OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER

British Columbia
Canada

Order 00-23

# INQUIRY REGARDING PORT MOODY POLICE DEPARTMENT RECORDS

David Loukidelis, Information and Privacy Commissioner
July 14, 2000

Order URL: http://www.oipcbc.org/orders/Order00-23.html
Office URL: http://www.oipcbc.org
ISSN 1198-6182

**Summary:** Applicant requested names of public body staff who allegedly made commitments or promises about payment of funeral expenses for a deceased public body employee. Applicant also sought copy of a legal opinion given regarding payment of funeral expenses. Public body authorized to withhold legal opinion under s. 14. Public body authorized to withhold only some information under s. 14, but not required to withhold identities and positions of public body's staff under s. 22.

**Key Words:** Advice or recommendations – solicitor client privilege – unreasonable invasion of personal privacy.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 14, 22.

**Authorities Considered: B.C.:** Order 00-06; Order 00-07; Order 00-08; Order 00-19.

**Cases Considered:** *B.* v. *Canada*, [1995] 5 W.W.R. 374, (BC.S.C. ); *S & K Processors Ltd.* v. *Campbell Ave. Herring Processors Ltd.* (1983), 35 C.P.C. 146 (B.C.S.C.).

## 1.0 INTRODUCTION

In letters dated May 22 and July 5, 1999, the applicant sought from the City of Port Moody ("City") information, including legal advice it had received, related to payment of funeral expenses for a deceased public body employee. The City transferred both requests to the Port Moody Police Department ("Department"), which responded to the applicant on July 13 and August 5, 1999. These responses were not satisfactory to the applicant, so he requested a review, under s. 52 of the *Freedom of Information and Protection of Privacy Act* ("Act"), of the Department's decisions.

The records in dispute are invoices, transaction statements, internal Department memorandums, correspondence from a funeral centre, a legal opinion to the City from its lawyers dated March 22, 1999 and a Department report regarding payment of funeral expenses. The Department disclosed some of the information in these records. It withheld most of the rest of the information under the Act, and withheld some information as being outside the scope of the access requests, as is discussed below.

## 2.0 ISSUES

The issues in this inquiry are as follows:

1. Was the Department authorized by s. 14 of the Act to refuse to disclose information to the applicant?

2. Was the Department required by s. 22 to refuse to disclose personal information to the applicant?

The Department has, under s. 57(1) of the Act, the burden of proving that it was authorized to refuse to disclose information under s. 14. By contrast, s. 57(2) of the Act places the onus on the applicant to establish that personal information in the records can be disclosed to him without unreasonably invading the personal privacy of third parties.

## 3.0 DISCUSSION

**3.1 Scope of the Inquiry** – The applicant requested a review of the Department's decision in letters dated July 27, 1999, and August 5, 1999, to this Office. In the applicant's July 27, 1999 letter, the applicant said that he was seeking a review of the Department's July 13 response to his May 22 request letter. The applicant's July 27 request for review clearly relates only to the Department's failure to provide records responsive to the applicant's May 22 request for the names of any City or Department staff who made any commitments or promises regarding payment of the funeral expenses.

In the applicant's August 5 letter to this Office, the applicant said he was seeking a review of the Department's response to his July 5 letter (that Department response is also dated August 5). It is clear from the August 5 request for review that it relates only to the Department's withholding of a legal opinion dated March 22, 1999, respecting payment of funeral expenses.

The Notice of Written Inquiry issued by this Office indicates that ss. 14 and 22, as they relate to "records held by the Port Moody Police Department", are the only exceptions in issue in the inquiry. The Department originally relied on s. 13(1) of the Act as the basis for some of its severing of the released records. The applicant, in his review requests, does not take issue with the Department's application of s. 13(1) to the records. Accordingly, the Department's application of s. 13(1) to the disputed records is not in issue here.

Further, the applicant has not taken issue with the Department's severance of considerable portions of the released records on the ground they were "out of scope" in relation to the applicant's access requests. Having reviewed the unsevered the records, and therefore the portions severed as being "out of scope", I agree that the information in those passages is outside the scope of the applicant's requests.

