OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order 02-19

CITY OF COQUITLAM

David Loukidelis, Information and Privacy Commissioner
May 14, 2002

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Summary: The applicant sought copies of records, including employment performance appraisals, that relate to the applicant, that are both in the City's custody and located in the offices of the City's RCMP detachment, in the latter case in the custody of two specified City employees working in the RCMP detachment. The City refused to disclose information under ss. 12(3)(b), 13(1), 14, 16(1)(b) and 22 of the Act. The applicant abandoned the request for review in relation to third-party personal information. The City is entitled to withhold some information under ss. 12(3)(b), 14 and 16(1)(b) but must disclose other information it withheld under ss. 12(3)(b), and 16(1)(b). The City initially did not search adequately for records, but quickly corrected this and met its s. 6(1) obligation, thus making an order under s. 58(3) unnecessary. It was not necessary to consider s. 13(1).

Key Words: search for records – respond openly, accurately and completely – council meeting – *in camera* meeting – substance of deliberations – solicitor client privilege – received in confidence from a government or agency.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 12(3), 14, 16(1)(b).

Authorities Considered: B.C.: Order No. 326-1999, [1999] B.C.I.P.C.D. No. 39; Order No. 331-1999, [1999] B.C.I.P.C.D. No. 44; Order 00-11, [2000] B.C.I.P.C.D. No. 11; Order 00-14, [2000] B.C.I.P.C.D. No. 17; Order 01-32, [2001] B.C.I.P.C.D. No. 33. **Ontario:** Order 124, [1989] O.I.P.C. No. 85; Order P-368, [1992] O.I.P.C. No. 168; Order P-369, [1992] O.I.P.C. No. 167; Order P-452, [1993] O.I.P.C. No. 108. **Nova Scotia:** Report FI-00-29, [2000] N.S.F.I.P.P.A.R. No. 51; Report FI-01-82, [2001] N.S.F.I.P.P.A.R. No. 69.

Cases Considered: *Quebec (Attorney General)* v. *Canada (Attorney General)* (1978), 90 D.L.R. (3d) 161 (S.C.C.); *Re Board of Industrial Relations and Canadian Imperial Bank of Commerce* (1981), 125 D.L.R. (3d) 187 (B.C.C.A.); *Scowby et al.* v. *Glendinning* (1986), 32 D.L.R. (4th) 161 (S.C.C.); *Kavka* v. *Family Insurance Corp.*, [1994] B.C.J. No. 1515, 27 C.P.C. (3rd) 338 (B.C.S.C.); *Legal Services Society* v. *British Columbia (Information and Privacy Commissioner)* (1996), 140 D.L.R. (4th) 372; *Dagg* v. *Canada (Minister of Finance)*, [1997] 2 S.C.R. 403; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *Bell ExpressVu Limited Partnership* v. *Rex*, 2002 SCC 42, [2002] S.C.J. No. 43; *R.* v. *Campbell*, [1999] S.C.R. 565, [1999] S.C.J. No. 16; *British Columbia (Minister of Forests)* v. *Westbank First Nation* (2000), 191 D.L.R. (4th) 180 (B.C.S.C.), [2000] B.C.J. No. 1613; *Yukon Medical Council* v. *Yukon (Information and Privacy Commissioner)*, [2001] Y.J. No. 92 (Y.T.S.C.), 2001 YKSC 531.

1.0 INTRODUCTION

[1] In an October 17, 2000 request to the City of Coquitlam ("City"), under the *Freedom of Information and Protection of Privacy Act* ("Act"), the applicant sought copies of certain records relating to the applicant between June 15, 1987 and the date of the request. The applicant sought records in the City's custody and any records in the custody of the Coquitlam Detachment of the Royal Canadian Mounted Police ("RCMP").

[2] In an October 24, 2000 letter acknowledging the request, the City told the applicant it would treat the access request as an update to a request the applicant had made in 1997 and indicated that it would not again provide copies of records that predated the earlier request. In its November 21, 2000 response to the access request, the City disclosed some records. It withheld others under s. 14 of the Act and withheld some third-party personal information under s. 22.

[3] The applicant responded by expressing concern about the adequacy of the City's search for responsive records, citing a March 12, 1996 letter the applicant knew existed but that had not been disclosed. The City wrote to the applicant again, on December 18, 2000, and acknowledged the existence of the 1996 letter, but withheld it under s. 22 of the Act. (The City later released this letter, during the inquiry, with some s. 22 severing. The applicant has, in any case, since abandoned interest in any third-party personal information.) The City also acknowledged that it had located other records, but that it was withholding them under s. 12, 13, 14, 15, 16 or 22 of the Act or some combination of those sections.

[4] The applicant requested, under Part 5 of the Act, a review of the City's decision. Mediation by this Office resulted in disclosure of two further letters to the applicant, but the matter did not settle in mediation. I therefore held a written inquiry under Part 5 of the Act.

[5] The records in dispute largely consist of correspondence, or records reflecting correspondence, from the Coquitlam Detachment of the RCMP, internal City memos, reports, letters and other communications, and communications between the City and its outside lawyers. I have numbered the disputed records by tab number, in the order they were given to me in a binder of records by the City for this inquiry, as pages 1-1 to 1-135, 2-1 to 2-99, 3-1 to 3-18, 4-1 to 4-67, 5-1 to 5-116 and 6-1 to 6-23.

2.0 ISSUE

[6] The issues to be considered here are as follows:

1. Did the City discharge its duty to assist under s. 6(1) of the Act by conducting an adequate search for records?

2. Is the City authorized by s. 12, 13, 14 or 16 of the Act to refuse to disclose information to the applicant?

3. Is the City required by s. 22 of the Act to refuse to disclose personal information to the applicant?

[7] As has been established in previous orders, the City bears the burden of proving that it has discharged its s. 6(1) obligations in searching for records. Under s. 57(1) of the Act, the City also bears the burden of proof respecting the issues under ss. 12, 13, 14 and 16. Last, s. 57(2) of the Act places the burden of proof on the applicant on the s. 22 issue.

[8] Although the Notice of Written Inquiry indicates that s. 15 is an issue, the City has said, at para. 9 of its initial submission, that it "is no longer relying on section 15 of the Act" in this inquiry. Accordingly, I need not consider it here.

3.0 DISCUSSION

[9] **3.1 Was the City's Search Adequate?** – Section 6(1) of the Act requires the City to "make every reasonable effort" to assist an applicant by responding "openly, accurately and completely" to an access request. Although the Act does not impose a standard of perfection, it is well established that, as regards searches for records, the City's efforts in searching for records must conform to what a fair and rational person would expect to be done or consider acceptable. The search must be thorough and comprehensive. The public body's evidence in an inquiry such as this should describe all the potential sources of records, identify those sources that were searched and identify any sources that it did not check (giving reasons for not doing so). It should also indicate how the searches were done and how much time its staff spent searching for the records. See, for example, Order 01-32, [2001] B.C.I.P.C.D. No. 33.

