

ISSN 1198-6182

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 263-1998
September 11, 1998**

INQUIRY RE: Access to a letter of complaint sent to the City of Coquitlam

**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 June 22, 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 of a decision by the City of Coquitlam (the City) to refuse access to portions of a letter of complaint.

2. Documentation of the inquiry process

The City wrote to the applicant on October 27, 1997 to advise her that it had received a complaint from a third party alleging an illegal suite in property that she owned. The City's letter was addressed to the applicant, her business partner, and to "tenants - upstairs" and "tenants - downstairs." In her reply, sent to the City on November 27, 1997, the applicant requested access to the name, address, and telephone number of the complainant. She also requested access to the text of the complaint, information about whether it was made in writing or, if made verbally, the name, address, and telephone number of the City employee who recorded it, along with a written transcript.

The City responded to the applicant by letter dated December 12, 1997. It acknowledged receipt of the request for information under the Act, indicated that the complaint letter was dated October 6, 1997, provided a summary version of some of the information in the complaint letter, and advised the applicant that other information in the letter was withheld under the exceptions provided by sections 15 and 22 of the Act.

The applicant wrote to my Office on January 5, 7, and 14, 1998 to request an extension of the thirty-day time period within which to request a review of the City's response to her access request. The Office extended the deadline to February 28, 1998.

The applicant wrote to the Office to request a review of the City's response by letter dated and faxed February 26, 1998. The applicant and the City consented to an extension of the ninety-day period referred to in section 56(6) of the Act, and a notice of written inquiry was issued for an inquiry on June 22, 1998.

3. Issues under review and the burden of proof

The issues to be reviewed concern the City's application of sections 15 and 22 of the Act to a letter of complaint from a third party which was sent to the City on October 6, 1997 (the record).

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 the record has been refused under section 15, it is up to the public body, in this case the City, to prove that the applicant has no right of access to the record or part of the record. Under section 57(2), if the record or part that the applicant is refused access to under section 22 contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

The relevant sections of the Act 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

- (a) harm a law enforcement matter,
- ...
- (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,
- (d) reveal the identity of a confidential source of law enforcement information,
-

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

...

(c) the personal information is relevant to a fair determination of the applicant's rights,

...

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

....

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

(a) the third party has, in writing, consented to or requested the disclosure,

....

4. Procedural objections

The applicant objected to the City's inclusion, in its reply submission, of two decisions of the Supreme Court of British Columbia and a supplementary affidavit sworn by the City Solicitor. The applicant notes that the Office's information guidelines state that reply submissions should be limited to commenting on the other party's initial submissions and "should not raise new facts, new issues, or new factual allegations nor should they contain any new argument or evidence (including affidavits)." The City indicates in its supplementary written argument that the supplementary affidavit and its submissions merely respond to issues raised by the applicant in her initial submissions, issues to which the City initially did not have an opportunity to respond. I find that the City's supplementary written argument and supplementary affidavit are properly considered by me in this inquiry.

5. The records in dispute

The applicant was given access to transcribed portions of a letter of complaint. The disclosure of the remaining information in the very brief letter, including the complainant's name, address, and phone number, is in dispute.

6. The applicant's case

The applicant submits that the City's "policy regarding unauthorized suites is at the heart of the matter" in this inquiry. The applicant believes that the secondary suite bylaw enforcement process in Coquitlam is a sham; and its real objective is not to uphold the law but rather to satisfy complainants. The City's policy is one of not investigating a

zoning violation unless a written complaint is received by it. The applicant submits that section 22(1) should not be applied in circumstances where the third party making a complaint to the City does so for an improper purpose. The applicant also believes that the fact that the investigation of a complaint requires the City to enter premises which are the subject of the complaint is a relevant circumstance to take into account.

I have discussed below the applicant's submissions on the application of specific sections of the Act.

7. The City of Coquitlam's case

The City has refused access to the name, address, and telephone number of the complainant and provided the applicant with a summary version only of the text of the complaint, since "the identity of the complainant may have been ascertained from the context or substance of the information as presented in the actual document...." (Submission of the City, p. 1)

The City has a zoning bylaw that regulates land use within various zones. There are accompanying penalties for persons convicted of violations of the bylaw. Because of limitations on the City's resources, the City has in the past focused its investigations on bylaw infractions brought to its attention by way of complaints from the public. In accepting complaints about possible bylaw infractions, the City requires complainants to provide their names and telephone number for possible follow-up. Recognizing that complainants might be reluctant to express their complaints without a promise of confidentiality, the City has a formal policy that prohibits the release of any information that may in any way identify the complainant. (Submission of the City, p. 2; Affidavit of Deborah Brown, pp. 2-3)

I have presented below the submissions of the City on the application of specific sections of the Act.