**3.2 Form of the Access Requests** – The applicant's May 22, 1999 access request was framed as a request for "information", specifically the names of all City or Department staff (including elected officials) "who made verbal or written commitments/promises" to the family of the deceased employee "in regards to The City of Port Moody paying part or all of the Funeral costs" of the deceased. The request also sought information as to the "estimated or actual costs to the Taxpayers of Port Moody in regards to the above" and the amount that had "already been paid by The City of Port Moody/Police Board" for those expenses. The July 5, 1999 request was for a photocopy of "the legal opinion given to the members of the Port Moody Police Board prior to the Board approving" payment of funeral expenses.

The Department's responses plainly treated these requests as requests for records under the Act. The Department's response to the May 22 request characterized it as a request for "copies of records pertaining to the funeral" of the employee. The Department enclosed copies of requested records with that letter, with some of the information in the records having been severed. The Department's response to the July 5 request took the same approach. Despite this, the Department's counsel in this inquiry submitted that the applicant's May 22 letter was not a request for access to records within the meaning of s. 5 of the Act. As counsel put it, in the Department's initial submission,

> 19. With respect to his May 22 letter, it is submitted that the Applicant never in fact requested a record, as contemplated by section 5 of the Act. Section 5 reads:
>
> **How to make a request – s. 5**
>
> 5(1) To obtain access to a record, an applicant must make a written request to the public body that the applicant believes has custody or control of the record.
>
> (2) The applicant may ask for a copy of the record or ask to examine the record.
>
> …
>
> Rather, the Applicant's request was for information; specifically, names and amounts of money, which, it is submitted, is [*sic*] outside of the scope of the Act. As such, the City to whom the "request" was made, was under no obligation to take any action under the Act. [emphasis in original]

This is correct. The applicant's May 22 letter asked for "information" and posed a series of questions. Strictly speaking, the applicant did not say 'I request access to records disclosing the identities of employees who made commitments or promises respecting payment of funeral expenses and access to records setting out how much the taxpayers

have paid for those expenses'. However, it was obvious to the Department's employees that this is what the applicant meant and the Department responded accordingly. In doing so, the Department acted in a manner consistent with the obligation of all public bodies, under s. 6(1) of the Act, to make "every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely". The position taken by the Department in this inquiry, by contrast, ignores that statutory duty.

Similarly, counsel for the Department quibbled with the applicant's July 5 letter, on the basis that it refers to a legal opinion given to the Port Moody Police Board, "when in fact the Police Board never obtained any legal opinion". Counsel notes that it was the City's lawyers who "prepared legal opinions for the City, regarding the payment of funeral costs" (emphasis in original). Therefore, counsel says, "there is no document for either the City or the Police Department to produce in response to the July 5 letter, either". I am driven to observe again that counsel's position fails to account for the Department's obligation, under s. 6(1) of the Act, to make reasonable efforts to assist applicants. In this case, the applicant may have been mistaken as to the identity of the entity that received a legal opinion. It was nonetheless clear, from the rest of the applicant's letter, what he was looking for. Once again, the Department – consistent with its s. 6(1) duty – properly responded by identifying records that might fall under the July 5 request and by making a decision based on those records.

Counsel also notes that the applicant's request was to the City. The applicant "never made a request of the Police Board or the Police Department, the respondent in this inquiry". Again, counsel is correct. However, the City, consistent with both its s. 6(1) duty and the Act's s. 11 transfer mechanism, transferred the applicant's requests to the Department because the Department had custody of the records in dispute.

**3.3 Solicitor Client Privilege** – Section 14 of the Act permits a public body to "refuse to disclose to an applicant information that is subject to solicitor client privilege". In its July 13 response to the applicant's May 22 letter, the Department attached a number of records (except the March 22, 1999 legal opinion) and indicated that it had severed information from those records to protect advice or recommendations developed by or for a public body (s. 13), to protect the personal privacy of individual third parties (s. 22), and to "preserve solicitor-client privilege" (s. 14).