[10] The City says it has discharged its s. 6(1) search obligations. It acknowledges that, due to an "oversight, the City failed to search initially for responsive records" in an "obvious source of records", *i.e.*, in the administrative records holdings for the Coquitlam Detachment, where the applicant worked. These files were later searched and additional records were disclosed to the applicant. According to the City, this later disclosure means that, even if it initially failed to conduct an adequate search, no order for a further search should be made, since the oversight has been cured. The City also says that it re-copied all records for the applicant during this inquiry.

[11] The City relies on the affidavit of Deborah Brown, the City Solicitor, as to the particulars of the City's search efforts. That affidavit is sworn on information and belief. It describes, in considerable detail, the various City files that were identified and searched in various locations, including the Coquitlam Detachment, in an attempt to find responsive records. Her affidavit acknowledges the City's initial failure to search the Coquitlam Detachment's administration files.

[12] In the applicant's initial submission, the applicant expresses the concern, without providing particulars, that the City "may be withholding documents both from" this Office and from the applicant. The applicant says this

> … mistrust arises as a result of previous requests for information made over the past several years, wherein in each instance material was provided that obviously was in the file at the time of the previous request. I am aware that other employees have also had similar experiences, so it would appear that this is a fairly common practice for this public body. Their interpretation of Section 6 of the Act appears to be more adversarial than 'assisting'.

[13] The applicant has not provided any evidence to support these allegations regarding these experiences, and those of others, with the City's compliance under the Act.

[14] I do not see any need to discuss Deborah Brown's evidence in any detail. Having considered that evidence – including in light of the applicant's unsupported general allegations about City practices – I find that the City initially failed, when responding to the applicant's access request, to discharge its s. 6(1) obligation to conduct an adequate search for records. As the City has acknowledged, the administrative records of the Coquitlam Detachment were an obvious source that should have been, but initially were not, searched. Despite this, I am satisfied that the City quickly corrected this oversight soon after the applicant drew it to the City's attention. Accordingly, although I find that the City did not comply with its s. 6(1) obligation at the time of its initial response to the applicant's request, I find that it has since discharged its s. 6(1) obligation. The City's error was certainly unfortunate, but it has been fixed. It is not necessary for me to order the City, under s. 58(3), to search again for records.

[15] **3.2 Information Received in Confidence from the RCMP** – The City says 119 pages of records can be withheld on the basis of s. 16(1)(b) of the Act. It argues that all of the following records are protected by this section: pp. 3-1 to 3-18 (all of Tab 3 in the disputed records binder), as well as pp. 4-4 to 4-24 (from Tab 4), pp. 5-1 to 5-66 and pp. 5-74 to 5-86 (from Tab 5). In some of these cases, the records are City-generated, *i.e.*, the City did not receive the record from the RCMP, but the record contains information received from the RCMP. The City says that, because they contain information received from the RCMP, they are protected under s. 16(1)(b).

[16] Because the s. 16(1)(b) issue at hand has not, as far as I am aware, directly arisen before in an inquiry under the Act, I decided to invite the RCMP and the Ministry of Public Safety and Solicitor General ("Ministry") to provide representations. I therefore sent them notices under s. 54(b) of the Act and they each provided written submissions

on the s. 16(1)(b) issue. (Both the City and the applicant were given an opportunity to respond.) Since this question is, in my view, of some significance, I have decided to discuss it fully. As the following discussion indicates, I have decided that, on balance, the better view is that the RCMP is a federal government agency for the purposes of s. 16(1)(b).

[17] Section 16 of the Act reads as follows:

> **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;
>
> (ii) the council of a municipality or the board of a regional district;
>
> (iii) an aboriginal government;
>
> (iv) the government of a foreign state;
>
> (v) an international organization of states,
>
> (b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies, or
>
> (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.

[18] Section 16(1)(b) requires a public body to establish two things. It must show that information was received in confidence and that it was received from a "government, council or organization" listed in s. 16(1)(a) or one of "their agencies". I will deal with the agency issue first.

The Act does not apply directly to the RCMP or its records

[19] This inquiry does not raise, I should say at once, the issue of whether the Coquitlam Detachment, or the RCMP generally, is a "public body" under the Act. The RCMP says the Canadian constitution precludes "a direct application" of the Act "and other provincial access to information and privacy legislation to records in the custody of the RCMP" or under its control. It also refers to various statements by my predecessor in

speeches, position papers and so on that appear to acknowledge the RCMP is not subject to the Act or the jurisdiction of the Information and Privacy Commissioner for British Columbia. It says these statements amount to a finding by my predecessor that the Act does not apply to the RCMP.

[20] Apart from the issue of what weight should be given, in an inquiry, to such comments, I have no doubt the Act is not intended to apply to the RCMP as if it were a public body. The Act's definition of public body does not purport to encompass the RCMP. Nor does the fact that some RCMP-originated records and information are in the City's hands, or that the Coquitlam Detachment is the (contract) municipal police force for the City, somehow make the RCMP a public body under the Act, directly or through the City. Among other things, the fact that the Act's definition of "employee" says that a public body "employee" includes "a person retained under a contract to perform services for the public body" does not, constitutional issues aside, indirectly make the RCMP a public body in its own right.

[21] The question, rather, is whether the Coquitlam Detachment, which is under contract to act as the City's municipal police force, is one of the "agencies" of the government of Canada for the purposes of s. 16(1).

Is the RCMP one of the federal government's "agencies"?

[22] The City argues that, in light of the terms of the City-British Columbia contract under which the RCMP provides municipal police services to the City, it is clear that "control of the functioning of the RCMP remains at all times with the Government of Canada" (para. 21, initial submission). The RCMP adopts this argument and adds, at p. 8 of its submission, that the

> … RCMP is primarily regulated by the RCMP Act and the Royal Canadian Mounted Police Regulations, 1988 (SOR/88-361) and is subject to the exclusive authority of the RCMP Commissioner.

[23] Only Parliament, the RCMP says, has the authority to enact laws concerning the management and administration of the RCMP. See, for example, *Quebec (Attorney General)* v. *Canada (Attorney General)* (1978), 90 D.L.R. (3d) 161 (S.C.C.). It does not, however, follow that, because Parliament has exclusive legislative authority over the RCMP's management and administration, the RCMP is a federal government 'agency' for the purposes of s. 16(1)(b).

[24] The RCMP argues, at p. 8, that various pieces of federal legislation give it status "as a federal government institution", including the federal *Access to Information Act*, *Privacy Act*, *Financial Administration Act* and *Royal Canadian Mounted Police Act* (Canada) ("RCMP Act"). It says the following, at p. 8, regarding the federal *Privacy Act*:

> The *Privacy Act* recognizes that the RCMP is part of the Government of Canada and provides that records containing personal information may be transferred from the RCMP to the Attorney General of Canada in order to defend other parts of the Government against civil litigation claims.

