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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 251-1998
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INQUIRY RE: A decision by the Ministry of Aboriginal Affairs to sever information from records dealing with the Whistler Land Corporation and the disposal or sale of Crown Lands

Fourth Floor
1675 Douglas Street
Victoria, B.C. V8V 1X4
Telephone: 250-387-5629
Facsimile: 250-387-1696
Web Site: http://www.oipcbc.org

1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on March 16, 1998 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review by the Te'mexw Treaty Association (the applicant), of a decision by the Ministry of Aboriginal Affairs (the Ministry) to sever information from records dealing with the Whistler Land Corporation and the disposal or sale of Crown lands. The applicant is an association of five Vancouver Island First Nations made up of the Nanoose, Malahat, Songhees, Beecher Bay and T'Souke First Nations.

2. Documentation of the inquiry process

On September 2, 1997 the applicant submitted a request to the Ministry of Aboriginal Affairs for all records pertaining to the Whistler Land Corporation as well as all records pertaining to the disposal or sale of provincial Crown lands from January 19, 1997 to the date of the request.

On September 25, 1997 the Ministry informed the applicant that consultations were necessary with another public body and extended the time period for responding to the request by thirty days. On November 25, 1997 the Ministry responded to the applicant's request by disclosing approximately 180 pages of records. While approximately 57 of those pages were disclosed in full, the remaining records were severed on the grounds that they contained information excepted from disclosure under sections 12, 13, 16, 17 and 22 of the Act.

On November 25, 1997 the applicant sent a request to this Office for a review of the Ministry's decision to withhold information under sections 13, 16, and 17.

On February 3, 1998 the applicant informed my Office that it wished the matter to proceed to an inquiry, which was scheduled for March 16, 1998. On February 5, 1998 the Whistler Land Corporation requested and was granted full party status in this inquiry under section 54(b) of the Act.

On March 13, 1998 the applicant included with its reply submission a request for an adjournment of the inquiry and an extension of time in order to reply to one specific issue raised in the initial submission of the public body. Both the Ministry and the Whistler Land Corporation opposed the adjournment and extension request of the applicant. Given that all submissions had already been received and exchanged, and having reviewed both the applicant's request and the responses of the other parties, I decided that the inquiry should proceed as scheduled without an adjournment.

3. Issue under review and the burden of proof

This inquiry examines the Ministry's application of sections 13, 16, and 17 of the Act to records pertaining to the Whistler Land Corporation and the disposal or sale of Crown lands. The relevant sections read as follows:

Policy advice or recommendations

13(1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

(2) The head of a public body must not refuse to disclose under subsection (1)

(a) any factual material,
...
(d) an appraisal,
...
(f) an environmental impact statement or similar information,
...
(l) a plan or proposal to establish a new program or to change a program, if the plan or proposal has been approved or rejected by the head of the public body,
....

Disclosure harmful to intergovernmental relations or negotiations

16(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 the conduct by the government of British Columbia of relations between that government and any of the following or their agencies:

(i) the government of Canada or a province of Canada;
...
(iii) an aboriginal government;
...

(c) harm the conduct of negotiations relating to aboriginal self government or treaties.

(2) Moreover, the head of a public body must not disclose information referred to in subsection (1) without the consent of

(a) the Attorney General, for law enforcement information, or

(b) the Executive Council, for any other type of information.

(3) Subsection (1) does not apply to information that is in a record that has been in existence for 15 or more years unless the information is law enforcement information.

Disclosure harmful to the financial or economic interests of a public body

17(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:

...
(b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;
...
(d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;

(e) information about negotiations carried on by or for a public body or the government of British Columbia.
....

In addition to the these sections, the applicant raises section 25 of the Act which reads as follows:

Information must be disclosed if in the public interest

25(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

(a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or

(b) the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

....

Section 57 of the Act establishes the burden of proof on the parties in an inquiry. Under section 57(1), it is up to the Ministry to prove that the applicant has no right of access to records or portions of records withheld under sections 13, 16, and 17.

