

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 123-1996
September 5, 1996**

INQUIRY RE: A media request for access to a consultant's report prepared for the District of Sechelt

**Fourth Floor
1675 Douglas Street
Victoria, B.C. V8V 1X4
Telephone: 604-387-5629
Facsimile: 604-387-1696
Web Site: <http://www.cafe.net/gvc/foi>**

1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner on July 16, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of an applicant's request for a review of the District of Sechelt's (the District) decision to withhold a consultant's report under section 17 of the Act. The District subsequently added sections 12.1 and 13.1 to its reasons for non-disclosure. The applicant, Jane Seyd, is news editor of the Coast Independent, which is a newspaper based in Gibsons.

2. Documentation of the inquiry process

The applicant made a request on February 22, 1996 to the District of Sechelt for a "financial feasibility study completed on development plans for Block 7 by consultants." The District denied access to the record on March 20, 1996. The applicant asked for a review of this decision on April 2, 1996.

3. Issues under review at the inquiry and the burden of proof

The issues under review in this inquiry are the application of sections 12.1, 13(1), and 17 of the Act to the record in dispute. The relevant sections read as follows:

- 12.1 The head of a local public body may refuse to disclose to an applicant information that would reveal

- (a) a draft of a resolution, bylaw or other legal instrument by which the local public body acts or a draft of a private Bill, or
- (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 holding that meeting in the absence of the public.

....

13(1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

(2) The head of a public body must not refuse to disclose under subsection (1)

- (a) any factual material,
- ...
- (d) an appraisal,
- (e) an economic forecast,
- ...
- (i) a feasibility or technical study, including a cost estimate, relating to a policy or project of the public body,
- (j) a report on the results of field research undertaken before a policy proposal is formulated,
- ...
- (m) information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy, or

....

Disclosure harmful to the financial or economic interests of a public body

17(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:

- (a) trade secrets of a public body or the government of British Columbia;
- (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;

...

- (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
- (e) information about negotiations carried on by or for a public body or the government of British Columbia.

Section 57 of the Act establishes the burden of proof. Under that section, where a public body has refused access to a record which does not contain personal information, it is up to the public body to prove that the applicant has no right of access to the record. In this inquiry, the District of Sechelt has to prove that the applicant has no such right of access under section 12.1, 13 or 17.

4. The records in dispute

The record, dated January 1996 and titled “Block 7 Financial Analysis for the District of Sechelt,” is a 31-page document of which 23 pages are appendices setting out financial data, mostly in spreadsheet format. There is also a facsimile cover page.

5. The District of Sechelt’s case

The District generally argues that:

The withheld document contains detailed schemes, financial plans, and strategies that if disclosed would seriously compromise Sechelt’s abilities to market and develop Block 7 to the best advantage of the taxpayer. Furthermore, both the preliminary draft report and resubmitted report contain expert analytical advice of a consultant, paid for by the District which has a real marketable value to any land developer, and its disclosure at this time would cause irreparable financial harm to Sechelt. (Submission of the District, p. 3)

The District emphasizes that sections 12 and 19 of the *Municipal Act* provide it with considerable powers to develop and sell municipal land.

Our position is that the requested document must be kept confidential to secure the municipalities’ interest in the value of research and consultant advice acquired, in addition to preventing real and lasting harm to the municipality as it proceeds with its development plans. (Submission of the District, p. 4)

I have presented below, as appropriate, the District’s detailed submissions on specific sections of the Act.

6. The Coast Independent’s case

The applicant is of the view that the public has a right to discuss the financial information contained in the record in dispute. She is critical of the District’s stance as a land developer and

argues that the balance should be struck in favour of accountability to the public rather than its concern for economic loss. Disclosure is especially important in light of the District's assumed roles of land regulator and land developer, which also raise real or perceived conflicts of interest.

7. Discussion

The District emphasizes that it has made public the 93-page "Master Plan for Block 7," prepared by Urban Systems Ltd. and various consultants and dated March 1996. Having reviewed it, I can verify that it does address "marketing strategy," including marketing and financial considerations and disposition strategies. These matters are indeed expanded upon in the record in dispute.