[25] Further, the RCMP says (at p. 10), s. 36 of the federal *Crown Liability and Proceedings Act* "supports the argument that the RCMP is part of the federal Crown". Section 36 reads as follows:

> 36. For the purposes of determining liability in any proceedings by or against the Crown, a person who was at any time a member of the Canadian Forces or of the Royal Canadian Mounted Police shall be deemed to have been at that time a servant of the Crown.

[26] I do not place much weight on this provision. It is aimed, in my view, at removing any doubt about whether a member of the RCMP is a federal Crown employee, *i.e.*, an employee of the executive branch of government. The section would not be necessary if it were otherwise clear that a member of the RCMP is a Crown employee.

[27] More to the point, in my view, is the RCMP's reliance on the *Department of the Solicitor General Act*. In *Quebec (Attorney General)*, above, the Supreme Court of Canada, citing that Act, characterized the RCMP as "a branch of the Department of the Solicitor-General" (Pigeon J., at p. 180), "operating under the authority of a federal statute, the *Royal Canadian Mounted Police Act*." Pigeon J. went on to say the following, also at p. 180:

> Parliament's authority for the establishment of this force and its management as part of the Government of Canada is unquestioned. It is therefore clear that no provincial authority may intrude into its management.

[28] Accordingly, the Court held, provincial authorities can investigate and prosecute criminal acts committed by RCMP members, but may not under that guise "pursue the inquiry into the administration and management of the force" (p. 180).

[29] The applicant argues that s. 16(1)(b) does not apply because the relationship between the City and the Coquitlam Detachment "does not meet the standard required by any stretch." At para. 10 of the applicant's reply submission, the applicant says the relationship between the two is essentially "equivalent to any other municipal police department, that is to say, the City is the employer and therefore has tacit control over the policing of their community."

[30] Section 29 of the *Interpretation Act* defines the term "government of Canada" – the relevant term in s. 16(1) – as meaning "Her Majesty the Queen in right of Canada or Canada, as the context requires." I understand this to refer to the federal Crown, *i.e.*, the executive branch of the federal government, not Parliament or the federal judiciary. No one has argued here that the RCMP is to be treated as if it were the federal Crown itself. Rather, it is argued that, as a federally constituted and regulated police force, under the RCMP Act, the RCMP is one of the "agencies" of the "government of Canada" within the meaning of s. 16(1)(b).

[31] I see no basis on which the RCMP should be treated as if it is the federal Crown itself for the purposes of s. 16(1)(b). Certainly, neither the City nor the RCMP argues

that the RCMP should be treated as the federal Crown. The question, again, is whether the RCMP is a federal government agency within the meaning of s. 16(1)(b). In deciding that issue, I must interpret s. 16(1)(b) in light of the Act's purposes, as expressed in s. 2(1). This approach is required by s. 8 of the *Interpretation Act*, which reads as follows:

> 8. Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[32] This approach to statutory interpretation was also affirmed, for example, in *Dagg* v. *Canada (Minister of Finance)*, [1997] 2 S.C.R. 403, where La Forest J. indicated that the question of what is "personal information" under the federal *Access to Information Act* and federal *Privacy Act* should be interpreted in light of the legislative purposes of those statutes. This approach is also consistent with the Supreme Court of Canada's views on statutory interpretation in cases such as *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, and (more recently) *Bell ExpressVu Limited Partnership* v. *Rex*, 2002 SCC 42, [2002] S.C.J. No. 43.

[33] Section 2(1) of the Act reads as follows:

> **Purposes of this Act**
>
> 2(1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by
>
> (a) giving the public a right of access to records,
>
> (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves,
>
> (c) specifying limited exceptions to the rights of access,
>
> (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies, and
>
> (e) providing for an independent review of decisions made under this Act.

[34] One explicit purpose of the Act is to promote accountability of public bodies, including the City. Another clear purpose is to give individuals a right of access to their own personal information in the hands of a public body. These purposes should be kept in mind in interpreting s. 16(1)(b). One way of putting the question is to ask whether the Legislature intended, through s. 16(1)(b), to overcome the legislative goals just described where information that might promote accountability, or information about an individual applicant, has been received in confidence from the RCMP.

[35] The courts have, for a variety of reasons, found it necessary to decide whether an organization or body is a Crown agent. A helpful review of the principles applied in doing so is found in *Yukon Medical Council* v. *Yukon (Information and Privacy*

Commissioner), [2001] Y.J. No. 92 (Y.T.S.C.), 2001 YKSC 531. That decision, which is under appeal, dealt with the issue of whether the Yukon Medical Council – the statutory governing body for physicians in the Yukon – is a "public body" under the Yukon's *Access to Information and Protection of Privacy Act*. Although that question differs from the one before me, Schuler J. provided the following overview of the rules on agency:

> 30. The considerations most often quoted are set out in the judgment of Ritchie J. for the Court in *Westeel-Rosco Ltd.* v. *Board of Governors of South Saskatchewan Hospital Centre*, [1977] 2 S.C.R. 238:
>
> > Whether or not a particular body is an agent of the Crown depends upon the nature and degree of control which the Crown exercises over it. This is made plain in a paragraph in the reasons for judgment of Mr. Justice Laidlaw, speaking on behalf of the Court of Appeal for Ontario in *R.* v. *Ontario Labour Relations Board. Ex p. Ontario Food Terminal Board* (1963), 38 D.L.R. (2d) 530 at p. 534, [1963] 2 O.R. 91, where he said:
> >
> > > It is not possible for me to formulate a comprehensive and accurate test applicable in all cases to determine with certainty whether or not an entity is a Crown agent. The answer to that question depends in part upon the nature of the functions performed and for whose benefit the service is rendered. It depends in part upon the nature and extent of the powers entrusted to it. It depends mainly upon the nature and degree of control exercisable or retained by the Crown.
>
> 31. At page 537 of the *Ontario Labour Relations Board* case, Laidlaw J.A. stated the following:
>
> > It is not proper or sufficient to examine one section or part of an Act only to ascertain the degree of control exercisable or retained by the Crown in any particular case. The Act must be examined as a whole and all provisions therein touching the matter of control must be considered together. I shall proceed to examine each and all of the sections together touching that matter.
>
> 32. Similarly, in *Northern Pipeline Agency* v. *Perehinec* (1983), 4 D.L.R. (4th) at page 5, the Supreme Court of Canada stated that, "Whether a statutory entity is an agent of the Crown, for the purpose of attracting the Crown immunity doctrine, is a question governed by the extent and degree of control exercised over that entity by the Crown, through its Ministers, or other elements in the executive branch of government, including the Governor in Council".
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> 33. In *Westeel-Roscoe*, the Court referred to the judgment in *Halifax* v. *Halifax Harbour Commissioners*, [1935] 1 D.L.R. 657 (S.C.C.), in which Duff C.J.C., in finding that the respondents were agents of the Crown, noted at p. 664:
>
> > To state again, in more summary fashion, the nature of the powers and duties of the respondents: Their occupation is for the purpose of managing and administering the public harbour of Halifax and the properties belonging thereto which are the property of the Crown; their powers are derived from a statute of the Parliament of Canada; but they are subject at every turn in executing those powers to the control of the Governor representing His Majesty and acting on the advice of his