To the extent that the applicant relies on section 25 of the Act to say that the Ministry is required to disclose the information in the public interest, the burden of proof is on the applicant to demonstrate that section 25 applies to the information. (See Order No. 165-1997, May 21, 1997; Order No. 182-1997, August 13, 1997; and Order No. 206-1997, December 18, 1997)

4. Procedural objections

Each of the parties made reply submissions on March 13, 1998. On March 16, 1998, the applicant submitted a further letter for the purpose of clarifying that it had no intention of abandoning any part of the request for disclosure of information – a concern that arose from the reply submissions made by the Ministry and the Whistler Land Corporation. Both the Ministry and the Whistler Land Corporation object to this late submission. Since the purpose of the letter was to simply clarify the applicant's position, I have considered the contents of the letter in making my decision.

5. The records in dispute

The Ministry identified 54 records (145 pages) responsive to the applicant's request. They include electronic mail messages, briefing notes, meeting notes and memoranda. Of these 54 records, 36 have been partially severed under sections 13, 16 and 17 of the Act. Information severed from the records under sections 12 and 22 of the Act is not in dispute in this inquiry. In some cases, information has been severed under section 12 or 22 and another exception to disclosure. In those cases, the severing under the other exception will not be reviewed in this inquiry, as the applicant has accepted the severing under sections 12 and 22. (Submission of the Ministry, paragraph 4.01)

6. The Te'mexw Treaty Association's case

The applicant is engaged in treaty negotiations with the B.C. government. It has done so on the assurance from government "that in the settlement of overall treaty claims there would be Crown Land available in satisfaction of the outstanding aboriginal title and aboriginal rights claims." Its fear is that the government is now improving and selling such lands through the Whistler Land Corporation. (Submission of the Applicant, pp. 1-2)

The applicant is concerned that in response to its access request the Ministry has refused to disclose the list of Crown property that has been identified as property available to be sold by the Whistler Land Corporation. (Submission of the Applicant, p. 3) In this particular instance, the applicant emphasizes that the government and its agents have "a fiduciary duty" to protect the rights of aboriginals by negotiating in good faith, including "the exchange of information in furtherance of solution of the infringement of the interests of aboriginal people." (Submission of the Applicant, pp. 6, 7) The applicant submits that this fiduciary duty is an "overriding relevant factor in the context of this particular application for disclosure." It relies in particular upon section 25(1) of the Act for this purpose. (Submission of the Applicant, pp. 8-12)

The applicant essentially wants the full list of property and legal descriptions of Crown land sold and available for disposition through the Whistler Land Corporation.

I have presented below the more detailed arguments of the applicant about specific sections of the Act.

7. The Ministry of Aboriginal Affairs' case

The Ministry submits that a proactive program for marketing Crown lands has been in place for over fifteen years. The Whistler Land Corporation is a government corporation, in existence since 1983, but with a newly-enhanced mandate to lead the provincial initiative to market Crown land through the province. The Ministry makes the decisions as to what land will be available for sale. The two work jointly under a Land Disposition Agreement. The Ministry described the process as follows:

> Schedule 'A' to the Land Disposition Agreement identifies projects currently approved by MELP [Ministry of Environment, Lands and Parks] in respect of the development and marketing by Whistler Land Corporation. Once MELP approves a project for development and marketing and it is added to Schedule 'A' of the Land Disposition Agreement, this information is made publicly available. On November 5, 1997, the First Nations Summit Task Group and the Treaty Negotiation Protection Alliance was [*sic*] provided with the initial list of properties that Whistler Land Corporation may market on behalf of MELP. (Submission of the Ministry, paragraph 1.12)

The Ministry states that the Whistler Land Corporation may conduct market analysis of surplus properties and estimate their market value:

> In the initial planning and selection of Crown land for sale, there are development, pricing, timing and policy considerations that the Province may

> wish to keep confidential. The Province will not provide full disclosure of all properties being considered. It is information of this nature which the Public Body has severed from the records in dispute under section 17 of the Act. (Submission of the Ministry, paragraph 1.13)

The Ministry also points out that the applicant and other native bands have filed a writ of summons in the Supreme Court of British Columbia against the Whistler Land Corporation and the province, seeking a declaration that the Land Disposition Agreement is unlawful and unenforceable. (Submission of the Ministry, paragraph 1.18)

I have discussed below the Ministry's arguments on the application of specific sections of the Act.

