

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 112-1996  
July 2, 1996**

**INQUIRY RE: A decision of the Ministry of Finance and Corporate Relations to refuse an applicant access to the records of an audit of the Public Affairs Branch of the Ministry of Municipal Affairs**

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**1. Description of the review**

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner on March 20, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision of the Ministry of Finance and Corporate Relations (the Ministry) to refuse an applicant access to certain information contained in records relating to a 1994/95 audit of the Public Affairs Branch of the Ministry of Municipal Affairs.

**2. Documentation of the review process**

On August 28, 1995 the applicant submitted a request "to examine all records, documents, memos, correspondence, etc. regarding the audit of the Public Affairs Branch, Ministry of Municipal Affairs, which took place in 1994/95." By letter dated December 10, 1995, the Ministry notified the applicant of the availability for his examination of a bundle of documents. Some of the records had information severed under sections 15, 21, and 22 of the Act. Some documents were withheld in their entirety. The applicant wrote to this Office on December 18, 1995 to request a review of the decisions of the Ministry with respect to all information withheld from him under these sections.

**3. Issue under review at the inquiry and the burden of proof**

The issue under review in this inquiry is whether the release of the severed information would be harmful to law enforcement, the business interests of a third party, or personal privacy under sections 15, 21, and 22 of the Act respectively. The relevant sections are 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
- ...
  - (j) facilitate the commission of an offence under an enactment of British Columbia or Canada, or
  - (k) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.
  - ....

***Disclosure harmful to business interests of a third party***

- 21(1) The head of a public body must refuse to disclose to an applicant information
- (a) that would reveal
    - ...
    - (ii) commercial, financial, labour relations, scientific or technical information of a third party,
  - (b) that is supplied, implicitly or explicitly, in confidence, and
  - (c) the disclosure of which could reasonably be expected to
    - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
    - ...
    - (iii) result in undue financial loss or gain to any person or organization, or
    - ....

***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,
  - (g) the personal information is likely to be inaccurate or unreliable,  
and
  - (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,
  - ...
  - (d) the personal information relates to employment, occupational or educational history,
  - ...
  - (g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party,
  - ....
- (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
- ...
  - (e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff,
  - ...
  - (h) the information is about expenses incurred by the third party while travelling at the expense of a public body,
  - ....
- (5) On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the public body must give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information.
- ....

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(1), where access to information in a record has been refused, it is up to the public body to prove that the applicant has no right of access to the record or part of the record. In this

case, it is up to the Ministry of Finance and Corporate Relations to prove that the applicant has no right of access to the records withheld under sections 15 and 21 of the Act.

However, if the record or part of the record that the applicant has been refused access to contains personal information of a third party, section 57(2) requires the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's privacy. In this case, the applicant must prove that the release of the personal information withheld under section 22 of the Act would not be an unreasonable invasion of the privacy of third parties.

#### **4. The records in dispute**

The records in question consist of many hundreds of pages of documents relating to a management and financial audit of the Public Affairs Branch of the Ministry of Municipal Affairs. They include interview notes and summaries, contract forms, payment grids, payroll and employment documents, expenditure forms, travel receipts, client interview questionnaires, memos, and personnel file information.

#### **5. The applicant's case**

The applicant is a former employee of the Public Affairs Branch of the Ministry of Municipal Affairs. He left his position before this audit occurred. His view is that the "audit documents should be public. Taxpayers have a right to know under what conditions their money has been spent, and how the branches are being administered. [The Ministry of] Finance has deleted a wide range of material including the opinions of public employees acting in their professional capacity." He claims that extensive severing of the records in dispute has "rendered their value questionable" and wishes to contest all of the severing. (See Submission of the Ministry, paragraphs 5.2, 5.3)

The applicant claims that significant parts of the audit report involve him "and relate to my complaints about the Acting Director and the management of the Ministry of Municipal Affairs .... But because the report does not reflect well on management, and raises questions regarding their actions taken against me, the government has stonewalled my requests ...."

I have discussed below other specific points made by the applicant as I have found it appropriate to do so.