> Majesty's Privy Council for Canada, or of the Minister of Marine and Fisheries...
>
> 34. The Court in *Westeel-Roscoe* then commented that, "[i]n order to understand the wide difference existing between a body which is subject at every turn in executing its powers to the control of the Crown and one such as the present respondent...", it is necessary to examine the respondent's governing legislation.
>
> 35. I do not take the excerpts quoted to mean that in order for an entity to be considered a Crown agent, it must be "subject at every turn in executing its powers to the control of the Crown". An entity that fits that description would obviously be a Crown agent. However, something less than total Crown control will also suffice, as was the case in *Re Board of Industrial Relations and Canadian Imperial Bank of Commerce* (1981), 125 D.L.R. (3d) 487 (B.C.C.A.), to which I will refer again further on.
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> 36. To summarize, whether an entity is a Crown agent depends on the nature and degree of control exercised by the Crown as well as the other considerations referred to by Laidlaw J.A. in *Ontario Labour Relations Board* with respect to the nature of the functions performed and the nature and extent of the powers entrusted to the entity.

[36] See, also, *British Columbia (Minister of Forests)* v. *Westbank First Nation* (2000), 191 D.L.R. (4th) 180 (B.C.S.C.), [2000] B.C.J. No. 1613, and *Re Board of Industrial Relations and Canadian Imperial Bank of Commerce* (1981), 125 D.L.R. (3d) 187 (B.C.C.A.). Both of these decisions apply the *Westeel-Roscoe* agency test referred to in *Yukon Medical Council*.

[37] As I noted earlier, the City relies on the City-British Columbia agreement in support of its contention that the RCMP is a federal government agency. The RCMP Act authorizes the RCMP to enter into contracts with provincial governments to provide provincial or municipal police forces. Such an agreement exists in British Columbia. Under the authority of the provincial *Police Act*, British Columbia and Canada have entered into an agreement under which Canada is contractually obliged to cause the RCMP to carry out the powers and duties of the British Columbia provincial police force in providing municipal police services.

[38] The provincial *Police Act* contemplates some provincial role, through the Canada-British Columbia agreement, in the RCMP's policing of the province. It could not seriously be suggested, however, that the *Police Act*, or any agreement under it, somehow makes the RCMP a provincial body or agency. The constitutionality of any attempt by British Columbia to do this would be, at its best, questionable. See, for example, *Attorney General (Quebec)*, above, and *Scowby et al.* v. *Glendinning* (1986), 32 D.L.R. (4th) 161 (S.C.C.). Constitutional issues aside, I do not see any attempt on the part of British Columbia, through the *Police Act*, to turn the RCMP into a provincial agency. See, also, *Re Ombudsman for Saskatchewan* (1974), 46 D.L.R. (3d) 452 (Sask. Q.B.), where Bayda J. (as he then was) held that the RCMP was not a provincial government agency for the purposes of the Saskatchewan *Ombudsman Act*.

[39] The Ministry provided me with a copy of the April 1, 1992 Municipal Policing Agreement between British Columbia and Canada. Under s. 21(a) of this agreement, which expires in 2012, Canada must provide a Municipal Police Unit in each specified municipality. For this purpose, Canada is authorized by British Columbia to "carry out the powers and duties of the provincial police force" (s. 2.1). Under article 3.1(a), the

> … internal management of each of the Municipal Police Services, including its administration and the determination and application of professional police procedures, shall remain under the control of Canada.

[40] Under s. 4.1 of the Canada-British Columbia agreement, the officer commanding the RCMP Division in British Columbia

> … shall act under the direction of the Minister [the provincial Solicitor General] in aiding the administration of justice in the province and in carrying into effect the laws enforced therein.

[41] Section 4.2 acknowledges that the Division Commanding Officer must implement "the objectives, priorities and goals as determined by the Minister for policing in the Province."

[42] By an agreement dated April 1, 1992 – a copy of which forms Exhibit "A" to Deborah Brown's affidavit – British Columbia and the City agreed that the RCMP's Coquitlam Detachment would function as the municipal police force in the City. That agreement requires British Columbia to cause the Coquitlam Detachment to perform the municipal policing functions contemplated by the City-British Columbia agreement and by the Canada-British Columbia Municipal Policing Agreement referred to above.

[43] Sections 3.1 and 3.2 of the City-British Columbia agreement read as follows:

> 3.1 Canada shall provide and maintain a Municipal Police Unit within the Municipality, being part of the provincial police force, to act as the municipal police force in the Municipality in accordance with this Agreement.
>
> 3.2 The Municipality hereby engages the Municipal Police Unit, being part of the provincial police force, to act as the municipal police force in the Municipality in accordance with this Agreement.

[44] Under s. 3.6 of the City-British Columbia agreement, the City is required to provide, "without any cost to Canada or the Province", all support staff required by the Coquitlam Detachment. Under s. 3.8, Canada is required to pay to the City the salaries for any support staff services that are employed "in support of provincial policing or in support of federal policing."

[45] Mirroring the Canada-British Columbia Municipal Policing Agreement, s. 4.1(a) of the City-British Columbia agreement stipulates that the "internal management" of the Coquitlam Detachment – including its "administration and its determination and

application of professional police procedures" – remains under "the control of Canada." Also in line with the Municipal Policing Agreement, article 5.0 provides for the City's setting of objectives and goals for the Coquitlam Detachment, and for the City's direction over by-law enforcement. It also provides for reporting by the Coquitlam Detachment to the City. Article 5.0 reads as follows:

> 5.1 For the purposes of this Agreement, the Commanding Officer [of the RCMP in British Columbia] shall act under the direction of the Minister [now the provincial Solicitor General] in aiding the administration of justice in the Province and in carrying into effect the laws in force therein.
>
> 5.2 It is recognized that, pursuant to the Provincial Police Service Agreement, the Commanding Officer shall implement the objectives, priorities and goals as determined by the Minister for policing in the Province.
>
> 5.3 The Chief Executive Officer [the City's mayor] may set objectives, priorities and goals for the Unit that are not inconsistent with those of the Minister [responsible for policing services in British Columbia] for other components of the provincial police service.
>
> 5.4 The Member in charge of a Municipal Police Unit shall, in enforcing the by-laws of the Municipality, act under the lawful direction of the Chief Executive Officer or such other person as the Chief Executive Officer may designate in writing.
>
> 5.5 The Member in charge of a Municipal Police Unit shall report as reasonably required to either the Chief Executive Officer or the designate of the CEO on the matter of law enforcement in the Municipality and on the implementation of objectives, priorities and goals for the Unit.

