



November 25, 2004

To the parties:

Request for review by an applicant under s. 52(1) of the *Freedom of Information and Protection of Privacy Act* (“Act”)—Ministry of Public Safety and Solicitor General (“Ministry”)—OIPC File No. 16126

1. Purpose of this letter—This decision responds to the Ministry’s request that I decline to proceed with an inquiry in this matter because the request for review presents no arguable issue. Further, as reflected in the Ministry’s later submissions, the Ministry has requested that I not proceed with an inquiry because doing so would permit the applicant to re-litigate issues decided in Order 03-21, [2003] B.C.I.C.P.D. No. 21, in which I held that the Ministry is required to refuse to disclose third-party personal information. For the reasons given below, I have decided to exercise my discretion under s. 56(1) of the Act to decline to hold an inquiry in this case.

2. Background—The respondent made an access to information request to the Ministry for a list of the license numbers for licenses issued by the Ministry to private investigators employed by a private investigation firm and the dates of issue of those licenses between the years 1999 and 2003, inclusive. The Ministry refused to disclose this information, relying on s. 22 of the Act. In its response, the Ministry told the respondent that the information he requested “is contained in the same record that was withheld from you in response to your request” of May 17, 2002.

The Ministry’s response to the respondent’s first access request (which was for a list of past and present employees of the private investigation firm) resulted in Order 03-21. As the Ministry told the respondent when replying to his present access request, in Order 03-21, I required the Ministry, under s. 22, to refuse to disclose the third-party personal information in dispute in that case, noting the following at para. 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.

The information in the records in dispute included the “created date” for each employee, which I discuss below.

In its response to the respondent’s present access request, the Ministry said that the license numbers he requested are the same as the “employee file number” in the responsive records that were dealt with in Order 03-21. It added that the “date of issue of the licenses is listed as the created date in the responsive records” and that both of these pieces of information were withheld in response to the applicant’s original access request, a decision that was confirmed in Order 03-21.

In response to the Ministry’s refusal of his second request, the respondent requested a review under Part 5 of the Act. The Ministry then asked me to exercise my discretion under s. 56(1) of the Act to decline to conduct an inquiry under Part 5.

3. Discussion—Section 56(1) of the Act reads as follows:

Inquiry by Commissioner

56(1) If the matter is not referred to a mediator or is not settled under section 53, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

The present wording of s. 56(1) clearly confers discretion as to whether to hold a Part 5 inquiry respecting a request for review. As I have previously noted, there may be a variety of reasons why that discretion might be exercised one way or another. These include the principles articulated in Order 02-57, [2002] B.C.I.P.C.D. No. 59, and Order 01-03, [2001] B.C.I.P.C.D. No. 3. In Order 02-57, I held that Simon Fraser University was entitled to refuse to process an access request that clearly attempted to circumvent the effect of Order 01-16, [2001] B.C.I.P.C.D. No. 17, which involved the same records. I held that the second access request was an abuse of process and that the legal principle of *res judicata* also applied. In Order 01-03, I held that *res judicata* and the doctrine of *issue estoppel* prevented an applicant from making a second request for records that had previously been refused, with that refusal having been upheld by a decision of the previous Commissioner.

In this matter, I accept the Ministry’s affidavit evidence that the employee file numbers referred to in Order 03-21 and the employee licence numbers covered by the respondent’s present access request are the same. In Order 03-21, I held that this information qualified as third-party personal information, that its disclosure would be a presumed unreasonable invasion of personal privacy under s. 22(3)(d) of the Act and that the Ministry was required to withhold this information together with other third-party personal information. Applying the principles of *res judicata* as outlined in Order 01-03 and Order 02-57, I am satisfied on the material before me that, if an inquiry were held under Part 5 of the Act, it would amount to a re-litigation of the issues that were adjudicated between the Ministry and the respondent in Order 03-21. I therefore decline to proceed with a Part 5 inquiry respecting the employee file numbers.

This leaves the question of whether the respondent's request for access to the licence issue dates should be the subject of an inquiry under Part 5. In its request that I not proceed with an inquiry, the Ministry told me that the dates of issuance of these licenses were found in the records that were dealt with in Order 03-21. The Ministry now says, however, that it has since determined that the dates of issuance for the licences are not contained in those records. The records in Order 03-21, the Ministry concedes, contain only the so-called "created date" respecting each individual, and these are not the same as the "dates of issuance" of licences issued to private investigators, which is the information the respondent is now seeking.