My review of the records sent to the applicant with that letter discloses no instance where s. 14 is cited as the basis for any severing. Only ss. 13 and 22 are referred to, in addition to references to information being severed because it is "out of scope". Nonetheless, all but one of these same records are now said, by the Department's counsel, to be privileged under s. 14 of the Act as "internal documents prepared in contemplation of litigation". Counsel argues as follows:

> … the information contained in these documents … is subject to solicitor-client privilege, which has not been waived … .
> The Respondent [Department] released these documents in severed form although they were not requested and the Respondent was under no obligation to do so. The severance was initially claimed under sections 13 and 22 of the Act.

> The Respondent submits that sections 13 and 22 apply in the alternative that section 14 does not apply. The severed sections are justly withheld for the purpose of protecting draft recommendations under section 13, and the privacy interests of third parties, under section 22 of the Act.

In its August 5 response to the applicant's July 5 access request, the Department said that it had "identified two documents that contain legal opinions and partial access only is being provided to this information". The two documents are letters dated February 3, 1999 and March 22, 1999. The Department disclosed portions of the February 3, 1999 letter and severed other portions of it, on the basis that the severed portions "are … not accessible under Sections 13(1) and 22 of the Act". The March 22, 1999 document was "not considered accessible to preserve solicitor-client privilege in accordance with Section 14 of the Act". The Department indicated that ss. 13(1) and 22 might also apply to this document. Counsel now argues:

> All correspondence between the City and its solicitors … is covered by section 14 of the Act, as they are [*sic*] correspondence between a client and a solicitor. The head of a local public body is under no obligation to produce any of these documents.
>
> While a February 3, 1999 opinion was voluntarily disclosed in a severed form (severance being claimed under section 13), the Respondent [Department] submits that in addition to section 13, section 14 of the Act applies.
>
> It is the Respondent's submission that production of a severed form of a document, which is privileged in accordance with section 14, does not constitute a waiver such that an applicant may then request access to the information so severed.
>
> A 'waiver' analysis as it might apply in a Court where reliability of information is being assessed is not appropriate in this setting. Further, as was submitted above, the Respondent, as an independent local public body, was not properly in a position to waive the privilege, which belonged to the City.
>
> The March 22, 1999, opinion is subject to solicitor-client privilege, which may not be waived by the Respondent.

As I noted in Order 00-06, two kinds of solicitor client, or legal professional, privilege are recognized for the purposes of s. 14. First, a public body may withhold information that consists of, or would reveal, a confidential communication between a lawyer and his or her client directly related to the giving or receiving of legal advice. Second, a public body may withhold a record that was created for the dominant purpose of preparing for, advising on or conducting litigation that was under way or in reasonable prospect at the time the record was created. This second type of privilege is often referred to as 'contemplation of litigation privilege' or 'litigation privilege'. The Department argues here that some of the disputed records are properly withheld on the basis of litigation privilege and that the March 22 letter is properly withheld because it is a confidential communication between the City and its lawyer that relates to giving legal advice.

***Solicitor Client Communications Privilege***

Again, this rule protects, as privileged, confidential communications between a lawyer and the lawyer's client that are directly related to the seeking or giving of legal advice. Such privileged communications cannot be disclosed unless the client waives that privilege. They are protected by privilege because of the fundamental importance of the professional relationship between lawyer and client. See, for example, Order 00-08 and *B.* v. *Canada*, [1995] 5 W.W.R. 374 (B.C.S.C.).

The Department now argues that all correspondence between the City and its lawyers is privileged under this rule. It says that portions of a February 3, 1999 letter, and all of a March 22, 1999 letter, to the City from the City's lawyers that have not already been disclosed to the applicant are privileged, as is an April 8, 1999 letter of instruction from the Department to the City's lawyers. In my view, the status of the February 3 and April 8 records is not in issue here. The applicant has made it clear that he only wants the March 22, 1999 opinion. In the applicant's August 5 request for review, he said the following:

> My request to the Port Moody Police Board (copy inclosed) [*sic*] very specifically ask [*sic*] for a photo copy of the legal opinion "given to members of the Police Board" … and NOT the Feb. 03/99 letter … that was sent to me. The document that I asked for is dated Mar. 22, 1999, but [the Department] states … that this letter is "not accessible" under Sec. 14 of the Act.