[46] I do not agree with the City that the City-British Columbia agreement is enough to establish that the RCMP is a federal government agency for the purposes of s. 16(1)(b). The federal government has that degree of control over the Coquitlam Detachment's management given to it by the RCMP Act or other law. The terms of the agreement between the City and British Columbia cannot enlarge or restrict the federal government's control over, or responsibility for, the RCMP. Section 4.1 of the City-British Columbia agreement is consistent with this view, since it confirms that the internal management of the Coquitlam Detachment "remains" under the "control of Canada". Even if the material relates to the internal management of an RCMP detachment, it does not follow that a contractual affirmation of federal government "control" over the detachment's internal management is enough to establish agency status for the purposes of s. 16(1)(b).

[47] Section 5 of the RCMP Act provides that the Commissioner of the RCMP – who is appointed by the federal Cabinet – has, "under the direction" of the Solicitor General of Canada, the "control and management" of the RCMP and "all matters connected therewith". The Solicitor General of Canada's statutory authority to direct the Commissioner's control and management of the RCMP is an important indicator of federal government control for the purposes of the *Westeel-Rosco* test.

[48] In *R.* v. *Campbell*, [1999] S.C.R. 565, [1999] S.C.J. No. 16, the Supreme Court of Canada considered, among other things, whether RCMP officers were, in investigating a crime, acting as government functionaries or agents. It had been alleged that certain RCMP officers had acted illegally during a criminal investigation. The federal Crown argued that, because they were acting as Crown agents, the officers had Crown immunity for their actions. Writing for a unanimous Court, Binnie J. rejected that argument. At paras. 27-29, he said the following:

> The Crown's attempt to identify the RCMP with the Crown for immunity purposes misconceives the relationship between the police and the executive government when the police are engaged in law enforcement. A police officer investigating a crime is not acting as a government functionary or as an agent of anybody. He or she occupies a public office initially defined by the common law and subsequently set out in various statutes. In the case of the RCMP, one of the relevant statutes is now the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10.
>
> Under the authority of that Act, it is true, RCMP officers perform a myriad of functions apart from the investigation of crimes. These include, by way of examples, purely ceremonial duties, the protection of Canadian dignitaries and foreign diplomats and activities associated with crime prevention. Some of these functions bring the RCMP into a closer relationship to the Crown than others. The Department of the *Solicitor General Act*, R.S.C., 1985, c. S-13, provides that the Solicitor General's powers, duties and functions extend to matters relating to the RCMP over which Parliament has jurisdiction, and that have not been assigned to another department. Section 5 of the *Royal Canadian Mounted Police Act* provides for the governance of the RCMP as follows:
>
> > 5.(1) The Governor in Council may appoint an officer, to be known as the Commissioner of the Royal Canadian Mounted Police, who, under the direction of the [Solicitor General], has the control and management of the Force and all matters connected therewith.
>
> *It is therefore possible that in one or other of its roles the RCMP could be acting in an agency relationship with the Crown.* In this appeal, however, we are concerned only with the status of an RCMP officer in the course of a criminal investigation, and in that regard the police are independent of the control of the executive government. The importance of this principle, which itself underpins the rule of law, was recognized by this Court in relation to municipal forces as long ago as *McCleave* v. *City of Moncton* (1902), 32 S.C.R. 106. That was a civil case, having to do with potential municipal liability for police negligence, but in the course of his judgment Strong C.J. cited with approval the following proposition, at pp. 108-9:
>
> > Police officers can in no respect be regarded as agents or officers of the city. Their duties are of a public nature. Their appointment is devolved on cities and towns by the legislature as a convenient mode of exercising a function of government, but this does not render them liable for their unlawful or negligent acts. The detection and arrest of offenders, the preservation of the public peace, the enforcement of the laws, and other similar powers and duties with which police officers and constables are entrusted are derived from the law, and not from the city or town under which they hold their appointment. [italics added]

[49] The *Campbell* decision dealt with Crown immunity for individual police officers who had allegedly engaged in criminal conduct in the course of a criminal investigation. Binnie J.'s passing comment about the RCMP possibly being in an agency relationship with the Crown for other purposes begs the question before me. Further, the term "agencies", as used in s. 16(1)(b), does not necessarily have the same meaning as the term "agency" at common law. Binnie J.'s comments underscore the fact that individual police officers are not, in all cases or for all purposes, agents of the Crown. The fact that they might be Crown agents, or that the RCMP as a force might be an agent, does not mean the RCMP is or is not a federal government agency under s. 16(1)(b), where it is acting as a municipal police force.

[50] In *Kavka* v. *Family Insurance Corp.*, [1994] B.C.J. No. 1515, 27 C.P.C. (3rd) 338 (B.C.S.C.), Boyd J. held that the British Columbia *Rules of Court* apply to the RCMP. The plaintiff, whose home had been destroyed by fire, sought an order under the *Rules of Court* compelling the RCMP, as a third party not involved in the lawsuit, to produce its file relating to a criminal investigation of the fire. The plaintiff appealed the Master's decision that the RCMP was not bound by the *Rules of Court*. Boyd J. cited s. 14 of the *Police Act* and concluded that, in relation to the fire's investigation, the RCMP detachment involved was acting under contract as the provincial police force. In that capacity, she concluded, the RCMP is subject to Rule 26 of the *Rules of Court*. She arrived at this conclusion despite what she termed (at para. 12, B.C.J.) the "dual constitutional authority", both federal and provincial, that exists in relation to the RCMP when it acts under contract as British Columbia's provincial police.

[51] In deciding that s. 17 of the federal *Interpretation Act* did not affect her conclusion and insulate the RCMP from the *Rules of Court*, Boyd J. said that, for her to conclude that the RCMP is not subject to the *Rules of Court*, would be "absurd". She observed that such a conclusion would mean a criminal investigation report would be accessible where the investigation was undertaken by a municipal police force such as the Victoria Police Department, but not where the RCMP, acting under contract as the provincial police force, had investigated the matter.

[52] The issue in *Kavka* differs from the issue at hand. Boyd J. had to decide whether the RCMP is immune from the *Rules of Court* because it is, in effect, the federal Crown when acting as the provincial police force in British Columbia. Here, I must decide whether the Legislature, in enacting s. 16(1)(b), intended to extend to the RCMP protection as one of the "agencies" of the federal government, even if, in a given case, it is acting under contract as a municipal police force or the provincial force.