Section 12.1: Local public body confidences

The District attempts to interpret this section to apply to "draft documents," such as the record in dispute, which "forms part of the deliberations of the *in camera* meeting at which it was received and discussed."

I am of the view that the record in dispute is not a draft of a "resolution, bylaw or other legal instrument, ... or a draft of a private Bill" under the language of section 12.1(1)(a). I have also established in previous Orders the distinction between appropriately protecting "the substance of deliberations" of an *in camera* meeting as opposed to the record that may have served as the basis for whatever deliberations occurred. (See Order No. 8-1994, May 26, 1994 pp. 9, 10; Order No. 48-1995, July 7, 1995, pp. 9, 10; Order No. 113-1996, August 19, 1996 pp. 4, 5; and Order No. 114-1996, August 22, 1996, p. 3)

Thus I conclude that the District was not authorized to refuse access to the records under section 12.1.

Section 13(1): Policy advice or recommendations

The District argues that this section applies to the entire record in dispute:

The whole document should be characterized as advice and analysis with various projections and development scenarios evaluated and synthesized.... The document discusses a marketing approach and figures for the packaging of land development parcels for sale to interested developers or partners. It is both a financial discussion and an action plan, which deals with detailed methods and schemes. (Submission of the District, pp. 9, 10)

I have no difficulty concluding that the record in dispute comprises information that would reveal financial analyses, advice, and recommendations developed by a consultant for the District in accordance with section 13(1) of the Act. (See Order No. 93-1996, March 19, 1996, p. 2)

Section 17(1): Disclosure harmful to the financial or economic interests of a public body

The District relies on this section as its principal reason for non-disclosure of the record in dispute, because “it sets out financial models and development scenarios and strategies for the development of a parcel of land owned by the District of Sechelt.” Release of this “professional opinion and numeric financial advice...would be seriously detrimental to Sechelt’s economic interests, and the harm would be real, present and continuing over the next few years until the development was complete.” (Submission of the District, p. 5; see also p. 11)

The District emphasizes with respect to its reasonable expectation of harm that the requester in this case is a newspaper, so that it is probable that the contents of the record in dispute would be made public during a period of strategy and negotiations to sell parts of Block 7 to prospective developers.

Land values, coupled with market analysis, use options, development risks and a development schedule and strategy, are all key information used as the basis for shrewd negotiation either to sell parcels of Block 7, lease those parcels, share or join venture or hold those parcels, to the best advantage of the local government. (Submission of the District, pp. 4, 5)

The District emphasizes that disclosure would result in prospective or competing developers and landowners being able to generate increased profits by acquiring knowledge of the District’s financial analysis and strategy. (Submission of the District, p. 7)

The applicant submitted that “a local government’s role in being accountable to its constituents outweighs the concern of potential economic loss. Making money for the benefit of its taxpayers through speculative real estate developments is not the primary function of local government...” Whatever the merits of this view, section 17(1) does permit the District to protect its financial or economic interests from the reasonable prospect of harm.

I find that disclosure of the record in dispute to the applicant could reasonably be expected to harm the financial or economic interests of the District of Sechelt within the meaning of section 17(1). See Order No. 26-1994, October 3, 1994, p. 9.

Review of the record in dispute

The applicant suggests that perhaps not all of the record in dispute needs to be withheld; the District argues that severing is impossible for this record. I agree with the District.

I have carefully reviewed the record in dispute. Essentially, it contains a series of scenarios for development under varying market conditions, calculates the potential benefits to the District of various choices that it can make, and makes a recommendation. About half of the pages of text specify dollar amounts associated with options.

8. Order

I find that the District of Sechelt is authorized to refuse access to the record in dispute under sections 13(1) and 17(1) of the Act. Under section 58(2)(b), I confirm the decision of the District of Sechelt to refuse access to the record in dispute.

David H. Flaherty
Commissioner

September 5, 1996