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COMMISSIONER  
— for —  
British Columbia

Order 03-21

**MINISTRY OF PUBLIC SAFETY & SOLICITOR GENERAL**

David Loukidelis, Information and Privacy Commissioner  
May 14, 2003

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**Summary:** The Ministry is required by s. 22(1), in this case, to withhold names of private security firm employees, since s. 22(3)(d) applies and s. 22(4)(i) does not. Not necessary to decide whether s. 19(1)(a) applies.

**Key Words:** unreasonable invasion – personal privacy – details of a licence – employment history.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, s. 22(1), ss. 22(2)(c), 22(3)(d) and 22(4)(i); *Private Investigators and Security Agencies Act*, s. 11.

**Authorities Considered: B.C.:** Order No. 01-07, [2001] B.C.I.P.C.D. No. 7; Order 01-46, [2001] B.C.I.P.C.D. No. 48; Order No. 01-53, [2001] B.C.I.P.C.C. No. 56.

**Cases Considered:** *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)*, 2003 SCC 8.

## 1.0 INTRODUCTION

[1] The applicant in this case was, while suspended from his employment by the Ministry of Public Safety and Solicitor General (“Ministry”), the subject of surveillance by CanPro Pacific Services Inc. (“CanPro”), a security firm retained by the Ministry. According to the Ministry, it retained CanPro not to investigate the applicant, but to monitor him due to third-party safety concerns. The Ministry says the applicant had threatened other employees and it was concerned that he posed a risk to these individuals.

[2] CanPro provided the Ministry with written reports detailing the results of its surveillance. The applicant has obviously received copies of these reports, as he refers to their contents and attaches to his submission two pages from one of the reports. The applicant was quite upset by what he considers to be an intrusion into his personal life and he is disturbed by what he views as inappropriate surveillance by CanPro's investigators. The applicant claims, for example, that CanPro investigators monitored his private conversations with his lawyer, thus violating solicitor-client privilege, and subjected other parties, such as his father and friends, to surveillance as well.

[3] On March 12, 2002, the applicant submitted a request, under the *Freedom of Information and Protection of Privacy Act* ("Act"), to the Ministry for a list of shareholders and interested parties of CanPro, as well as a list of all past and present employees. The Ministry is responsible under the *Private Investigators and Security Agencies Act* for licensing private investigators and in this capacity compiles information concerning persons granted security employee licences.

[4] The Ministry informed the applicant that information regarding company shareholders is publicly available online in the Corporate Registry. The Ministry's response to this part of the applicant's request is not an issue in this inquiry. With respect to the applicant's request for a list of past and present CanPro employees, the Ministry responded to the request on May 1, 2002 by denying access to the information under s. 22 of the Act.

[5] On May 27, 2002, the applicant requested a review of the Ministry's decision to withhold the names of CanPro employees. During the mediation process, the applicant agreed to narrow his request for a list of past and present CanPro employees to a list of only those individuals employed by CanPro in the year prior to his request of March 12, 2002. Mediation was not otherwise successful and the matter was set down for a written inquiry under Part 5 of the Act. CanPro was invited to participate in the inquiry and to make submissions on behalf of its employees.

[6] On September 24, 2002, the Ministry informed the applicant that, in addition to s. 22, it had also decided to apply s. 19 to the withheld information. On September 25, 2002, the Private Investigators' Association of British Columbia ("PIABC") was given permission to make submissions in the inquiry and it did so.

## **2.0 ISSUES**

[7] The issues before me are as follows:

1. Is the Ministry authorized to withhold information under s. 19(1)(a) of the Act?
2. Is the Ministry required to withhold information under s. 22(1) of the Act?

[8] Under s. 57(1) of the Act, the Ministry has the burden of proof regarding the application of s. 19(1)(a). Under s. 57(2), the applicant has the burden of proving that s. 22(1) does not require the Ministry to refuse disclosure.

### 3.0 DISCUSSION

[9] **3.1 Record in Dispute** – The record in dispute consists of an electronic comprehensive business listing for CanPro, from the Ministry’s Security Programs Division. The first five pages list both present and former CanPro employees as of a given date. The remainder of the record is outside the scope of the applicant’s request. The Ministry has provided the applicant with the information at the top of page one, which pertains to CanPro, but has severed all information about past and present CanPro employees. The information which is severed from the listing includes: employee file number, employee name, employee hire date and type (hire or transfer), employee termination date and employment status.