Because the applicant specifically asked for a review of the Department's decision to withhold the March 22, 1999 opinion letter, I need not consider the Department's submissions about the application of s. 14 to "all correspondence" between the City and its solicitors generally and to the February 3 and April 8 records.

The Department has, from the outset, claimed solicitor client privilege applies to the March 22, 1999 opinion. In its August 5 reply to the applicant, the Department said "One document dated March 22, 1999 is not considered accessible to preserve solicitor-client privilege in accordance with Section 14 of the Act". There is no evidence that the privilege has been waived in respect of that record. I have reviewed it and I am satisfied that it constitutes a written communication between a solicitor and the solicitor's client, that it provides legal advice and that it is of a confidential character. I am also satisfied, based on the material before me, that a solicitor client relationship existed between the City and the lawyer who prepared and sent the letter.

There is also evidence to support the conclusion, for the purposes of this inquiry, that a solicitor client relationship existed between the same lawyer and the Department, on the premise that the Department is a separate legal entity as regards such solicitor client relationships. I conclude that the March 22, 1999 letter is privileged under s. 14 of the Act and does not have to be disclosed to the applicant.

***Litigation Privilege***

The Department says that seven records qualify for protection under the litigation privilege rule because the dominant purpose for which they were prepared "was the contemplation of litigation concerning the payment of" funeral costs. These seven records are internal documents generated by Department members in connection with the issue of the City's payment of funeral expenses. Portions of all of these records were disclosed to the applicant. As I indicated above, the severed portions were withheld on the basis of ss. 13 and 22 of the Act, not s. 14. As I also indicated earlier, the applicant's request for review relates only to the Department's failure to provide records responsive to his May 22 request for the names of any City or Department staff who allegedly made any commitments or promises regarding payment of funeral expenses. I have reviewed the unsevered versions of these records. The information the applicant seeks is found only in the severed portions that were originally marked by the Department as being subject to s. 22.

In support of its position that the seven records can be withheld on the basis of litigation privilege, the Department refers to the affidavit sworn by Inspector Douglas Stuckel, who was the Department's Acting Chief Constable from December 1998 through January 1999. Paragraph 35 of the Department's initial submission reads as follows:

> As deposed by Inspector Stuckel, the dominant purpose for which all of the documents referred to in paragraph 29 [*sic*] was the contemplation of litigation concerning the payment of … [the employee's] funeral costs.

The documents referred to in paragraph 29 of the Department's initial submission are a December 17, 1998 memo to the Mayor from the Acting Chief Constable, three memos to the Acting Chief Constable, a typewritten summary dated January 14, 1999, one memo to the Acting Chief Constable dated January 18, 1999 and a report dated January 21, 1999 from the Acting Chief Constable to the Port Moody Police Board. All of the records concern the funeral expenses for the deceased employee. The Department submits that, with the exception of the December 17 memo, all of these documents were prepared in response to a letter to the City about payment of funeral expenses, dated January 12, 1999, from a lawyer representing the deceased employee's family.

As is noted above, legal professional privilege protects from disclosure those communications that flow directly between the solicitor and the client for the purposes of giving or receiving legal advice. By contrast, litigation privilege protects an internal communication generated by the client, and a communication between the lawyer or the client with third parties, if it is established that the dominant purpose for which such a communication came into existence was to prepare for, advise upon or conduct litigation that was underway or in reasonable prospect at the time the communication was created. The requirement for the reasonable prospect, or existence, of litigation establishes the nexus between the communications and the solicitor client relationship. These communications thus derive from that relationship and for that reason are sometimes referred to as "derivative communications".