#### **6. The Ministry of Finance and Corporate Relations' case**

The audit records in dispute are under the control of this Ministry. It conducted a scheduled audit of the Public Affairs Branch that was advanced in time due to senior management concerns about a number of areas (not including the work of any specific person). (Submission of the Ministry, Affidavit of Jenifer Jennings, paragraphs 6, 7) I have discussed below its arguments on specific sections of the Act.

## 7. Discussion

The Ministry states that the applicant was not in the Public Affairs Branch when the audit was done and that “very little in the audit relates to the Applicant .... The Applicant has received all material that directly relates to him.” (Submission of the Ministry, paragraph 5.3) The applicant’s response is that he was working only steps away from his old branch while the audit team was asking questions about him. Eventually the auditors interviewed him at his own request. He also contests the Ministry’s assertion that he has received all of the information about himself in the audit records.

***Section 15(1): The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to ... (j) facilitate the commission of an offence under an enactment of British Columbia or Canada, ... (k) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system***

The Ministry has severed one or two pages under these sections that pertain to the payment of invoices and financial controls in an accounts payable system. It argues that a payment chart is “a financial system,” the disclosure of which would make it easy to commit fraud, which is an offense under the *Criminal Code* of Canada.

With respect to the two pages severed under section 15, I am of the view that sections 15(1)(j) and 15(1)(k) do not apply to the information severed in these records, because they do not reveal information that the exception is intended to protect.

***Section 21: Disclosure harmful to business interests of a third party***

Section 21 is a mandatory exception that includes a three-part test. The Ministry determined in three instances that “release would reveal commercial or financial information of a third party, that was implicitly or explicitly supplied in confidence, and disclosure would harm the competitive position of the contractor or result in financial loss to the contractor.” In fact, the Ministry only severed the hourly contract rate or price from invoices, arguing that it is “financial information that the third party would expect would be confidential and should be given the protection of this section of the Act.” (Submission of the Ministry, paragraphs 5.10, 5.13, 5.15)

With respect to these specific section 21 severances, I find that this section does not apply to the information about the hourly rate or total compensation of a government contractor under a completed contract, because there is no demonstration of harm. I note, furthermore, that on a number of pages (e.g., P1-20, P3-3, P3-4.4.2, the attachments to P-4-5) the Ministry has already released the very hourly rates it now seeks to protect.

***Section 22: Disclosure harmful to personal privacy***

The Ministry is generally concerned that the simple severing of personal information in this case would not protect the identity of persons interviewed, who might become co-workers or subordinates of the applicant if he returned to the Public Affairs Branch of the Ministry. It tried to address this problem by releasing summaries of the interviews that the audit team had

prepared. (Submission of the Ministry, paragraphs 5.18, 5.19) For various reasons, including the fact that the applicant has already received his own personal information, the Ministry believes that “there is a great likelihood” that persons interviewed could be identified by the applicant. (Submission of the Ministry, Affidavit of Jenifer Jennings, paragraph 9) The applicant’s response is that if he were to return to the Ministry, it would be to another branch; were he transferred back to the Public Affairs Branch, he would have no supervisory authority because of his existing rank.

The applicant’s claim is that “the Ministry of Finance has over-zealously applied section 22 to audit documents which should be available to the public and myself.” His view is that the public has a right to know the opinions of public employees who were interviewed about areas for which they were responsible; moreover, he has a right to know who said what about him during such interviews, including negative remarks. The Ministry’s response is that the applicant has received the opinions expressed by others concerning him, but has not received the opinions about others, which belong to them. (Reply Submission of the Ministry, paragraph 7)

The Ministry further submits that the purpose of the audit had nothing to do with the applicant. It also argues on the basis of Order No. 83-1996, February 16, 1996, p. 4 that the applicant has no right to the full notes of what was said during the course of interviews conducted during the audit, as opposed to the summaries that the applicant has received. In addition, it states that all of those interviewed were told that the interview would be confidential, as is customary in the audit process. (Reply Submission of the Ministry, paragraphs 8-11) The person who was directly responsible for the audit states that each “person was told that the interviews would be kept confidential as much as possible under the provisions of the *Freedom of Information and Protection of Privacy Act*.” (Reply Submission of the Ministry, Affidavit of Dan Ho, paragraph 6)