8. The Whistler Land Corporation's case

The Whistler Land Corporation's submission focused only on the section 17 arguments for non-disclosure of information in dispute, because it would impair "the ability of Whistler Land Corporation to market and sell Crown land for the maximum possible price at the least possible cost." (Submission of the Whistler Land Corporation, paragraph 2.2) Its position is that there is a reasonable expectation of harm to the financial and economic interests of the public bodies involved. See Order No. 206-1997, December 18, 1997; and Workers Compensation Board v. Ontario (1995), 23 O.R. (3d) 31 (Div. Ct.), p. 40. (Submission of the Whistler Land Corporation, paragraphs 5.2 to 5.7)

> Third parties dealing with Whistler Land Corporation in an attempt to negotiate contracts for the purchase of Crown lands will enjoy undue financial gain if information relating to Whistler Land Corporation's internal assessments of the market value of these pieces of property are [*sic*] made known. First, they would get free appraisals, which Whistler Land Corporation incurred expense to obtain. Second, the negotiating position of Whistler Land Corporation will be compromised once negotiations for a possible sale begin. (Submission of the Whistler Land Corporation, paragraph 5.18)

Because the Whistler Land Corporation's submission on the application of section 17 parallels the arguments of the Ministry, I have not discussed its submissions in detail below. See the Affidavit of R. Lorne Seitz; and Order No. 104-1996, May 24, 1996.

9. Discussion

In its lengthy submission, the applicant has sought to persuade me of the merits of its request for full disclosure of the records in dispute by making broad arguments about treaty negotiations, the rights and interests of native peoples, and the decisions of the Supreme Court of Canada that relate thereto. Some of this material is germane to arguments about the applicability of section 25 of the Act, which is discussed elsewhere in this Order. However, beyond that, I am limited in this process to the application of the existing sections of the Act itself to the records in dispute. I have no authority to address broader issues in the treaty process, such as the fiduciary obligation of the government to First Nations people. (See, for example, Submission of the Applicant, pp. 7, 25-26, 27, 33-34; and Reply Submission of the Applicant, paragraphs 65 to 75)

For its part, the Ministry submits that the "disposition of Crown land is guided by a number of principles, including the fulfillment of the Province's obligations with respect to aboriginal rights and title and consultation." (Submission of the Ministry, paragraph 1.14; see also Reply Submission of the Ministry, paragraphs 3.0 to 3.2, 8.2, 8.8) The Ministry submits that in circumstances in which there is a potential to infringe Aboriginal rights or title by the sale of Crown lands, the public body does consult with First Nations to determine whether there is an infringement. Such consultation is carried out in accordance with the Provincial Crown's "Crown Land Activities and Aboriginal Rights Framework" and the Ministry's "Procedures for Avoiding Infringement of Aboriginal Rights," a copy of which was put into evidence.

Section 13: Policy advice and recommendations

The applicant submits that the Ministry has refused to disclose records "which refer to property names or perhaps proposed property names to be sold as Crown land by the Whistler Land Corporation as well as projected revenue or sale price information for these properties." (Submission of the Applicant, p. 14) In particular, the Ministry has an obligation to disclose basic factual information: "In this case, the Applicant seeks only the simple information contained in the project lists of the property." (Submission of the Applicant, p. 15)

> The Applicant is asking only for disclosure of information which confirms the properties to be sold or considered for sale by W.L.C. and a list of those properties, in legal descriptive terms.... The format of the information allows for this easy severance as the property is listed on separate pages, in many cases, and in column fashion. (Submission of the Applicant, p. 16; see also p. 20)

The applicant argues similarly that the Ministry should not be refusing to disclose information that constitutes "appraisal of the value of its own land...." or environmental impact statements or similar information. It further argues that the Ministry must disclose plans or proposals to institute its Revenue Enhancement Strategy. (Submission of the Applicant, pp. 20-22)

The Ministry submits that the disclosure of the records in dispute in this inquiry would "implicitly or explicitly reveal advice or recommendations developed by or for a Public Body or a minister."

