

**INVESTIGATION REPORT
INVESTIGATION P94-001**

PUBLIC SERVICE EMPLOYEE RELATIONS COMMISSION

27 April 1994

**Information and Privacy Commissioner
for the Province of British Columbia
4th Floor, 1675 Douglas Street
Victoria, British Columbia V8V 1X4
Tel: (604) 387-5629
Fax: (604) 387-1696**

**INVESTIGATION INTO A COMPLAINT THAT THE PUBLIC SERVICE EMPLOYEE
RELATIONS COMMISSION RELEASED PERSONAL INFORMATION TO MR. JACK
WEISGERBER, MLA (s. 42 of the *Freedom of Information and Protection of Privacy Act*)**

COMPLAINT:

The complainant, Jack Weisgerber, MLA, alleged that, in response to a routine request for records, the Ministry of Finance and Corporate Relations improperly disclosed personal information.

CONDUCT OF REVIEW:

On 12 April 1994, within two hours of receiving the documents in question from Mr. Weisgerber, I reviewed the package with two of my colleagues and made a preliminary determination of the extent of any breach of privacy. We found that some of the disclosed records contained personal information of former employees and contractors of the provincial government and that, in some cases, this disclosure constituted an unreasonable invasion of privacy.

On 13 April 1994, two of my colleagues met with members of the Public Service Employee Relations Commission (PSERC) staff and with a lawyer from the Ministry of Attorney General to discuss both the events that led to the disclosure and PSERC's proposed response. My colleagues agreed with most of the proposals, subject to some minor changes designed to ensure continued protection of the privacy of the people whose personal information had been disclosed to Mr. Weisgerber.

From 15 to 22 April 1994, PSERC carried out its revised plan and kept my office up to date on its progress. During this time, my office monitored the execution of PSERC's plan and, on 27 April 1994, I issued this report of the investigation.

BACKGROUND:

Mr. Weisgerber personally presented a package of materials to my office on 12 April 1994. These materials were sent to Mr. Weisgerber by the Public Service Employee Relations Commission, in response to the routine request made by him on 14 February 1994. The request stated he was "...interested in obtaining a copy of the warning that Revenue Canada has issued to the province, as well as any other information about Revenue Canada raising concerns about this practice to the province." The practice referred to is hiring independent contractors to work as employees of the government. In keeping with the principle that the Act is not meant to replace normal channels of releasing information, the Ministry of Finance and Corporate Relations treated this request for information from a Member of the Legislative Assembly as a routine request for information, rather than as a formal request for records under the *Freedom of Information and Protection of Privacy Act* (the Act).

The materials at issue were collected from several government ministries and sent out to Mr. Weisgerber as a "...sample of the correspondence and other materials on the topic going back several years." He received approximately 50 pages of records spanning the years from 1984 to 1991. Approximately 15 pages contained personal information about 22 individuals. None of the personal information in the files had been severed, nor had the Manager, Information and Records Service, of the Ministry of Finance been asked to review the request for possible conflict with the Act.

The disclosure of personal information of sixteen individuals was not found by my office to be an unreasonable invasion of their privacy, as it included their names, their status as contractors or employees of the provincial government, their salaries and their periods of employment with the government and other information of the types described in paragraphs 22(4)(e) and (f) of the Act. These paragraphs state that the disclosure of personal information is not considered to be an unreasonable invasion of privacy if it is about third parties' position, functions or remuneration as an officer, employee or member of a public body, or a minister' staff, or if it reveals financial or other details of a contract to supply goods or services to a public body.

Subsection 22(1) of the Act requires public bodies to withhold personal information where its disclosure would constitute an unreasonable invasion of a third party's privacy. Subsection 22(2) of the Act requires public bodies to consider a number of factors in determining the extent of the invasion of privacy resulting from disclosure of the personal information. These factors include whether the disclosure is desirable for the purpose of subjecting the government's activities to public scrutiny, and if the personal information is relevant to a fair determination of the applicant's rights. Subsection 22(3), in turn, lists a number of types of personal information, the disclosure of which is presumed to be an unreasonable invasion of a third party's privacy. These include details of a third party's medical history, financial history, social assistance benefits, tax information, character references, racial origin, political or religious beliefs and other personal information of a particularly sensitive nature.

In the case of nine individuals (three of whom were among the sixteen previously mentioned), I found that the disclosure of personal information was an unreasonable invasion of the privacy of the persons concerned, as it included their home addresses and Social Insurance Numbers, and

their Canada Pension Plan, income tax, and unemployment insurance information. I found that the factors outlined in subsection 22(2) of the Act did not outweigh the invasion of privacy of these nine individuals occurring on the disclosure of their home addresses and Social Insurance Numbers. The other types of personal information fell into the categories described in paragraphs 22(3)(c) and (f), that is, they related to the individuals' eligibility for social services benefits or was gathered for tax purposes.