8. Discussion

The applicant made extensive submissions about the issue of secondary suites in Coquitlam and the history of the residential property at issue in this case. I have reviewed this material and find that it has little, if any, bearing on the issues before me in this inquiry. The same holds true of the applicant's theories about the possible identity and motives of the individual who complained about her property to the City.

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 (a) harm a law enforcement matter

The City states that it has a bylaw which provides that land within the City may not be used except as permitted under the zoning bylaw. Its bylaw also provides for enforcement by authorizing City employees to enter premises to conduct inspections to

ascertain compliance with the bylaws. Further, the bylaw states that anyone violating the bylaws is deemed to have committed an offence and is subject, on conviction, to penalties, including ticketing and the imposition of fines. The City also notes appropriately that I decided in Order No. 39-1995, April 24, 1995, that bylaw enforcement is a law enforcement matter within the meaning of this section. The City is concerned that members of the public will be reluctant to voice their complaints unless the City is able to maintain confidentiality of their identity. One of the purposes of its policy of not releasing any information which might identify a complainant is to ensure that complainants are not exposed to adverse actions as a result of making a complaint. I agree with the City that disclosure of the identity of the complainant could reasonably be expected to harm a law enforcement matter within the meaning of section 15(1)(a) of the Act. (Submission of the City, pp. 2-3) See also Order No. 163-1997, May 14, 1997.

Section 15(1)(c): harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement

The City submits that disclosure of the identity of complainants would also harm the effectiveness of its investigative techniques and that section 15(1)(c) therefore applies. For reasons discussed in previous Orders, I am of the view that this subsection does not apply in these types of circumstances. See for example, Order No. 39-1995, April 24, 1995.

Section 15(1)(d): reveal the identity of a confidential source of law enforcement information

As noted above, the City has established a formal policy on the issue of confidentiality. The City argues that disclosure of complainants' identities would mean that the City could no longer assure complainants of confidentiality. The public would be less likely to come forward with complaints, and the City's bylaw enforcement would suffer, given its limited resources. I agree with the City that this subsection of the Act permits non-disclosure of the information in dispute.

I find that the City has met its burden of proving that the applicant has no right of access to the record sought on the basis of section 15 of the Act.

Section 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... (f) the personal information has been supplied in confidence

The applicant allows that, in the case of a genuine complaint about increased noise or traffic, a complainant is entitled to anonymity and also admits that the City may have accepted this particular complaint in confidence. She then goes on to suggest various possible dubious motives on the part of this particular third party for making the complaint. She argues that the third party forfeits his / her privacy where the complaint is frivolous or malicious in nature. The applicant argues that the City should accept only

genuine (i.e., well-founded) complaints, where the complainant has been adversely affected by the particular alleged zoning infraction. She also argues that the City's zoning bylaws offend the *Charter of Rights and Freedoms*. In all such cases, the applicant argues, the City should not accept and retain complaints in confidence. (Submission of the Applicant, pp. 10-12; Reply Submission of the Applicant, pp. 3 and 6)

The City states that it considered the confidentiality factor described in this section. It argues that, given its formal policy that complainants' identities shall be kept confidential, it has adequately established that the personal information of a third party that is in dispute was submitted in confidence. (Submission of the City, p. 4) I agree. Further, in its reply submission, the City argued correctly that the identity of the complainant has no bearing on bylaw and zoning issues and the applicant's references to the *Charter* are irrelevant. It also rejects the complainant's suggestion that it should only investigate genuine complaints of bylaw infractions and then only where the complainant is adversely affected. (Reply Submission of the City, p. 3; Reply Affidavit of Deborah Brown, p. 1)

Section 22(2)(e): the third party will be exposed unfairly to financial or other harm

The City has submitted affidavit and *in camera* exhibit evidence in support of its assertion that complainants in bylaw matters may be exposed unfairly to harm if their identities are disclosed. (Submission of the City, pp. 4-5) I agree with the City's contention that this is a relevant circumstance that it must take into account in making a decision on disclosure of personal information about third-party complainants.

I find that the applicant has not met her burden under section 22 of the Act and that the City was correct in withholding the information in dispute under this section. I also find that the City's decision to provide a summary only of the substance of the complaint was in accordance with the provisions of the Act.

9. Order

I find that the City of Coquitlam was authorized under section 15(1) of the Act to refuse access to the withheld information. Under section 58(2)(b) of the Act, I confirm the decision of the City of Coquitlam to refuse access to the information withheld on the basis of section 15(1).

I also find that the City of Coquitlam was required to refuse access to the withheld personal information under section 22(1) of the Act. Under section 58(2)(c) of the Act, I require the City of Coquitlam to refuse access to the personal information on the basis of section 22(1).

David H. Flaherty
Commissioner

September 11, 1998