The policy reasons for litigation privilege differ from those underlying legal professional privilege. Litigation privilege exists to promote the efficacy of an adversarial system of litigation. The purpose of the privilege is to allow a party to anticipated or existing litigation to freely prepare its case. Without this protection against disclosure, a litigant would be required to forward to its opponent unfavourable information that was developed while preparing the party's case. Also, unlike legal professional privilege, litigation privilege does not last indefinitely. While there are some recognized exceptions, the general principle is that derivative communications made in contemplation of litigation cease to be privileged on completion of the original litigation.

I have decided that the Department has successfully made its case for litigation privilege. The first point to be made is evidentiary. Paragraph 35 of the Department's initial submission says the Stuckel affidavit speaks to the dominant purpose for preparation of the "documents referred to in paragraph 29", which was litigation then in contemplation. In paragraph six, Inspector Stuckel deposes that, after receiving a letter from the lawyer who was acting for the deceased employee's family on the funeral expense issue,

> … City council requested that certain City employees appear before them to explain their possible representations to … [the wife of the employee] that the City would pay for … [the employee's] funeral. To assist in determining the City's possible legal responsibility, I requested of these certain employees to provide me [*sic*] with written statements regarding their involvement with … [the employee's wife] and the funeral arrangements.

The same paragraph goes on to refer to five of the seven records over which the Department now claims litigation privilege, *i.e.*, four records dated January 14, 1999 and one January 18, 1999 record. As regards the December 17, 1998 memorandum from Inspector Stuckel to the City's Mayor, Stuckel deposes that he realized the deceased employee's family was taking the position that the funeral expenses were not to be paid by the family or the estate of the deceased. Stuckel deposes, in paragraph three of his affidavit, that it "was apparent to me that litigation over the funeral costs was a real possibility". He also deposes, in paragraph four, that at the time he wrote the December 17, 1998 memorandum, he believed "that there was a real possibility" that the employee's wife "would retain legal counsel in order to get the City to pay for" the funeral.

As to others of the records described above, Inspector Stuckel deposes that he asked certain employees to provide written statements regarding their involvement with the employee's wife and the funeral arrangements, in order to "assist in determining the City's possible legal responsibility". This action was taken after the City had received a letter from a lawyer acting for the wife of the deceased employee. That letter, which forms part of the record before me, refers to a meeting being held by the City's finance committee, on the same day the letter was sent, "to discuss payment for the funeral". The letter asks that the finance committee consider a number of circumstances surrounding the question of who should pay for the funeral. The letter then recites a variety of circumstances and says

that, given those circumstances, "we trust that Port Moody will pay for" the funeral. The letter then concludes by asking the City to get in touch with the letter's author if the City has "any questions or concerns".

The lawyer's letter does not explicitly take any position on who is liable to pay the funeral expenses. It does not refer to litigation or expressly threaten it. It is, however, a letter written by a lawyer acting for the wife of the deceased employee, reciting a variety of circumstances that lead the lawyer to conclude by saying that "we trust that Port Moody will pay for" the funeral. Given the other evidence as to the reasonable prospect of litigation, such a letter need not expressly threaten litigation for it to function as an indicator of litigation in this case.

The final record is a January 21, 1999 memorandum to the Port Moody Police Board, which was written by Inspector Stuckel, again as Acting Chief Constable. In paragraph 8 of his affidavit, Stuckel deposes that he "prepared the Report [*i.e.*, his memorandum] for the primary purpose of assisting the City and its solicitors with the preparation for and possible conduct of litigation regarding the funeral costs". He also deposes, in paragraph 9, that his report to the Port Moody Police Board was later sent to the City's lawyers "for the purposes of assessing legal liability, if any, of the City or Police Department".

In my view, there is a sufficient evidentiary foundation for the Department's claim that the seven records described above are covered by litigation privilege because they were created for the dominant purpose of assisting with and preparing for litigation in reasonable prospect at the time they were created. Evidence supporting this conclusion is found in the Stuckel affidavit, in the seven records themselves, and in the other evidence before me. I am also satisfied, based on my review of the records, and other material before me, that the records were prepared for use by the Department in litigation that the Department considered would involve it directly.