[53] Several decisions under Ontario's freedom of information legislation, which is similar to the Act, have proceeded on the basis that the RCMP are an agent of the federal government. Under s. 15(b) of the Ontario *Freedom of Information and Protection of Privacy Act*, an institution may refuse to disclose "information received in confidence from another government or its agencies". In Order 124, [1989] O.I.P.C. No. 85, Commissioner Sidney Linden held that the RCMP was an agency of the federal government for the purposes of s. 15(b) of the Ontario legislation. See, also,

Order P-368, [1992] O.I.P.C. No. 168; Order P-369, [1992] O.I.P.C. No. 167; and Order P-452, [1993] O.I.P.C. No. 108.

[54] Two decisions under Nova Scotia's *Freedom of Information and Protection of Privacy Act* take the same view. In Report FI-01-82, [2001] N.S.F.I.P.P.A.R. No. 69, Review Officer Darce Fardy accepted that the RCMP is a federal government agency for the purposes of s. 12(1)(b) of the Nova Scotia Act. That section is very similar to s. 16(1)(b) of the British Columbia Act. See, also, Report FI-00-29, [2000] N.S.F.I.P.P.A.R. No. 51, another case in which the agency status of the RCMP was accepted.

[55] Applying the *Westeel-Roscoe* test, I have concluded that the degree of control exercised over the RCMP by the Solicitor General of Canada leads to the conclusion that the RCMP is one of the federal government's "agencies" for the purposes of s. 16(1)(b). The RCMP's functions and duties under the RCMP Act, as a national police force, also support this conclusion. On the control issue, I note the authority of the Solicitor General of Canada, under the RCMP Act and the *Solicitor General Act*, to direct – as a member of the federal Cabinet – the RCMP's Commissioner in his or her control and management of the RCMP. There is also the fact that the federal Cabinet appoints the Commissioner of the RCMP, although I place less weight on that factor.

[56] Further, as I indicated above, the terms of the City-British Columbia policing agreement and the Canada-British Columbia policing agreement have not attempted to enlarge or reduce the statutory or constitutional authority of Canada, British Columbia or the City over the RCMP. Those agreements in fact affirm that Canada has the authority to control the internal management and direction of the RCMP, even for the purposes of those agreements. The contractual authority given to British Columbia or the City to direct certain aspects of the RCMP's delivery of policing services does not mean the RCMP is not a federal government agency. The policing agreements are, in fact, consistent with the view that the RCMP is a federal government agency for the purposes of those agreements, at least.

[57] Last, I do not consider the British Columbia Supreme Court decision in *Kavka* to be binding on me on the s. 16(1)(b) issue. Nor does it necessarily provide clear guidance on the point, given the differences between the issue in that case and the s. 16(1)(b) issue here, which is a matter of statutory interpretation.

[58] I am satisfied that the RCMP is a federal government agency for the purposes of s. 16(1)(b) of the Act.

Receipt of Information in Confidence

[58] Citing the criteria that I set out in Order No. 331-1999, the City says the records and information to which it has applied s. 16(1)(b) were received in confidence from the RCMP. Relying on an affidavit sworn by Deborah Brown, the City Solicitor, the City says there was an expectation of confidentiality on the part of both the RCMP and the

City respecting certain of the records in dispute. The City relies on the following factors in support of its confidentiality argument:

- some of the records are marked "privileged and confidential";
- the records contain information of a type that a reasonable person would regard as confidential;
- some of the information was supplied to City council at an *in camera* council meeting;
- the information was supplied voluntarily and under no compulsion;
- the City has consistently treated the information as confidential; and
- there is an established working relationship between the City and the Coquitlam Detachment of the RCMP in which sensitive information is exchanged on a confidential basis.

[59] The City also relies on an April 20, 2001 letter written by the officer in charge ("OIC") of the Coquitlam Detachment, in which that officer asserts that the RCMP expected confidentiality at the time the information was supplied a number of years ago. A copy of this letter forms Exhibit "C" to Deborah Brown's affidavit. This letter's author was not the OIC at the relevant time and no evidentiary basis is found in the letter, or elsewhere, to support his assertion that there was an expectation of confidentiality at the time any information or records were provided some years ago. The letter does not even speak to there being a consistent practice, or understanding, of confidentiality. The letter merits some, but not much, weight in determining whether the disputed information was "received in confidence" by the City several years ago.

[60] I am persuaded that, in all the circumstances, the information the City says is subject to s. 16(1)(b) was received from the Coquitlam Detachment in confidence. Among other things, Deborah Brown's affidavit provides the necessary evidence of a mutual understanding and practice of confidentiality, at the relevant times, respecting City-RCMP communications. There is also the fact that some, though not all, of the records sent by the RCMP are marked as being confidential. Moreover, the nature of the information is such that one would reasonably expect that the RCMP and the City both intended and expected it to be sent and received in confidence.

[61] I will deal here, in passing, with the City's argument, at para. 26 of its initial submission, that the "continued effectiveness of the City's relationship" with the RCMP would be jeopardized "if the City were unable to communicate with the RCMP in a confidential manner." This is a general argument that a need or desire for confidentiality should be sufficient to trigger s. 16(1)(b). The same argument could be advanced by any municipality in relation to a municipal police force established and operated directly by the municipality under the *Police Act*, *e.g.*, the Vancouver Police Department or the Victoria Police Department. It is not enough to assert that confidentiality is essential to

ensure good working relationships between municipalities and their police forces, in whatever manner their police forces are constituted. Any protection of information, where confidentiality is considered essential, must be found in the Act's specific exceptions to the right of access.

[62] Because the RCMP is a federal government agency for the purpose of s. 16(1)(b), and the information in issue was received in confidence, I find that the City is authorized by s. 16(1)(b) of the Act to refuse to disclose information. This finding applies to pp. 3-1 to 3-3, 3-6, 3-7 and 3-10 to 3-18.

[63] The City, at para. 24 of its initial submission, describes the letter at pp. 3-4 and 3-5 as a record received from the RCMP. The letter was actually sent by Deborah Brown, the City's Solicitor, to the Coquitlam Detachment. The City has not pointed specifically to any information in this letter that could be said to have originated in confidence from the RCMP, although this is the basis on which the City says s. 16(1)(b) applies to it. The fact that a record, such as this letter, generally discusses or relates to dealings between the City and the Coquitlam Detachment about a specific matter is not enough. The protection of s. 16(1)(b) extends to information received in confidence, not the general relationship between a public body and an agency of another government. Still, it is clear from the letter itself that portions of it communicate information that the City received in confidence from the RCMP. I have severed the letter to remove the portions of pp. 3-4 and 3-5 that are protected under s. 16(1)(b) and have delivered the severed copy to the City with its copy of this order.

[64] Pages 3-8 and 3-9, which were enclosed with pp. 3-4 and 3-5 (the Deborah Brown letter) are photocopies of pages from the statutes of British Columbia. This would, at best, be information the City sent to the RCMP, not the other way around. Section 16(1)(b) does not apply to these pages.

[65] Similarly, the City says that pp. 4-4 to 4-24, 5-1 to 5-66 and 5-74 to 5-86 are protected by s. 16(1)(b). These pages deal with issues involving the City and the Coquitlam Detachment and, in some places they contain information that was plainly received in confidence from the RCMP. I have dealt with pp. 4-4 to 4-19, 4-22, 5-1 to 5-66 and 5-74 to 5-86 under other exceptions. Portions of pp. 4-20 and 4-21 do, however, contain some information that falls under s. 16(1)(b) – as well as under s. 12(3)(b), as discussed below – and I have marked these pages accordingly in the copies I have delivered to the City with its copy of this order. Pages 4-23 and 4-24 do not, on their face, appear to contain information protected under s. 16(1)(b), and the City has not established that they specifically contain any such information. Parts of both of these pages are, however, covered by s. 12(3)(b). As indicated below, I have severed the s. 12(3)(b) records, including pp. 4-23 and 4-24, and delivered them to the City for disclosure to the applicant.

[66] As regards the duty to sever, it bears repeating that public bodies must perform their obligation under s. 4(2) to sever records where reasonably possible. Section 16(1)(b) is not a blanket exception that applies in every case to the entirety of any

record received from the RCMP or the entirety of any record that in some degree contains information received in confidence from the RCMP.

[67] I will also note here that, as regards the interests of accountability and access to one's own personal information that are among the Act's purposes, the RCMP is subject to the federal *Access to Information Act* and federal *Privacy Act*. It is open to the applicant, therefore, to seek access to the disputed information in the hands of the RCMP. Whether she gets any of it depends on the application of those federal laws. For future reference, however, I strongly encourage police forces and other public bodies that are covered by the Act to consult, in such cases, with the RCMP, with a view to obtaining consent under s. 16(1)(b) to disclosure of information that could or must be disclosed under the comparable federal legislation. Any such consultation should be undertaken as soon as practicable after the access request is received. Consultation would streamline matters by avoiding, in many cases, the need for two access request processes to be engaged. This would benefit both applicants and the RCMP. This is especially important where, as here, an applicant is seeking access to his or her own personal information.

[68] **3.3 Substance of *In Camera* Council Deliberations** – The City seeks to withhold, under s. 12(3)(b) of the Act, minutes of five *in camera* City Council meetings and staff reports that were discussed at those meetings. These records comprise all of Tab 4 (pp. 4-1 to 4-67) of the disputed records. It also seeks to withhold notes of *in camera* meetings made by Deborah Brown, the City Solicitor, *i.e.*, pp. 5-76 to 5-86. Since these notes are, in my view, properly withheld under s. 14, I need not consider here whether they are also protected by s. 12(3)(b).

[69] Section 12(3)(b) of the Act reads as follows:

> **Cabinet and local public body confidences**
>
> …
>
> 12(3) The head of a local public body may refuse to disclose to an applicant information that would reveal
>
> …
>
> (b) the substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under this Act authorizes the holding of that meeting in the absence of the public.

[70] Citing Order No. 326-1999, [1999] B.C.I.P.C.D. No. 39, and Order 00-11, [2000] B.C.I.P.C.D. No. 11, the City acknowledges that s. 12(3)(b) creates a three-part test, all of which must be satisfied before the section applies. The test can be summarized as follows:

1. It must be established that a meeting of the public body's elected officials or governing body was held;

2. It must be shown that an Act of the Legislature authorized the holding of that meeting in the absence of the public; and

3. It must be established that disclosure of the disputed information would reveal the substance of deliberations at that meeting.

[71] The City says Deborah Brown's affidavit establishes that the first two parts of the test have been met. I agree. Her affidavit establishes that the five *in camera* City Council meetings referred to were held and that they were held under the authority of what is now the *Local Government Act*. I also agree with the City's contention that the minutes of the *in camera* meetings would, if disclosed, reveal the substance of deliberations at those meetings. Accordingly, the City is authorized to withhold the minutes.

[72] The City has not, however, complied with its s. 4(2) duty to sever the records. It has withheld the entirety of each set of *in camera* minutes. As I noted in Order 00-14, [2000] B.C.I.P.C.D. No. 17, s. 12(3)(b) does not relieve a public body of its obligation to sever *in camera* minutes. The City cannot withhold information such as the dates, times and places of meetings, nor the names of the councillors nor, in this case, City staff who attended the *in camera* meetings. Nor in most cases can the subjects dealt with in *in camera* meetings be withheld under s. 12(3)(b). The records can readily be severed along these lines and I have prepared and delivered to the City a severed set of the relevant records, *i.e.*, pp. 4-2, 4-3, 4-20, 4-21, 4-23, 4-24, 4-48 to 4-49 and 4-67.

[73] As for the staff reports that were, as Deborah Brown's affidavit establishes, provided to Council members and discussed at the *in camera* Council meetings, the City contends that disclosure would permit accurate inferences to be drawn about the substance of Council's *in camera* deliberations. This argument is found at para. 32 of the City's initial submission, as follows:

> It is also submitted that the same exception should apply to the staff reports that were the subject of discussion at those meetings. The City appreciates the limits of the application of this exception in the case of background material and staff reports, as explained in the Commissioner's previous Orders, for example Order No. 331-1999. However, the reports in this case were prepared by staff for the express purpose of informing Council of certain issues and, in most cases, for the purpose of providing specific recommendations for Council's consideration. The minutes of the relevant Council meetings confirm that the reports were presented to Council and acted upon (even if just noted in the minutes as having been received). In that sense, this case is distinguishable from the circumstances in Order No. 00-11 and Order No. 331-1999 where it was found that the release of the reports in question would not permit accurate inferences to be drawn about the substance of Council's deliberations. [emphasis in original]

[74] As is discussed below, I have decided that all of Deborah Brown's reports to City Council (pp. 4-1, 4-4 to 4-19, 4-22 and 4-25 to 4-47) are protected by s. 14. I am also satisfied that the Deputy City Manager's report to City Council, dated September 27,

2000, and the attachments to that report, are protected by s. 14. I refer here to pp. 4-50 to 4-66. I therefore need not decide whether s. 12(3)(b) applies to these pages.

[75] **3.4 Advice or Recommendations** – The City relies on s. 13(1) of the Act in relation to the draft and final versions of the City Solicitor's reports to Council and to the Deputy City Manager's September 27, 2000 report to Council. The City does not specify page numbers for the draft reports, but it appears the City argues that pp. 5-1 to 5-66, 5-72 to 5-75 and 5-100 to 5-116 are protected under s. 13(1). Section 13(1) authorizes a public body to refuse to disclose "advice or recommendations" developed by or for a public body. Because I have found, for the reasons given below, that the City Solicitor's reports, both draft and final versions (as well as the Deputy City Manager's September 27, 2000 report to Council) are protected by s. 14, I need not consider whether they are also protected by s. 13(1).