> Most of the information severed under section 13 from the records in dispute reflect[s] the Public Body's assessment, often followed by explicit advice or recommendations, of the Province's initiative to increase the sale of Crown lands and its impact on treaty tables. The Public Body, as the province's representative in all treaty negotiations, needs to operate in a zone of confidentiality in developing policy and advice on the Province's position and strategy for negotiations. The Province speaks with one voice at the treaty tables, and it is essential that the free flow of advice and recommendations be protected in the deliberative process of government decision making and policy development. The Public Body has a right to operate in a zone of confidentiality as they develop policies and recommendations. (Submission of the Ministry, paragraph 5.05)

The Ministry has withheld a "relatively small amount of information" on the basis of section 13(1) and argues that none of it falls into the section 13(2) list. (Submission of the Ministry, paragraph 5.07)

As noted in detail below, I agree with the Ministry that information "which would reveal advice and recommendations developed by or for the Public Body in respect to the Crown lands which are being considered for development or marketing falls squarely within the protection of section 13 and the zone of confidentiality existing over a public body's internal deliberations." (Reply Submission of the Ministry, paragraph 5.0)

The applicant relies on section 13(2)(a) to require the Ministry to disclose factual material. It takes the position that property lists and legal descriptions of the property, whether proposed for sale or confirmed as marketable property, are factual material. (Submission of the Applicant, p. 20) The evidence indicates that properties which are confirmed as marketable are added to Schedule "A" of the Land Disposition Agreement, which is made available to the public. Insofar as proposed properties are concerned, I agree with the Ministry's submission that "a list of properties on a record which addresses Crown lands being considered for sale will implicitly reveal a recommendation that these properties be considered for sale." Since the information relating to the identification of proposed properties necessarily forms the substance of the advice and recommendations, it does not fall within section 13(2)(a).

The applicant also relies on section 13(2)(d), because property lists sometimes include a reference to "expected revenue." The applicant submits that the government's appraisal of the value of its land cannot be withheld, since that is expected revenue from the sale of Crown land. (Submission of the Applicant, p. 20) I agree with the Ministry's submission that the "expected revenue" from the sale of a property may be different from its appraised value. Based on my review of the records in dispute, I am satisfied that none of the information withheld falls within the exception contained in section 13(2)(d).

The applicant further relies on section 13(2)(f), which provides that a public body must not refuse to disclose an environmental impact statement or similar information. The argument is made that information regarding the property and the lists of property to be sold by the Whistler Land Corporation constitutes information similar to an environmental impact statement,

because it contains facts and information which have an effect or influence upon the social, economic, and cultural conditions of First Nations. In my view, section 13(2)(f) does not apply, because a list of properties does not constitute an assessment of the impact on the environment, nor does it constitute similar information.

Finally, the applicant relies on section 13(2)(l), which mandates disclosure of "a plan or proposal to establish a new program or to change a program, if the plan or proposal has been approved or rejected by the head of the public body." The plan or proposal in this case, according to the applicant, is the use of the Whistler Land Corporation to dispose of Crown lands in fulfillment of increased revenue projects. The applicant contends that the plan, proposal, or recommendation surrounding the proposal cannot be withheld since the project is now proceeding. (Submission of the Applicant, p. 22) As the Ministry correctly points out, section 13(2)(l) applies to "plans or proposals" rather than to "recommendations" surrounding those plans or proposals. I agree with the Ministry that the recommendations in this case do not fall within the scope of section 13(2)(l) of the Act.

Having reviewed the information withheld under section 13 and the submissions made by the parties, I find that the Ministry has met its burden of proof with respect to the application of section 13 to certain information in dispute.

Section 16: Intergovernmental relations or negotiations

The Ministry has specifically relied on sections 16(1)(a)(i), 16(1)(a)(iii), and 16(1)(c) to refuse access to information on the basis of section 16 of the Act. It is concerned about harm to the normal process of relations between the province and the government of Canada and between the province and an aboriginal governments (including band governments, such as the five present applicants). The Ministry is further exercising its discretion to refuse to disclose information, "if the disclosure could reasonably be expected to harm the conduct of negotiations relating to aboriginal self government or treaties." (Submission of the Ministry, paras. 5.09 to 5.11)

The Ministry submits that:

> ... the disclosure of information regarding the Province's policies, positions, tactics and strategies for treaty negotiations, including information regarding the internal development and assessment of the said policies, positions, tactics and strategies, can reasonably be expected to harm the conduct of relations and the conduct of treaty negotiations between the Province and aboriginal governments, and the Province and the Government of Canada. (Submission of the Ministry, para. 5.13)

See Order No. 14-1994, June 24, 1994 and the *in camera* affidavit of Patrick O'Rourke.

