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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 277-1998
November 26, 1998

INQUIRY RE: A decision by the Ministry of Attorney General of British Columbia to refuse access to information

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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 (the Office) on October 15, 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 Ministry of Attorney General (the Ministry) to refuse an applicant's request for a copy of specified written correspondence between B'nai Brith of Canada and the Ministry.

2. Documentation of the inquiry process

On May 13, 1998 the applicant requested a copy of a record in the custody of the Ministry. The record consists of a one-page cover letter to various parties, another one-page letter, and two pages of related newspaper clippings. The request was based on information from a newspaper article in the May 13, 1998 edition of the Vancouver Sun, page B8, titled "Colwood condemns hate as talk set for library." The article mentioned a letter sent by B'nai Brith of Canada to the Ministry concerning the use of public library space, by what the B'nai Brith allegedly described as, "hate groups."

The Ministry responded to the applicant by letter dated June 15, 1998, notifying him that the record was being withheld in its entirety under section 19(1) of the Act, "Disclosure harmful to individual or public safety."

On July 4, 1998 the applicant requested a review of the Ministry's decision to withhold the record. The applicant was not satisfied with the outcome of the mediation and, on September 23, 1998, the Office gave notice of the written inquiry to be held on October 15, 1998.

3. Issue under review and the burden of proof

At this inquiry, I reviewed the Ministry's application of section 19(1) of the Act to the record requested by the applicant. This section reads as follows:

> ***Disclosure harmful to individual or public safety***
>
> 19(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to
>
> (a) threaten anyone else's safety or mental or physical health, or
>
> (b) interfere with public safety.
>
> ....

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(1), where access to a record has been refused under section 19(1), it is up to the public body, in this case the Ministry, to prove that the applicant has no right of access to the record or part of the record.

4. The record in dispute

The record in dispute is a four-page record consisting of a one-page cover letter to various parties, another one-page letter, and two pages of related newspaper clippings.

5. The applicant's case

The applicant essentially wishes to know the substance of efforts to lobby the government with respect to the free speech issue. He argues that to deny him access to the letters in dispute is to shut him out of the political process.

6. The Ministry of Attorney General's case

I have discussed below the Ministry's reliance on section 19 of the Act to refuse access to the records in dispute to this applicant.

7. Discussion

Section 19: Disclosure harmful to individual or public safety

The essence of this case is the Ministry's reliance on section 19 of the Act to deny access to this applicant. In my judgment, the initial and reply submissions of the applicant to this inquiry are sufficient to establish that disclosure of the information in dispute to him could reasonably be expected to threaten the safety or mental or physical

health of other individuals and may interfere with public safety. (See Submission of the Applicant, pp. 1-8, Reply Submission of the Applicant, pp. 1-7, and the accompanying documentation) I am not prepared to dignify certain contents of his submissions by quoting them at length here, and I think it is unnecessary to do so for the purposes of this inquiry.

I have reviewed the Ministry's detailed discussion of section 19 of the Act and my previous Orders applying it. It notes that I have upheld the use of section 19 in three separate Orders involving this applicant. (See Order No. 7-1994, April 11, 1994; Order No. 80-1996, January 23, 1996; and Order No. 199-1997, November 21, 1997) (Submission of the Ministry, paragraphs 5.01 to 5.08) I have also reviewed *in camera* portions of the Ministry's submission with respect to the application of section 19(1) in the current inquiry. I have also reviewed an *in camera* submission from a third party

I fully agree with the reply submission of the Ministry that "the Applicant's statements clearly indicate the potential for this Applicant to resort to violence against those who do not share his views…."

I am determined to continue to act prudently under the Act with respect to the disclosure of records or information to individuals for whom a public body has invoked the section 19 exception from disclosure.

On the basis of the submissions and information before me in this inquiry, I find that the Ministry has properly relied on section 19 of the Act in refusing to disclose the record in dispute to this applicant, since "disclosure could reasonably be expected to (a) threaten anyone else's safety or mental or physical health, or (b) interfere with public safety."

8. Order

I find that the Ministry of Attorney General was authorized under section 19 of the Act to refuse access to information in the records in dispute. Under section 58(2)(b) of the Act, I confirm the decision of the Ministry to refuse access to the information in the records.

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David H. Flaherty
Commissioner

November 26, 1998