[76] **3.5 Solicitor Client Privilege** – The City has withheld a sizeable number of the records (pp. 1-1 to 1-135, 2-1 to 2-99, 4-1, 4-4 to 4-19, 4-22, 4-25 to 4-47, 4-50 to 4-66, 5-1 to 5-116 and 6-1 to 6-7) under s. 14 of the Act, which authorizes the City to refuse to disclose information that is "subject to solicitor client privilege." The City relies on legal professional privilege, which protects confidential communications between lawyer and client that relate to the seeking or giving of legal advice. The City does not rely on litigation privilege. The classes of records that the City has withheld under s. 14 can be described as follows:

- communications between the City and its outside legal counsel in relation to a human rights complaint the applicant had made and in relation to a Workers' Compensation Board appeal;
- reports to City Council from the City Solicitor;
- working notes, drafts of correspondence, reports and other records found in the related files of the City Solicitor;
- records created by City employees, and sent to the City Solicitor, for the purpose of seeking legal advice from the City Solicitor;
- a report from the City's Deputy City Manager, to City Council, that conveys the legal advice of outside legal counsel to the City (which the evidence establishes was actually written by the City Solicitor); and
- accounts for legal services provided to the City by outside legal counsel.

[77] The City's claim of privilege is supported by Deborah Brown's affidavit, which sets out, in considerable detail, evidence that is probative of the City's claim of privilege over these classes of records. As was the case with the s. 6(1) issue, I do not propose to recite all of her evidence as it relates to the City's reliance on s. 14. It suffices to say that her affidavit provides – record by record – more than enough evidence to support the City's contention that the records are confidential communications related to seeking legal advice from, or the giving of legal advice by, either the City Solicitor or outside legal counsel to the City. This includes, on the evidence of Deborah Brown, the

September 27, 2000 report to City Council from the Deputy City Manager, which clearly communicates legal advice to Council. This further includes notes of discussions, telephone conversations and meetings involving legal counsel, as well as correspondence and other communications between the City and legal counsel and drafts of such correspondence, reports to City Council prepared by legal counsel and other records to which the City has applied s. 14.

[78] Further, on the authority of British Columbia Supreme Court decisions such as *Legal Services Society* v. *British Columbia (Information and Privacy Commissioner)* (1996), 140 D.L.R. (4th) 372, I have no choice but to find that the copies of legal bills rendered to the City by outside legal counsel are protected under s. 14. The City has clearly exercised its discretion under s. 14 against disclosing the legal bills, despite its ability to waive the benefit of s. 14 and disclose them. This ends the matter as regards the legal bills and I find that the City is authorized by s. 14 to refuse to disclose these records.

[79] I find that the City is authorized, under s. 14 of the Act, to refuse to disclose to the applicant the records that the City has withheld under that section.

[80] **3.6 Third-Party Personal Privacy** – The City has severed third-party personal information from pp. 6-9, 6-14 to 6-17, 6-19 and 6-22 to 6-23 of records on the basis of s. 22(1) of the Act. (Pages 6-8, 6-10 to 6-13, 6-18 and 6-20 to 6-21 are duplicate, unsevered pages of these records.) Section 22(1) requires the City to withhold third-party personal information where disclosure of that information would unreasonably invade a third party's personal privacy.

[81] In this case, the personal information consists principally of the names of the RCMP members who sent two memoranda, together with some employment history information on one of those members. The City also severed the names of civilian employees of the Coquitlam Detachment and of another RCMP member. These individuals are mentioned in these two memorandums and two others. The City also severed a line of personal information about a civilian employee of the Coquitlam Detachment in an e-mail message and approximately two lines in a letter to the City Solicitor from a lawyer who represented some RCMP members. The City says the applicant has received copies of these records with third-party personal information severed, as shown in the copies it provided to me for this inquiry, and that it severed no other information from these records. The City provided no argument as to why it considers that s. 22 applies to these items.

[82] The applicant, as noted above, has the burden of proof regarding s. 22. However, the only time she directly addressed this section in her initial or reply submission was on p. 2 of her initial submission, in reference to two records. She says that, in both cases, she should be allowed to have "vetted" copies of the records with "third party information removed". This clearly indicates that the applicant does not wish access to any severed personal information in the records. Accordingly, I need not deal with s. 22 in this order, as I am satisfied that the applicant has abandoned her request for review of the City's decision respecting s. 22. This turns on the applicant's clear intention not to seek third-party personal information and does not mean that a public body can withhold

the names of employees who write e-mails, memorandums or other records in the ordinary course of their employment duties.

4.0 CONCLUSION

[83] For the reasons given above, I make the following orders:

1. Under s. 58(2)(a) of the Act, subject to paragraph 2, below, I require the City to give the applicant access to the information it withheld under s. 12(3)(b) on pp. 4-2, 4-3, 4-20, 4-21, 4-23, 4-24, 4-48 to 4-49 and 4-67, as shown in black ink on the severed copies of those pages provided to the City with its copy of this order.

2. Under s. 58(2)(b) of the Act, I confirm the City's decision that it is authorized to refuse access to the information it withheld under s. 12(3)(b) on pp. 4-2, 4-3, 4-20, 4-21, 4-23, 4-24, 4-48 to 4-49 and 4-67, as shown in red ink on the severed copies of those pages provided to the City with its copy of this order.

3. Under s. 58(2)(b) of the Act, I confirm the City's decision that it is authorized to refuse access to the records it withheld under s. 14 of the Act, *i.e.*, pp. 1-1 to 1-135, 2-1 to 2-99, 4-1, 4-4 to 4-19, 4-22, 4-25 to 4-47, 4-50 to 4-66, 5-1 to 5-116, and 6-1 to 6-7.

4. Under s. 58(2)(a) of the Act, subject to paragraph 2, above, and paragraph 5, below, I require the City to give the applicant access to the information it withheld under s. 16(1)(b), *i.e.*, all of pp. 3-8, 3-9, 4-23 and 4-24, and those portions of pp. 3-4, 3-5, 4-20 and 4-21 shown in black ink on the severed copies of those pages provided to the City with its copy of this order.

5. Under s. 58(2)(b) of the Act, subject to paragraph 4, above, I confirm the City's decision that it is authorized to refuse access to the records that it withheld under s. 16(1)(b) of the Act, *i.e.*, all of pp. 3-1 to 3-3, 3-6, 3-7, and 3-10 to 3-18, and portions of pp. 3-4, 3-5, 4-20 and 4-21, as shown in red ink on the severed copies of these last four pages provided to the City with its copy of this order.

For the reasons given above, no order is necessary regarding ss. 13, 15 and 22.

May 14, 2002

ORIGINAL SIGNED BY

_____

David Loukidelis
Information and Privacy Commissioner
for British Columbia