[10] **3.2 Threat to Health or Safety** – The Ministry has applied s. 19(1)(a) to the list of CanPro employees. Section 19(1)(a) 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, or ... .

[11] The Ministry, CanPro and the PIABC all argue against disclosure of the names for health and safety reasons. The Ministry’s submissions list a number of circumstances involving the applicant that it argues give rise to a legitimate concern that he is a risk to third-party health and safety. Most of these involve incidents that occurred while the applicant was employed with the Ministry. The applicant denies he is a threat to anyone and claims that his “transgressions”, as he calls them, were largely exaggerated by his former supervisors due to labour relations disputes. The arguments put forward by CanPro and the PIABC are more global in nature, in that they deal with why disclosure of the names, generally, would pose a risk to the safety of private investigators due to the hazardous nature of the work they do, rather than with any threat supposedly posed by the applicant.

[12] In the circumstances, however, I have determined that it is not necessary to decide whether or not the Ministry may refuse to disclose the names under s. 19(1)(a) as I am persuaded that s. 22 requires the Ministry to refuse access.

[13] **3.3 Third-Party Personal Privacy** – The Ministry argues that s. 22 requires it to withhold the names of CanPro employees because the information relates to their employment history and, under s. 22(3)(d), disclosure of such information is presumed to be an unreasonable invasion of the employees’ privacy.

[14] The applicant argues, at p. 1 of his initial submission, that CanPro is licensed by the Ministry and that he has

... the right as a member of the public to know the names of persons or agents of the government and/or private individuals whom [*sic*] are bonded and licensed by the government to conduct investigations into the private and personal lives of members of the public.

[15] He also states that he has “the absolute right to know who specific members of CanPro are in direct relation to a specific investigation conducted by CanPro on myself in 2001.” He adds that he is “asking that their identities be revealed so that I may be sure that only holders of a valid Security/Investigation license were conducting this investigation against myself.”

***Application of s. 22***

[16] I have discussed the application of s. 22 in a number of orders (see, for example, Order 01-53, [2001] B.C.I.P.C.D. No. 56). I have followed the same approach for applying s. 22 in this case.

[17] The relevant portions of s. 22 in this case 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

...

(c) the personal information is relevant to a fair determination of the applicant’s rights,

...

(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,

...

- (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

...

- (i) the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a public body, not including personal information supplied in support of the application for the benefit, ... .

### ***Details of a licence***

[18] While the applicant does not specifically state that s. 22(4)(i) applies to his request for a list of CanPro employees (and actually acknowledges that this inquiry is not about access to licences), his submissions refer to his right to know the names of individuals who are licensed by the government. He also argues that s. 11 of the *Private Investigators and Security Agencies Act* supports his case for disclosure of the list because it requires private investigators to present their licence identification when asked by any member of the public. That section reads as follows:

#### **Production and display of security employee licence and identification card**

11. A security employee must, while at work, carry on his or her person the security employee licence issued under section 10 and an identification card issued by his or her current employer in a form approved by the registrar, and must produce them for inspection at the request of any person to whom the licensee holds himself or herself out to be licensed or any peace officer or inspector.

[19] As the Ministry correctly points out, however, "the duty to show one's licence to someone who is not a peace officer or inspector only arises when someone holds themselves out to be licensed." Section 11 therefore is not relevant here. It requires security employees to carry their license with them while at work and produce it for inspection to people to whom they hold themselves out to be licensed. It does not require the release of a copy of the licence or, as is the case here, a list of employees of a security business.

[20] It is necessary in this case to determine whether or not disclosure of the information to which the applicant requested access (names of CanPro employees) would reveal the details of a licence. If so, s. 22(4)(i) applies and the Ministry cannot withhold the information under s. 22.

[21] The Ministry has confirmed that the following types of information appear on Security Employee Licences that the Ministry issues: the full name of the licensee; category of licence (*e.g.*, private investigator, security patrol or locksmith); employee file number; business file number; expiration date of the licence; a picture of the individual; audit number; date of birth; height; eye colour; hair colour; weight; and complexion.