The Ministry nonetheless contends that the similarity between "created dates" and "dates of issuance" warrants my deciding that the outcome in Order 03-21 should govern here, such that no inquiry should be held. Supported by affidavit evidence, the Ministry says this in support of this argument:

14. By way of background, the "Hire date" information severed in the records responsive to the First Request signified the dates that the security business hired the third party in question (as indicated on the application for the licence, or if not indicated, the default date is the date the application for a licence was received). The "received date" information severed in the records responsive to the First Request signified the dates that each licence application was received by the Ministry's Security Programs Division. The "created date" information in the records responsive to the First Request was the date the licence application was inputted into the Ministry's computer system.
15. After the "created date", there is a process of determining whether a security licence should be issued to the employee in question. The time between the "created date" and the "date of issuance" of licences in 1998 was usually between 6 to 8 weeks. For the years, 1999 to 2001, the Ministry estimates that that time between those dates averaged between 7 and 12 days.
16. The Ministry submits that any disclosure of the date of issuance of CanPro employee's [*sic*] licences would effectively result in the disclosure of the "created date" information in relation to those employees, a result which the Commissioner found was precluded by section 22 of the Act. If one has access to the "issuance date" of CanPro employees, one could estimate the "created dates" fairly accurately, i.e. to within eight weeks. As such, the Ministry submits that the Commissioner would clearly find that it was required to refuse access to the issuance dates of CanPro employees under section 22 of the Act.
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19. In light of the section 22 analysis found in Order No. 03-21, the Ministry knows of no principled basis for distinguishing between the "created dates" requested in the First Request (of which the Commissioner held must be withheld under section 22) and the "dates of issuance" requested by the applicant in the Second Request. For instance, the Ministry submits that the section 22(3)(d) presumption applies equally to both. In addition, given that the Applicant is again requesting information concerning third party employees of a particular business, namely CanPro, the Ministry submits that the section 22(4)(i) analysis in Order No. 03-21 applies equally to this case.

As the Ministry points out, in Order 03-21, I required the Ministry to refuse to disclose personal information that included the “created date” for each of the investigation firm’s employees. It is clear to me that, if an inquiry were to proceed at this time respecting that same information, the principle of *res judicata* would apply and the outcome would be the same, effectively, as in Order 03-21. On that basis, I decline to proceed with an inquiry under Part 5 of the Act respecting the “created dates”, which found in the records that respond to the access request in issue here for the various employees involved.

This leaves the question, however, of whether the request for licence issue dates, which are not the same as the ‘created dates’, should be the subject of an inquiry under Part 5 of the Act. The Ministry argues that disclosure of a licence issue date would lead to derivative disclosure of the created date, which I held in Order 03-21 is prohibited by s. 22(1). Specifically, the Ministry believes disclosure of a licence issue date would enable the respondent to work back to the relevant “created date” for that individual. I do not accept this, noting the pretty wide range of lag times, for various years, between the entry of a licence application (the “created date”) and the date a licence was actually issued. The derivative disclosure argument is not persuasive. I should also add that the reverse holds true, in my view. One would not be able to determine the issuance date from the created date.

In any case, based on my review of the disputed records, I fail to see how those records respond to the respondent’s request for access to licence issue dates. None of the data fields in the records is identified as containing the issue date for licences. The records in dispute here therefore do not respond to this aspect of the respondent’s request. I infer that this is because, when the Ministry responded to the present access request, it believed (as noted above) that the “created date” was the licence issue date. Since these records are not, however, responsive to that part of the respondent’s present access request, it would be pointless to proceed to a Part 5 inquiry respecting these records and I therefore decline to do so.

Because the disputed records are not responsive to this part of the respondent’s request, I need not decide whether s. 22(1) prohibits disclosure of the licence issue dates requested by the respondent. I will say in passing, however, that if a later access request is made for this information, it would almost certainly be found to be part of each individual’s employment history within the meaning of s. 22(3)(d) of the Act, thus raising a presumed unreasonable invasion of personal privacy if the information were disclosed. This outcome would be consistent with my findings in Order 03-21, which involved similar information—the “created date” for each individual. The respondent has not cited any relevant circumstances supporting disclosure of the present personal information, despite the analysis of relevant circumstances in Order 03-21. Nor is his reliance on the *Personal Information Protection Act* and the *Private Security Act* well-founded. Nothing in the material here suggests that the outcome of a Part 5 inquiry respecting licence issue dates is likely to differ from the outcome in Order 03-21. Without deciding the matter or pre-disposing myself or anyone else in any way, if the issue arose for decision, I would on the material before me be inclined to hold that s. 22(1) requires the Ministry to refuse to disclose the requested licence issue dates.

For the reasons given above respecting *res judicata* and non-responsiveness of the records, under s. 56(1) of the Act, I decline to hold a Part 5 inquiry respecting the respondent's request for review.

Yours sincerely,

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia

cc: Brenda Guiltner, Registrar of Inquiries