The Ministry’s contention is that the applicant has not met his burden of proof under section 22 as established in Order No. 24-1994, September 27, 1994, p. 7, and Order No. 27-1994, October 24, 1994. (Reply Submission of the Ministry, paragraphs 2-5, 16)

In general, the Ministry applied the following parts of section 22 to personal information excepted from disclosure to the applicant: sections 22(2)(e), (f), (g), and (h); 22(3)(b), (d), and (g); and 22(4)(e) and (h). I will evaluate each of these applications in the course of examining the records in dispute. (Reply Submission of the Ministry, paragraphs 13, 14)

### ***State of the records***

With one notable exception, I found the severed records in this case adequately marked to show what records the applicant had received, what records and information he had not received, and what section of the Act the public body had applied to the withheld information. Regrettably, there was a sizeable package of records, Volume 4, which was confusingly marked and for which it was impossible to tell, with any confidence, how the public body had treated the records.

I should also note that the packages of unsevered records provided to me (i.e., the pages highlighted to show the withheld information) appeared to be the Ministry's own internal freedom of information working file. They contained numerous notes from Ministry officials on the merits of various exceptions and showed what appeared to be initial and final attempts at severing the records, including a reminder not to leave notes and unanswered questions on the working file. Public bodies should take care to present a final, properly-marked, and unambiguous version of the severed records to my Office in future. In this case, due to the confusing highlighting and annotations, I have made assumptions on the information severed from the records in Volume 4. I have assumed that information circled or stroked out in pink highlighter was withheld and that all other information in this volume was made available to the applicant, either by viewing the records in person or by receiving copies.

### ***Review of the records in dispute***

The Ministry emphasizes that the applicant has reviewed the entire record in dispute in severed form, received copies of individual documents at his request, and also received a summary of a portion of the record. It claims that the applicant has received almost ninety percent of the entire record. The Ministry applied section 15 to a total of two pages, section 21 to various items, and section 22 to personal information that, in its view, should not be disclosed. (Submission of the Ministry, paragraphs 1.03, 4.2; Reply Submission of the Applicant, paragraph 15) The person who directed the audit states that the applicant has now received the final audit report, information provided by persons interviewed, "if the information directly related to the job that the person being interviewed performed," and summaries of all of the interviews that were conducted: "This means, therefore, that the Applicant has received the contents of what was said during the interviews, but has not received who said what." (Reply Submission of the Ministry, Affidavit of Dan Ho, paragraphs 10-12)

I have reviewed all of the severances imposed by the Ministry on the records in dispute. I am satisfied that the applicant has received much of the information to which he is entitled under the Act and that section 22 has been appropriately applied to personal information about third parties in many instances. There is, however, some additional personal information about the applicant that should be disclosed to him.

I also found a large number of pages that should be released to the applicant, in full or in part, because their disclosure would not be an unreasonable invasion of the privacy of third parties. Some of this previously-severed material concerns salaries, reporting relationships, duties, and dates of employment for public servants, which must be disclosed under section 22(4)(e).

The Ministry has withheld other pages in their entirety under section 22 of the Act. They comprise payroll and leave verification notes, time entry and pay authorizations, leave management transactions, attendance logs, and overtime records. Although they concern specific persons other than the applicant, I find that under section 22(4)(e) a number of these pages can be disclosed to the applicant with a modest amount of severing, since they concern third parties' position, functions, or remuneration as an employee of the Ministry.

Finally, I consider that there are several pages of interview notes in Volume 4 which should be released, in whole or in part. I note that the pink highlighting in the records in Volume 4 was not applied to most interviewees' names, indicating that they were released to the applicant. I therefore find that a second release of this information would not be an unreasonable invasion of the third parties' privacy. Some personal information about the interviewees should not, however, be released and was appropriately severed under section 22. I have marked the records accordingly.

## **8. Order**

I find that the Ministry of Finance and Corporate Relations is required to refuse access to part of the records in dispute under section 22 of the Act. Under section 58(2)(c), I require the head of the Ministry to refuse access to part of the records in dispute.

I find that the Ministry is not authorized or required to refuse access to part of the records in dispute under sections 15, 21, or 22 of the Act. Under section 58(2)(a), I require the Ministry to give the applicant access to those parts of the records that I have marked for the Ministry to release.

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David H. Flaherty  
Commissioner

July 2, 1996