[22] The Ministry also provided the following information:

Please note that the name of the person's employer does not appear on the licence. However, a Ministry number assigned to the person's employer at the time of issuance of the licence, namely, the business file number, appears on the licence. However, if the person has switched employers between the time of issuance of the licence and the date of the licence's expiry, the file number of the current employer will not appear on the licence.

[23] Based on the Ministry's evidence as to what information appears on a Security Employee Licence, I cannot find that s. 22(4)(i) applies to the information the applicant requested. While the security employee's name is a detail of a licence, the name of the security business where the licensee is employed is not a detail of her or his licence. Therefore, disclosure of a list of CanPro employees would reveal information that is not a detail of a licence – namely that the licensee is employed by CanPro. Even though the business file number is a detail of a security employee license, the file number identifies the licensee's employer at the time the licence was issued, not the licensee's current employer. Therefore, some employees of CanPro may have the business file number of a previous employer on their licences while other licensees, previously employed by CanPro, will still have CanPro's business file number on their licenses. For this reason, I cannot find that disclosure of a list of individuals employed by CanPro in the year prior to the applicant's request would only reveal the details of a license on the grounds that all employees on this list would have CanPro's business file number on their licence. I note here that the Ministry has said that its Public Safety and Regulatory Branch will confirm to anyone who asks whether or not a specific private investigator has a valid licence.

[24] Neither the applicant nor the Ministry argues that any of the other circumstances listed under s. 22(4) applies to this request and I find that none apply. I will now consider whether or not the information falls under one of the categories listed in s. 22(3) for which disclosure is presumed to be an unreasonable invasion of privacy.

### ***Employment history***

[25] The Ministry argues that all of the information in dispute relates to the employment history of third parties. Under s. 22(3)(d), disclosure of such information is presumed to be an unreasonable invasion of a third party's personal privacy. In support of its argument, the Ministry refers to Order 01-46, [2001] B.C.I.P.C.D. No. 48, where I found that the public body's decision to withhold a third party's present employment circumstances, including the name of the third party's employer, was correct under s. 22. I stated the following in Order 01-46 (at para. 39):

ICBC has also withheld the third party's employment-related information. Some of the records contain information about the third party's present employment circumstances, as well as his past employment history. This information includes the name of his employer, details of that employment (including earned and lost income), other employment the third party has had. The information withheld by ICBC is subject to the presumed unreasonable invasion of personal privacy created by s. 22(3)(d) of the Act. The applicant has not attempted to rebut that

presumption, other than by asserting his alleged right, as an insured, to know “everything” about his case. None of the relevant circumstances in s. 22(2), or otherwise, supports disclosure. I find that ICBC is required to refuse to disclose the third party’s employment-related information.

[26] The information in dispute about each individual is, again, the following: employee file number, employee name, employee hire date and type (hire or transfer), employee termination date and employment status. The employee’s file number is a particular identifier assigned to the employee and is thus that individual’s personal information. In my view, that information, and the other data elements just described, all qualify as “employment history” of each individual. As I did in Order 01-46, I find that s. 22(3)(d) applies to the list of names of CanPro employees and to the other third-party personal information in the disputed record. I find that disclosure of the information is presumed to be an unreasonable invasion of personal privacy.

[27] It should be noted here, in passing, that my finding in this case, like the finding in Order 01-46, relates to the employment history of individuals who are not employees or officers of a public body. Quite apart from s. 22(4)(e) of the Act, it is my view that different considerations almost certainly will apply under s. 22 to a request for the names of employees of a public body. It is difficult to see how, in general, the disclosure of a list of the names of a public body’s employees would be an unreasonable invasion of their personal privacy. The same can be said, as it has been before, about disclosure of an individual’s name in the context of performing work functions. For example, it is unlikely that, in general, disclosure of the name of a public body employee who wrote a particular report would unreasonably invade that individual’s personal privacy. See, generally, the Supreme Court of Canada’s approach to related issues under the federal *Privacy Act* in its recent decision in *Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)*, 2003 SCC 8.

