspects of the letter express the third party's views about the applicants, notably the male applicant. The Act's definition of "personal information" provides that it is "recorded information about an identifiable individual", including "anyone else's opinions about the individual." The third party's views and opinions about the applicants, as set out in both letters, are clearly their personal information.

[43] The third party's second letter, dated July 17, 2000, gives the City's bylaw enforcement officer an "update" on events since the third party's first letter. It describes interactions that allegedly occurred, on July 14, 15 and 16, 2000, between the male applicant and the third party.

[44] I will now consider whether the City is required to withhold the third party's personal information, or the applicants' personal information, found in these letters.

Law Enforcement Information

[45] The applicants argue, in their initial submission, that because the City's bylaw complaint file was closed by August 14, 2000, s. 22(3)(b) does not apply to the letters. I disagree. Those letters were submitted while the file was still open and they were delivered expressly in response to the City's June 23, 2000 invitation to comment on the allegations against the third party. To the extent the letters contain personal information – whether of the third party or the applicants – I find that the personal information was compiled and is identifiable as part of an investigation into the possible violation of law for the purposes of s. 22(3)(b). The question remains, of course, whether this presumed unreasonable invasion of personal privacy prevents the applicants from getting their own personal information, much less any of the (relatively innocuous) third-party personal information found in the letters. I will deal with that issue below.

Personal Recommendations or Evaluations

[46] I do not agree with the City's argument that s. 22(3)(h) applies to the letters. Briefly stated, the contents of these letters are not the kind of material that the Legislature intended to cover under s. 22(3)(h) by referring to a "personal recommendation or evaluation, character reference or personnel evaluation." As I said at p. 21 of Order 01-07, [2001] B.C.I.P.C.D. No. 7, s. 22(3)(g) – and, by the same token, s. 22(3)(h) – are intended to cover evaluative material and not unsolicited opinions about someone else. Here, the City's invitation to respond to the noise complaint made by the applicants does not transform what the third party said into s. 22(3)(g) material. On this basis, I am satisfied that neither s. 22(3)(g) (nor s. 22(3)(h), therefore) applies.

[47] Further, even if the disputed letters could be characterized as material covered by s. 22(3)(g), I fail to see how disclosure of their contents could reasonably be expected to reveal that the third party supplied a recommendation, evaluation or reference about the applicants. The applicants have already been told, by the City's investigating bylaw officer, that the third party sent two letters to the City. In addition, and parts of the letters were read to them (a fact not denied by the City). Therefore, they already know the third party has written about them and s. 22(3)(h) could not, in any case, apply.

Confidentiality of Supply

[48] This brings me to the question of whether the letters, and the personal information they contained, were supplied to the City in confidence, as submitted by the City in relation to s. 22(2)(f) of the Act.

[49] The City argues, as is noted above, that its co-ordinator believed the letters had been submitted "with an expectation of confidence" because of their nature and tone and because both letters asked the City to advise the applicants of the third party's rights. The co-ordinator said that, if the third party had intended the letters to be disclosable to the applicants, the third party could have copied the applicants on the letters. For his part, the third party objects to the letters' disclosure.

[50] Neither of the letters is labelled as being confidential. Nor do their contents expressly, or implicitly, indicate any expectation of confidentiality at the time they were sent to the City. Moreover, nothing in the City's June 23, 2000 letter to the third party promises confidentiality, either explicitly or by implication. That letter invited the third party to comment on the noise complaint if he believed that the information received by the City "is incorrect or that there may be extenuating circumstances", with any such comments being "entered on the file". The City did not bring to my attention any City policy respecting the confidentiality of such letters or bylaw complaint files or investigations generally.

[51] The upshot is that, although I accept that the third party may have had some expectation of confidentiality for his letters at the time he wrote them, there is insufficient evidence for me to conclude that the expectation was reciprocated by the City as required by s. 22(2)(f). Neither the circumstances surrounding supply of their contents, nor their contents themselves, support a conclusion of confidentiality in this case.

[52] In any event, even if the personal information had been supplied in confidence, I would not be persuaded that s. 22(2)(f) favours the withholding of the applicants' personal information. It would be perverse, in the ordinary case, for someone in the third party's position to be able, by getting a public body's assurance that someone else's personal information was being supplied in confidence, to deny those other individuals the right of access to their own personal information on that basis alone.

[53] In my view, no other relevant circumstances apply here, including under s. 22(2). Neither the City nor the third party has argued that relevant circumstances exist, under that section or otherwise, and I am not able to discern any others. For the reasons given above, certainly, I am not persuaded that s. 22(2)(e) is relevant here. Nor am I persuaded that s. 22(2)(h) applies here.

[54] Although I acknowledge that there may be some cases in which an applicant will be unable to gain access to her or his own personal information, because its disclosure to the applicant would unreasonably invade someone else's personal privacy, this is by no means one of those cases. To the contrary, for the reasons given above, I see no reason to withhold the applicants' personal information from them.

[55] In closing, public bodies may wish, when they send letters such as the City's June 23, 2000 letter to the third party, to consider alerting recipients that any response they provide may be accessible under the Act, particularly as regards personal information they provide about other individuals. Certainly, as I noted above, a public body cannot successfully resist an individual's right of access to his or her own personal

information simply because the public body promises confidentiality in such a context. A public body can state a policy of confidentiality in such a letter, but the public body cannot guarantee that it will hold firm under the Act. Supply in confidence is only one circumstance to consider under s. 22(2).

[56] I should mention something about s. 15(1)(d) at this point. Section 15(1)(d) permits a public body to refuse to disclose information that could reasonably be expected to identify a confidential source of law enforcement information. The City did not rely on that section in this case, quite properly in my view. It must be understood that the fact that the third party's letters must be disclosed does not affect previous decisions where the identity of a confidential source of law enforcement information is in issue. Nothing in this decision touches on the question of disclosure of the identity of a confidential source of law enforcement information.

Third Party's Telephone Number and E-mail Address

[57] As I noted above, the third party's name, street address, telephone number, fax number and e-mail address are found in the letters. His name and street address are already known to the applicants, his neighbours. In my view, there is no basis under s. 22 to refuse to disclose the third party's name or street address to the applicants. I am not, however, persuaded they can be given his telephone number, fax number or e-mail address. The applicants did not address that issue in their submissions. I find that the City is required by s. 22(1) to refuse to disclose the third party's telephone number, fax number and e-mail address to the applicants.

4.0 CONCLUSION

[58] For the reasons given above, I make the following orders:

1. Under s. 58(2)(a) of the Act, with the exception of the third party's telephone number, fax number and e-mail address, I require the City to give the applicants access to all of the disputed records; and
2. Under s. 58(2)(c) of the Act, I require the City to refuse access, under s. 22(1), to the third party's telephone number, fax number and e-mail address.

October 17, 2001

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia