



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

Order 04-03

CITY OF SURREY

Alexander Boyd, Adjudicator
February 9, 2004

Quicklaw Cite: [2004] B.C.I.P.C.D. No. 3
Document URL: <http://www.oipc.bc.ca/orders/Order04-03.pdf>
Office URL: <http://www.oipc.bc.ca>
ISSN 1198-6182

Summary: The City is required to withhold some third-party personal information in records of complaints to the City about the applicants' property. The City is required to withhold telephone numbers, fax numbers, e-mail addresses, employment information and personal opinions or observations not related to the applicants, but must disclose the rest to the applicants.

Key Words: personal privacy – unreasonable invasion – submitted in confidence.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(e) and (f).

Authorities Considered: B.C.: Order 01-48, [2001] B.C.I.P.C.D. No. 50; Order 01-53, [2001] B.C.I.P.C.D. No. 56;

1.0 INTRODUCTION

[1] This inquiry arises out of the applicants' access request to the City of Surrey ("City"), under the *Freedom of Information and Protection of Privacy Act* ("the Act"), for a copy of all complaints made to the City's By-Law Enforcement Office since October 2000 regarding the applicants' address. The desired response was, the applicants indicated, to include copies of any correspondence from or records about meetings City staff held with complainants.

[2] The access request apparently was the result of a meeting between one of the applicants and a City By-Law Enforcement Officer, which left the applicants with the impression that the City might have records pertaining to them. Their apparent concern was that the records might contain inaccuracies.

[3] The City's review of the requested records revealed that portions of the records might be subject to s. 22 of the Act, as they contained the personal information of third parties. Under s. 23(1) of the Act, the City sent the third parties a letter asking for their views concerning the disclosure of the records. The third parties responded to the City by saying that disclosure of the records would unreasonably invade their personal privacy and that they would not consent to disclosure.

[4] The City eventually determined that, in spite of the third parties' concerns, it would release a copy of the requested records in severed form and informed the third parties of this decision. The third parties requested a review by this Office of that decision.

[5] As mediation did not resolve this matter, a written inquiry was held under Part 5 of the Act. I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

2.0 ISSUE

[6] The only issue here is whether the City is required by s. 22 of the Act to refuse to disclose the disputed information to the applicants. Section 57(3)(a) places the burden on the applicants to show that the disclosure of the third parties' personal information would not unreasonably invade their personal privacy.

3.0 DISCUSSION

[7] **3.1 Procedural Issue** – I will first deal with two additional records that were located by the City and referenced in its initial submission. In paragraph 13 of her affidavit, Kory Swaele, acting Freedom of Information and Protection of Privacy Coordinator for the City, submitted that she had located additional documentation that could have been responsive to the applicants' access request.

[8] The first, attached as Exhibit "H" to the City's *in camera* submission, was apparently provided at a meeting held among the third parties, Cst. J Danyluk of the RCMP and City By-law Officer Dave Berar. Although this record is undated, I have been able to determine that it was created and provided to the City before the applicants' access request was received, so it is covered by this inquiry.

[9] The second record, attached as Exhibit "I" to the City's *in camera* submission, and referenced in paragraph 14 of Swaele's affidavit is an e-mail, dated June 17, 2002. This inquiry is about the City's response to the applicants' access request of June 5, 2002. Only records that were created before or up to the date of the request and in the custody or under the control of the City are subject to this inquiry. Exhibit I, was created after the date of the applicants' request and thus is not part of this inquiry. If the applicants wish to obtain a copy of this record, they can attempt to do so by making a new access request to the City.

[10] **3.2 Nature of the Disputed Information** – The records that are the subject of this inquiry consist of a series of letters and e-mails between the third parties and the City regarding ongoing alleged problems that the third parties say they are having with the applicants.

[11] The content of the records is such that they contain the personal information of both the third parties and the applicants. This includes the third parties' observations and opinions about the applicants, the alleged problems that they perceive with them as neighbours, and the impact on the third parties. The records also contain personal information about both the third parties and the applicants compiled by the City. They also contain the street address, telephone numbers, e-mail address, fax number and employment information of the third parties.

[12] **3.3 Discussion of Section 22** – Section 22 of the Act requires a public body to withhold personal information if its disclosure would result in an unreasonable invasion of a third party's personal privacy. The Information and Privacy Commissioner has, in a number of decisions, discussed how s. 22 is to be applied. See for example, Order 01-53, [2001] B.C.I.P.C.D. No. 56. I will not repeat such a discussion here, but have applied the approach in Order 01-53 and other decisions.

[13] The Act requires that a public body must decide whether disclosure of the disputed information is, under s. 22(3), presumed to cause an unreasonable invasion of privacy. Neither party has presented an argument that any of the presumed unreasonable invasions of privacy mentioned in s. 22(3) applies to the disputed records in this case. Although I will not discuss s. 22(3) here, I have reviewed that section and determined that none of the presumed unreasonable invasions of privacy it mentions applies here to the disputed information.

[14] The Act then requires that a public body must consider all relevant circumstances in determining whether disclosure would unreasonably invade personal privacy, including the circumstances set out in s. 22(2). The third parties have submitted that ss. 22(2) (e) and (f) should be considered relevant circumstances. These sections state:

Disclosure harmful to personal privacy

22(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.

Exposure to Harm

[15] Section 22(2)(e) provides one relevant circumstance, which is whether the third party will be unfairly exposed to financial or other harm.

[16] Although not referencing s. 22(2)(e) directly, in their submission the third parties argue that they could be subject to personal harm or that there could be harm to their property (initial submission). On p. 2 of their initial submission the third parties also express concern that they will be at risk for psychological and physical assault, should the disputed information be disclosed.

[17] The third parties express a concern that the applicants are angry and unhappy with the various issues that the City has taken to them. However, they have not provided me with any evidence as to the nature of any psychological or physical assaults they allege have occurred in the past or any affidavit evidence from any other parties who could support their concerns. In their submissions, the applicants argue there never has been any physical violence on their part (pp. 1 & 2, para. 2).

[18] The City says it considered whether the release of the disputed information to the applicants could reasonably be expected to threaten anyone else's safety or mental or physical health. To assist it in determining whether this would be a relevant circumstance, the City contacted the RCMP.

[19] In her affidavit, Kory Swaele states that she personally was informed by Cst. Searle of the RCMP that there were no ongoing investigations or contemplation of charges in relation to the issues which have given rise to the request for records, and nothing to indicate a concern for the safety of any individual related to this matter.

[20] The City also provided affidavits from three of its staff, John Hofmann, Senior By-law Enforcement Officer, John Sherstone, Manager, By-laws & Licensing Services and Dave Berar, By-law Enforcement Officer. Each deposed that during the course of dealing with the parties that there was nothing to indicate that there was a concern for the safety of the third parties.

[21] The evidence before me does not support a finding that the third parties will be exposed to psychological or physical harm if the disputed records are released. There does appear to be a history of ongoing disagreements between the third parties and the applicants. The fact is that such disagreements on their own cannot lead to a reasonable expectation that the third parties will be exposed to psychological or physical harm if the disputed records are released. Accordingly, I find that s. 22(2)(e) is not a relevant circumstance in this case.

Records Supplied in Confidence

[22] Section 22(2)(f) provides that one of the relevant factors is whether the requested records have been supplied in confidence.

[23] In order for s. 22(2)(f) to apply the first requirement is that the information in question have been supplied to the public body. Information created by the City would not meet this requirement.

[24] On p. 1 of their initial submission, the third parties have said that the City requested that they provide verbal and written information in confidence. They say confidential meant total privacy with respect to all communications between the City and the third parties. The third parties have not provided any evidence, in the form of sworn affidavits or otherwise, in support of their position.

[25] The City has taken the position that the records were not supplied to it in confidence. In their affidavits, Berar, Sherstone and Hofmann all depose that each at no time advised the third parties that any information they submitted would be held in confidence.

[26] My review of the records supports the City's position. None of the records supplied to the City by the third parties is marked as being "confidential" or "supplied in confidence". None of the narrative sections of the records has information that would indicate that the third parties had supplied the records with an expectation of confidentiality.

[27] Further, the nature of the issues that were presented by the third parties to the City for resolution are such that it would not be reasonably possible for the City to approach the applicants about them without it being revealed who the complainants were. There is also reference to the possibility of the disputing parties meeting to resolve their differences

[28] The evidence before me is such that I am not persuaded that s. 22(2)(f) is a relevant consideration.

[29] There are no other relevant circumstances that apply here, including any under s. 22(2). None of the parties has argued that other relevant circumstances do exist, under s. 22 (2) or otherwise.

Third Parties' Personal Opinions.

[30] Some of the records contain the personal opinions or observations of the third parties that are not related to the applicants. This information falls outside of the scope of the applicants' request. I find that the portions of the records that contain the personal opinions or observations of the third parties that are not related to the applicants fall outside of the scope of the applicants' request.

4.0 CONCLUSION

[31] For the reasons given above, I make the following order:

Under s. 58(2)(a) of the Act, with the exception of the third parties' personal opinions or observations not related to the applicants, I require the City to give the applicants access to all of the disputed records. As indicated above, the third parties' personal opinions or observations not related to the applicants are clearly outside the scope of the applicants' request, so no order is necessary in relation to that information.

February 9, 2004

ORIGINAL SIGNED BY

Alexander Boyd
Adjudicator