***Waiver of Privilege***

The Department argues that a waiver analysis "as it might apply in a Court where reliability of information is being assessed is not appropriate in this setting". I disagree. In my view, incorporation into the Act, by s. 14, of the common law of solicitor client privilege means the common law rules on waiver of privilege are also incorporated. See Order 00-06, Order 00-07 and Order 00-08, where I said the same thing. The Department also argues as follows, at paragraph 32 of its initial submission:

> The Respondent [Department] submits that the information contained in these documents referred to in paragraph 29 is subject to solicitor-client privilege, which has not been waived.

The Department's reliance on s. 14, and its assertion that it has not waived privilege, can only be tested against the evidence before me, bearing in mind that s. 57(1) of the Act places the burden of proof on the Department to establish that s. 14 applies. Section 14

only applies if the privilege has not, either expressly or implicitly, been waived. See Order 00-06, Order 00-07 and Order 00-08.

The Stuckel affidavit does not address the question of waiver. The difficulty with the Department's assertion that it has not waived litigation privilege is that, with the exception of the reference to s. 14 in the Department's July 13 response to the applicant, there is nothing that would indicate any intention by the Department to apply s. 14 to all of the records or to any of the withheld portions of the records. The Department submits that these records were simply "voluntarily disclosed". To my mind, this indicates the Department originally chose to waive the privilege and now wishes to characterize what it did as a selective waiver of privilege over only the disclosed portions of the records.

If the Department's intention was to preserve the privilege over the severed parts of the records, then one would expect it to refer to s. 14 in the severed records themselves and in the response letter. It is clear that the records were severed only on the basis that either s. 22 or s. 13(1) applied to the severed portions. This is perhaps most clearly illustrated where only an individual's name, or name and position, has been severed from a sentence or a paragraph in one of the records. The severing actually carried out addresses only ss. 13(1) and 22 concerns and does not address any separate s. 14 concern.

In Order 00-07, I addressed the concepts of express and implied waiver in the context of solicitor client privilege. I discussed the circumstances in which the waiver of privilege as to part of a communication will be held to be a waiver as to the entire communication. I noted that the decision of McLachlin J. (as she then was) in *S & K Processors Ltd.* v. *Campbell Ave. Herring Processors Ltd.* (1983), 35 C.P.C. 146 (B.C.S.C.), makes it clear that waiver of privilege respecting part of a communication can be held, in the interests of fairness, to be a waiver in respect of the whole communication.

Again, I am satisfied that the Department contemplated litigation involving itself when the records were prepared, such that the records were prepared for the Department's litigation purposes. On the issue of waiver by the Department, it has to be remembered that the only information to which the applicant seeks access relates to the names and positions of the Department employees who supposedly gave assurances or promises about the payment of funeral expenses. The Department has raised s. 14 for the purpose of protecting that information from disclosure. In my view, it is unfair and unprincipled to permit the Department to apply s. 14 in this way. In all the circumstances of this case, I find that the Department's conduct overall is such that the s. 14 privilege was impliedly waived in respect of the information of interest to the applicant, as just described.

It is not necessary for me to decide whether the litigation privilege asserted by the Department has ended. I note that the Department's evidence is not clear as to whether the dispute between the family of the deceased employee and the Department has been resolved or settled, although it appears likely that this is so. If, in fact, the dispute has been

settled, then the potential for litigation and, correspondingly, the litigation privilege has ended. See Order 00-08, where I discuss this principle. There is no indication in the material before me of the existence or anticipation of litigation, other than the potential for litigation about the payment of funeral expenses.

**3.4 Third Party Personal Privacy** – The only remaining question is whether the portions of the records that reveal the names and positions of Department employees who allegedly made verbal or written representations or promises that the City would pay all or part of the funeral expenses must be withheld under s. 22(1) of the Act. The records at issue for the purposes of this analysis are the seven records described above, as well as various invoices and forms containing third party personal information.

Section 22(1) of the Act says that a public body must refuse to disclose personal information if its disclosure would be an unreasonable invasion of the personal privacy of a third party. The Department has deleted from the disputed records the names of Department members and civilian Department staff who were involved in dealing with the deceased employee's family in connection with the funeral and payment for it. In its initial submission, the Department simply asserts that, under s. 57 of the Act, the applicant "has the onus of proving that production of the severed sections would not be an unreasonable invasion of the third parties' privacy".