Based on my review of the submissions, I find that the Ministry has appropriately applied section 16 of the Act to the information in dispute.

Section 17(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic

interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:....

The applicant broadly argues that it is patently unreasonable to refuse to disclose the property and legal descriptions of Crown land on the grounds that this would harm the economic interest of the government. (Submission of the Applicant, p. 25) It argues that severing should be applied in order to provide the applicant "with as much information as is reasonably practical and still protect whatever economic interest the Government fears will be harmed." (Submission of the Applicant, p. 27) I agree with the latter point.

The applicant claims that the Ministry has denied that there has been any change in policy regarding the disposition of Crown lands in an accelerated or expedited manner. (Submission of the Applicant, p. 28)

The Ministry submits that the information it has severed from the records in dispute falls within the description of information in section 17(1)(b), (d), or (e), "or is information which is similar in type to the information listed and meets the harms test set out in subsection 17(1)." There are affidavits from the Ministry and the Whistler Land Corporation in detailed support of these assertions. (Submission of the Ministry, paragraph 5.19; and the Affidavits of R. Lorne Seitz and Phillip Christie)

Since the "sole purpose" of granting an expanded mandate to the Whistler Land Corporation for marketing of surplus Crown land was increasing provincial revenues, the Ministry submits that "[a]nything which hinders the marketing of surplus Crown land by Whistler Land Corporation must therefore be seen as harming the financial and economic interests of the Province, as well as those of Whistler Land Corporation." (Submission, of the Ministry, paragraph 5.20)

Section 17(1)(b): financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;

With respect to the application of the first part of section 17(1)(b), the Ministry submits as follows:

> Many of the records in dispute clearly disclose, and are related to, the monetary value of various Crown lands, and projected revenues from these properties. (Submission of the Ministry, paragraph 5.22)
>
> Many of the records in dispute disclose general and specific development and marketing plans for Crown lands. This includes internal reviews of the various Crown lands and the issues considered in evaluating these properties for potential development and marketing. (Submission of the Ministry, paragraph 5.23)
>
> The information in dispute belongs to the government of British Columbia and has significant intrinsic or monetary value to the province and to real estate

developers. (Submission of the Ministry, paragraphs 5.25 and 5.26) See Order No. 104-1996 and Order No. 15-1994, July 7, 1994, p. 6.

Section 17(1)(d): information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;

The Ministry also invokes section 17(1)(d) to emphasize in this inquiry the risks of premature disclosure of proposals to develop or market a piece of property. (Submission of the Ministry, paragraph 5.29) The Ministry further fears undue financial gain to third parties, such as land speculators. "Furthermore, if the market is aware of the appraised value of the Crown land or estimated revenues from the sale of the property, or characteristics of the property which reduce its value, Whistler Land Corporation's bargaining position on price is severely compromised." (Submission of the Ministry, paragraph 5.30)

Section 17(1)(e): information about negotiations carried on by or for a public body or the government of British Columbia.

The Ministry invokes this subsection to protect information that "could reasonably be expected to define the scope of future negotiations (i.e. the properties that are being considered for development and marketing, marketing strategies, and appraisal information)." It submits that the negotiating position of the Whistler Land Corporation needs to be protected if the province is to maximize its revenues from the sale of Crown lands. Disclosure of the information in dispute can reasonably be expected to harm the financial or economic interests of the province. (Submission of the Ministry, paragraph 5.32; see also the Reply Submission of the Ministry, paragraph 8.9) See Order No. 104-1996, May 24, 1996, p. 6; Order No. 123-1996, September 5, 1996; and Order No. 172-1997, July 11, 1997.

I find that the Ministry has met its burden of proof with respect to the application of section 17 of the Act to the records in dispute.

Section 22(2)(d): the disclosure will assist in researching or validating the claims, disputes, or grievances of aboriginal people,

The applicant has relied on this section in support of its argument that the requested records should be disclosed in the public interest on the basis of section 25. (Submission of the Applicant, pp. 11-12) While I acknowledge that it is useful to note this specific recognition in the Act of the interests of Aboriginal people, I must point out that this specific subsection relates only to the disclosure of personal information about third parties, not the kind of information that has been severed from the records in dispute in this inquiry.

