

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 262-1998
September 10, 1998**

INQUIRY RE: A review of a decision by the City of Abbotsford to disclose to Mediacom Inc. an agreement with Pattison Outdoor (formerly Seaboard Advertising Company)

**Fourth Floor
1675 Douglas Street
Victoria, B.C. V8V 1X4
Telephone: 250-387-5629
Facsimile: 250-387-1696
Web Site: <http://www.oipc.bc.ca>**

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 July 21, 1998 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request from Pattison Outdoor, A Division of Jim Pattison Industries Ltd. (Pattison) to review the decision by the City of Abbotsford (the City) to disclose to Mediacom Inc. (Mediacom, also referred to in this Order as the applicant) a 1986 agreement (the record) between Pattison and the City.

2. Documentation of the inquiry process

Mediacom made a written access request to the City, on April 7, 1998, for a copy of the City's Transit Shelter Representation Agreement. The record was identified as a 1986 agreement between the District of Matsqui and Seaboard Advertising Company. The City gave Pattison the opportunity to make representations concerning disclosure and subsequently decided to disclose the entire agreement to Mediacom. The City advised Pattison of that decision and indicated that the agreement would be disclosed on May 20, 1998, unless Pattison asked my Office to review the City's decision. Pattison asked for a review on May 15, 1998. A Notice of Written Inquiry was issued for an inquiry to be held July 21, 1998.

3. Issue under review and the burden of proof

The issue to be reviewed is the City's application of section 21 of the Act to the record in dispute.

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(3)(b), at an inquiry into a decision of a public body to give an applicant access to all or part of a record containing non-personal information that relates to the third party, it is up to the third party to prove that the applicant has no right of access to the record or part.

The relevant sections of the Act are as follows:

21(1) The head of a public body must refuse to disclose to an applicant information

- (a) that would reveal
 - (i) trade secrets of a third party, or
 - (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

....

4. The record in dispute

The record in dispute is a 1986 contract between the District of Matsqui (now the City of Abbotsford) and Seaboard Advertising Company (now Pattison Outdoor). The agreement gives Pattison the right to install bus shelters, containing advertising, on City property at specific locations.

5. The City of Abbotsford's case

The City decided that the record in dispute should be disclosed, because:

- a) it does not contain any financial information;
- b) it does not contain a confidentiality clause;
- c) City Council considered the agreement at a public meeting in 1986, which gives the public an automatic access to the minutes of the meeting, any staff reports, and the third party's proposal; and
- d) the agreement does not contain explicit information about cost factors.

6. Mediacom's case as the applicant

Mediacom is an admitted competitor with Pattison in the provision of transit shelters in other municipalities, and it is interested in providing such services in Abbotsford on an expanded basis. For this purpose, it wishes to review the existing agreement. It submits that it "is not interested in learning of any commercial, financial or trade secret information that may be contained in the agreement."

7. Pattison Outdoor's case as the third party

Pattison submits that the record in dispute should not be disclosed, because it has met the three-part test set out under section 21 of the Act. I have presented a summary of its detailed submissions below.

8. Discussion

Neither the applicant nor the City made a reply submission in this inquiry.

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

Pattisons submits that the record in dispute should not be disclosed, because it contains its commercial, financial, and operations information; because it was negotiated in confidence and treated as confidential by Pattison and Abbotsford; and because disclosure would harm significantly its competitive position and interfere significantly with its negotiating position. Disclosure could also result in undue financial gain to a competitor.

I have reviewed the record in dispute. For purposes of this inquiry, I am prepared to accept that the record in dispute contains commercial information of Pattison within the meaning of section 21(1)(a)(ii) of the Act. But I am not satisfied that the information in the record in dispute was "supplied, implicitly or explicitly, in confidence" within the meaning of my discussion of this test in Order No. 26-1994, October 3, 1994, pp. 7-8; and Order No. 210-1998, January 14, 1998, pp. 3-6.

Although it is not necessary for me to address the third part of the section section 21 test, I find also that the third party has not met its burden of proof with respect to section 21(1)(c). I am in no way satisfied that disclosure of the record could reasonably be expected to result in any of the harms enumerated in section 21(1)(c).

9. Order

I find that the head of the City of Abbotsford is not authorized or required to refuse access to the record under section 21 of the Act. Under section section 58(2)(a) of the Act, I require the head of the City of Abbotsford to give the applicant access to the record.

September 10, 1998
David H. Flaherty
Commissioner