RESPONSE BY THE MINISTRY OF FINANCE AND CORPORATE RELATIONS:

On 12 April 1994, Mr. Weisgerber made a public announcement of the alleged breach of privacy to the media and in the Legislature. The same day, the Minister of Finance and Corporate Relations, the Honourable Elizabeth Cull, held a press conference in order to provide an outline of the chain of events and to apologize publicly to the former employees and contractors whose personal information had been disclosed.

Both before and after her press conference, Ms. Cull was in touch with me to express her concern about the alleged breach of privacy. Ms. Cull assured me that she would take steps to ensure that such an incident would not recur and that ministry staff would co-operate fully in any investigations by my office.

RESPONSE BY THE MEDIA: On 12 April 1994, Mr. Weisgerber issued a press release about the alleged breach of privacy.

Members of the media called my office the same afternoon, requesting my comments on the situation.

In a conference call on the same day, I provided several journalists with the following comments: that I had received a formal complaint from Mr. Weisgerber and that my office was investigating the complaint.

that I had reviewed the documents he had received and had determined that they contained some personal information about some people.

that I was pleased that the distribution of the personal information was so limited and that I commended Mr. Weisgerber for not further disseminating it.

that I had spoken to the Minister of Finance who had assured me of her concerns about what had happened and that I was pleased with the sensitive and concerned response of the responsible officials.

that it seemed likely that the Ministry of Finance would have to tighten its procedures for disclosing personal information and that we would monitor the Ministry's actions in this regard.

that this disclosure did not occur in response to a formal request under the *Freedom of Information and Protection of Privacy Act* and that this new legislation will require some time for the government to implement its procedures fully.

The media continued to be informed that my office was investigating the complaint and that I would issue a report as soon as possible.

INVESTIGATION:

My colleagues met with staff from PSERC on the day after receiving the complaint from Mr. Weisgerber and reviewed the steps that led to the release of the information. A Ministry of Attorney General's representative was also present at the meeting, as was the Manager, Information and Records Service, for the Ministry of Finance.

PSERC staff admitted that they had not carried out their responsibilities under the Act and that they had made an error in sending out the material in an unsevered format. In an effort to provide a full and comprehensive response and to prevent the perception of not being responsive to a member of the Legislative Assembly, they disclosed the material without treating it as a formal FOI request. They have stated that all such material will now be reviewed for compliance with the Act regardless of the character of the request.

Section 74 of the Act sets out the offenses and penalties and contains no penalties for releasing personal information improperly. The legislature obviously believed that criminal sanctions might be counterproductive and that education, training and consciousness-raising are, indeed, better alternatives.

RECOMMENDATIONS:

My office recommends that the following proposals made by PSERC be immediately implemented. These are:

- 1) A staff person within PSERC be identified who will review all outgoing correspondence and records containing personal information, the disclosure of which might cause an unreasonable invasion of privacy.
- 2) In all cases in which a preliminary review reveals that the records contain personal information, the material should be forwarded to the Manager, Information and Records Service, in the Ministry of Finance and Corporate Relations for a recommendation on release/severing before the correspondence is approved for signature.
- 3) PSERC staff be informed of the importance of following this procedure.

I further recommend that PSERC:

- 4) Develop and implement an in-depth education and training program for all staff of the Ministry with the assistance of the Manager, Information and Records Service, and the Information and Privacy Branch of the Ministry of Government Services.
- 5) Review the actions of the individual(s) involved in the disclosure and decide if internal disciplinary measures are necessary. While in no way minimizing the seriousness of this breach

of the Act, I recognize that the legislation is new and that all staff are still learning the importance of incorporating the principles of fair information practices in their daily work. Furthermore, our investigations have shown that there was no malicious or deliberate attempt to contravene the Act.

6) Treat equally all applicants for information. While I appreciate the political processes that may motivate responses to requests for information, government ministries should not process requests from MLAs any differently from any others.

7) Obtain the unsevered materials from Mr. Weisgerber.

8) Re-issue a general, public apology to those whose personal information was disclosed to Mr. Weisgerber and inform the public of the measures the Ministry has taken to ensure that this type of incident does not recur. I do not believe that it would be appropriate for the Ministry to take the necessary steps to apologize individually to each person whose personal information was disclosed. This action could in itself constitute an unreasonable invasion of privacy, since ministry officials would have to try to trace the persons concerned using their own and other ministries' data bases for current address and telephone information. Some of the identifiers in the released data are more than ten years old. The use of such additional personal information to issue apologies for the release of personal information would not be consistent with the original purpose of collection, especially since the data disclosed have been seen only by Mr. Weisgerber and one of his staff members.

David H. Flaherty Commissioner

Investigation conducted by Lorraine Dixon and Celia Francis Report drafted by Lorraine Dixon and Celia Francis