Section 25: Public Interest Paramount

The applicant's position is that this section of the Act overrides any other exception to disclosure in the circumstances of this inquiry. The requested information must be disclosed to

protect the interests of the First Nations people as members of the public. (Submission of the Applicant, p. 10; and Reply Submission of the Applicant, paragraphs 76 to 81)

In partial response to this argument, the Ministry generally submits that the applicant does have existing access to the specific names and legal descriptions of Crown land that has been approved for sale, information about the location of all Crown land in the province, and information about the tenures issues over these lands and the resources used from the lands. (Reply Submission of the Ministry, paragraph 4.0)

The Ministry generally submits that "the information it has withheld does not meet the criteria set out in section 25 of the Act." (Reply Submission of the Ministry, paragraph 4.4) I agree with the Ministry that disclosure of the information is not "clearly" in the public interest in the circumstances of this inquiry. See Order No. 165-1997, May 20, 1997, p. 7.

I find that the applicant has not met its burden of proof with respect to the application of section 25 in the circumstances of this inquiry. (See the Reply Submission of the Whistler Land Corporation, paragraphs 4.1 to 4.18) See Order No. 165-1997.

Review of the Records in Dispute

The Ministry identified 54 records (145 pages) responsive to the applicant's request. The information severed under section 13 of the Act is information which would reveal the Ministry's assessment of how the Province's initiative to increase the sale of Crown lands may or may not have an impact on treaty negotiations, and advice and recommendations on how to deal with this issue. Section 16 has been applied to much of the same information severed under section 13. Section 17 has been applied primarily to information which would reveal the location of Crown lands which are being considered for sale by the Crown, and specific information about these properties. (Submission of the Ministry, paragraphs 4.01 and 4.02)

The Ministry's standard list of reasons for relying on section 17 to sever lines from records includes the following:

- would identify revenues estimates and values of Crown lands already identified as being for sale
- would identify Crown land being considered for sale
- revenue estimate from land sales, land tenures, interest income, etc.
- property names of Crown land being considered for sale
- estimated purchase price

The Whistler Land Corporation also furnished a helpful list of the four main types of information that have been withheld from the applicant on the basis of section 17:

- information which expressly or implicitly identifies Crown lands which are being considered for addition to Schedule "A";
- information which reveals either the estimated market value of property being considered for addition to Schedule "A" or which reveals internal discussions concerning factors affecting the potential market value of such properties;
- information which reveals either the estimated market value of property currently listed in Schedule "A" or which reveals internal discussions concerning factors affecting the potential market value of such properties; and
- information which reveals the marketing strategies employed by Whistler Land Corporation. (Submission of the Whistler Land Corporation, paragraph 5.10; Affidavit of R. Lorne Seitz, paragraph 3.2)

The reply submission of the applicant goes to great lengths to advance the argument that there are "considerable flaws" in the argument of the public bodies that there is a reasonable expectation of harm from disclosure of the information in dispute. The applicant further argues that the evidence for such harm must be detailed and convincing. I have indicated above that the standard is the reasonable expectation of harm to the financial and economic interests of the province. See Order No. 159-1997, April 17, 1997; Order No. 193-1997, October 7, 1997, and the Reply Submission of the Ministry, paragraphs 8.5 and 8.6. While I have reviewed the various arguments of the applicant as to why disclosure of the information in dispute would not harm the economic or financial interests of the public bodies, the key decision on the application has been appropriately made by the Ministry. I am satisfied on the evidence that disclosure of

the information could reasonably be expected to harm the financial or economic interests of the government.

With respect to the records in dispute, I simply take note of the Ministry's detailed reply submission to the effect that the applicant "has already received exactly what they claim they have a right to receive." (Reply Submission of the Ministry, paragraphs 1.0 to 1.3)

10. Order

I find that the Ministry of Aboriginal Affairs was authorized under sections 13, 16 and 17 of the Act to refuse access to the records in dispute. Under section 58(2)(b) of the Act, I confirm the decision of the Ministry to refuse access to the records withheld on the basis of sections 13, 16 and 17.

I also find that the Ministry of Aboriginal Affairs has acted properly in refusing to apply section 25 of the Act pursuant to the applicant's request. I make no order in this respect other than to note that the applicant has not satisfied me that the application of section 25 to the records is warranted under the Act.

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David H. Flaherty
Commissioner

July 31, 1998