It is true the applicant has the burden of proof on the s. 22(1) issue by virtue of s. 57 of the Act. It is clear the applicant seeks disclosure of this information because he thinks it is desirable for the purpose of subjecting the activities of the public body to public scrutiny. As he puts it, "All I and a lot of other concerned taxpayers here want to know is WHO was the person/persons that was responsible for this total waste of taxpayers [*sic*] money". The applicant says that the "claim that this 'is to protect the personal privacy of individual third parties' is simply absurd. They are simply City employees paid for in part with *my* taxes".

The Department has not explained its reasoning in deciding, when it responded to the applicant, that it was required by s. 22 to withhold third party personal information in the form of the names and the positions of Department employees. Section 22(4)(e) provides that disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if "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". Disclosure of the title of a person's position does not give rise to an unreasonable invasion of third party personal information.

Here, the Department says, in effect, that the very identity of its employees, as their personal information, cannot be disclosed without unreasonably invading their personal privacy. An individual's name is his or her personal information, but I am at a loss to understand how the Department could have decided that disclosure of the names of Department members and employees could be considered an unreasonable invasion of

their personal privacy. It must be remembered that we are dealing here with records that set out the Department's internal understanding of the circumstances surrounding the claim that the Department, or the City, had agreed to pay funeral expenses for the deceased employee. The records recite who said what to whom, and when, about payment of funeral expenses. The personal information in dispute concerns the identity of the various Department members and employees who were involved in the matter, but only as it relates to their official involvement in that matter. As is noted above, the applicant says this is a matter that raises questions of accountability. Viewed from a privacy perspective, disclosure of the names would not by any stretch unreasonably invade the personal privacy of these third parties within the meaning of s. 22.

I should say a few words about the personal privacy issue addressed in Order 00-19. In that case, the applicant sought personal information about certain public body officials. Although I referred to the personal information in dispute there as being (among other things) the "names of government officials", the personal information went well beyond names only. My observation in Order 00-19 that the personal information in issue in that case would have to be withheld – if it had actually been in issue in that case – must not be read as saying that names of government officials acting in their official capacity are to be withheld in the ordinary course under s. 22. On the contrary, the above comments about s. 22 as it applies to the names and positions of public body employees or officials in the ordinary course make that clear.

As an exception to what I said above about personal information in this case, a small amount of personal information has been severed because it sets out the personal credit card numbers of some individuals, as well as the names of individual third parties who are not employed by the Department or the City and who incurred expenses in association with the funeral. These expenses were apparently submitted for reimbursement. This personal information is outside the scope of the applicant's request. In the case of the personal financial information consisting of personal credit card numbers, that information is personal financial information that is protected under s. 22(1) and could not, in the circumstances of this case, be disclosed to the applicant if he requested it.

## 4.0 CONCLUSION

For the reasons given above, I make the following orders:

1. I find that the City of Port Moody Police Department was authorized by s. 14 of the Act to refuse to disclose the March 22, 1999, letter to the applicant and, under s. 58(2)(b) of the Act, I confirm its decision in regard to that record.

2. I find that the City of Port Moody Police Department was not authorized by s. 14 of the Act to refuse to disclose to the applicant those portions of the disputed records that indicate that severance is based on s. 22 of the Act. Under s. 58(2)(a) of the Act, I require the City of Port Moody Police Department to give the applicant access to those portions of the disputed records.

3. I find that the City of Port Moody Police Department was not required by s. 22(1) of the Act to refuse to disclose third party personal information in the form of the names and positions of its officers or employees in the portions of the disputed records that indicate that severance is based on s. 22 of the Act. Under s. 58(2)(a) of the Act, I require the City of Port Moody Police Department to give the applicant access to that third party personal information.

July 14, 2000

**ORIGINAL SIGNED BY**

David Loukidelis
Information and Privacy Commissioner
for British Columbia