[28] It should also be said, for clarity, that my finding here that s. 22(3)(d) applies to employment-related personal information of employees of a particular private investigation firm, at a particular time, does not mean the Ministry is required to refuse to confirm, when asked, whether a named individual is the holder of a Security Employee Licence issued under the *Private Investigators and Security Agencies Act*. Nor do the findings in this case, nor Order 01-46, mean that names of employees of private sector organizations must be withheld under s. 22(1) in all cases. This case involves employee names and more. The privacy interests of such individuals must be considered in the circumstances of each case, without any presumption or inclination that disclosure of their names would invade personal privacy (much less unreasonably so, as s. 22(1) contemplates).

[29] I will now consider whether any relevant circumstances rebut the presumption s. 22(3)(d).

***Relevant circumstances***

[30] As was the case in Order 01-46, the applicant in this case has not offered any argument to rebut the presumption in s. 22(3)(d), other than to reiterate that “a member of the public has the absolute right to know who these people are.” He also states that he finds it “outrageous” that CanPro should be able to rely on s. 22 when its activities, he says, involve intruding into other people’s lives. Of course, the applicant’s request is for personal information of CanPro’s employees, not information of or about CanPro. The Ministry has applied s. 22 to protect the privacy of individuals and it is irrelevant whether CanPro asserts that it applies.

[31] One of the relevant circumstances that a public body must consider in determining whether or not disclosure of personal information is an unreasonable invasion of third party’s personal privacy is whether, under s. 22(2)(c), the personal information is relevant to a fair determination of the applicant’s rights. While the applicant does not specifically cite s. 22(2)(c) as supporting his gaining access to the information in dispute, he frequently refers to his “right” to know. For this reason, I have considered whether the applicant’s rights are a relevant circumstance that support disclosure.

[32] The Ministry, relying on Order 01-07, [2001] B.C.I.P.C.D. No. 7, argues that s. 22(2)(c) does not apply. In Order 01-07, I said the following about s. 22(2)(c):

[31] In Ontario Order P-651, [1994] O.I.P.C. No. 104, the equivalent of s. 22(2)(c) was held to apply only where *all* of the following circumstances exist:

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.

[32] I agree with this formulation. I also note that, in *Greater Vancouver Mental Health Service Society v. British Columbia (Information and Privacy Commissioner)*, [1999] B.C.J. No. 198 (S.C.), at paras. 85-89, Lynn Smith J. concluded that a complainant’s “fairness” concerns, related to the conduct of a complaint investigation, did not activate s. 22(2)(c).

[33] I agree with the Ministry that there is no basis for finding, in the absence of any supporting material from the applicant, that s. 22(2)(c) is a relevant circumstance here. The applicant has not asserted any legal rights for which disclosure of the information is relevant. Nor has he referred to any existing or contemplated proceedings to which disclosure of the information is necessary or relevant. I find, therefore, that s. 22(2)(c) is not a relevant circumstance.

[34] If, as he has suggested, the applicant believes that CanPro's surveillance violated the PIABC's Code of Ethics and Professional Conduct, it is difficult to see why he needs the names of CanPro's employees in order to complain to the PIABC. As the Ministry points out, disclosure of the list of employees will not help the applicant determine which of them conducted the surveillance of which he complains. As to the applicant's argument that he should know the names so that he may be assured that only holders of valid security licences conducted the surveillance, as noted above, the Ministry has said that its Public Safety and Regulatory Branch will confirm to anyone who asks whether or not a private investigator has a valid Security Employee Licence.

[35] As indicated above, the applicant, apart from asserting his "rights", has raised no other relevant circumstances that might support disclosure and, indeed, I find that none apply. Because the applicant has the burden of proving that disclosure would be an unreasonable invasion of the employees' personal privacy, I find that he has not overcome the presumed unreasonable invasion of personal privacy under s. 22(3)(d).

#### **4.0 CONCLUSION**

[36] For the reasons given above, under s. 58 of the Act, I require the Ministry to refuse to disclose the disputed information under s. 22(1). No order is necessary respecting s. 19(1)(a) of the Act.

May 14, 2003

#### **ORIGINAL SIGNED BY**

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David Loukidelis  
Information and Privacy Commissioner  
for British Columbia