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**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 217-1998  
March 6, 1998**

**INQUIRY RE: A decision by the Ministry of Finance and Corporate Relations to withhold the names and addresses of property owners from copies of Certificates of Forfeiture**

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**1. Description of the review**

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on October 24, 1997 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of the response of the Ministry of Finance and Corporate Relations (the Ministry) to the applicant's request for copies of Certificates of Forfeiture of Real Property issued by the Crown under the *Taxation (Rural Area) Act* during the past fifteen years. Where taxes for rural properties remain unpaid for a period of time specified in the *Taxation (Rural Area) Act*, the property forfeits to the Crown and a Certificate of Forfeiture of Real Property is registered in the Land Title Office. The Certificate of Forfeiture of Real Property contains the legal description for the property, the actual value of the land, the name and address of the owner(s), the date of the forfeiture, and the outstanding taxes at the time of forfeiture.

**2. Documentation of the inquiry process**

On February 4, 1997 the applicant submitted a request to the Ministry for access to copies of Certificates of Forfeiture issued by the Crown in the past fifteen years, or the legal descriptions of all properties which have forfeited to the Crown for non-payment of property taxes in the past fifteen years.

On March 10, 1997 the Ministry sent the applicant a fee estimate of \$962.00 for preparing, handling, shipping, and photocopying the approximately 2,000 pages covered by the request and confirmed that the records would be subject to severing under sections 21(2) and 22(1) of the Act. The applicant's \$500.00 fee deposit was received by the Ministry on March 19, 1997.

On May 26, 1997 the Ministry notified the applicant that the actual fees had been reduced to \$816.00 and requested him to pay the balance of \$316.00. The applicant paid the additional amount, and the Ministry disclosed the severed 1,896 pages to him on June 17, 1997.

On June 18, 1997 my Office received the applicant's request for review of the Ministry's decision to apply sections 21(2) and 22(1) of the Act to the names and addresses of property owners in the records. The applicant also sought a review of the charges levied by the Ministry, on the basis that the records relate to a matter of public interest. During the mediation process, the Ministry advised the applicant that it was also applying sections 22(3)(e) and (f) of the Act to the records. The applicant consented to the Ministry's request for an extension of the original inquiry deadline to October 24, 1997.

### **3. Issues under review and the burden of proof**

There are two issues in this inquiry. The first is the Ministry's application of sections 21(2), 22(1), and 22(3)(e), and (f) of the Act to copies of Certificates of Forfeiture issued by the Crown in the past fifteen years. The second issue is the applicant's claim that the fees assessed by the Ministry for various services related to his access request should be reviewed and waived under section 75 of the Act, because the records relate to a matter of public interest.

The relevant sections of the Act are as follows:

#### ***Purposes of this Act***

- 2(2) This Act does not replace other procedures for access to information or limit in any way access to information that is not personal information and is available to the public.

#### ***Disclosure harmful to business interests of a third party***

- 21(2) The head of a public body must refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

#### ***Disclosure harmful to personal privacy***

- 22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

- (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether
- (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny
  - ...
  - (c) the personal information is relevant to a fair determination of the applicant's rights,
  - ....
- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
- ...
  - (e) the personal information was obtained on a tax return or gathered for the purpose of collecting a tax,
  - (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,
  - ....

***Disclosure of personal information***

33. A public body may disclose personal information only
- ...
  - (i) for the purpose of
  - ...
  - (ii) making a payment owing by the government of British Columbia or by a public body to an individual,
  - ....

***Disclosure for research or statistical purposes***

35. A public body may disclose personal information for a research purpose, including statistical research, only if
- ...
  - (b) any record linkage is not harmful to the individuals that information is about and the benefits to be derived from the record linkage are clearly in the public interest,

....

***Fees***

- 75(1) The head of a public body may require an applicant who makes a request under section 5 to pay to the public body fees for the following services:
- (a) locating, retrieving and producing the record;
  - (b) preparing the record for disclosure;
  - (c) shipping and handling the record;
  - (d) providing a copy of the record.
- (2) An applicant must not be required under subsection (1) to pay a fee for
- (a) the first 3 hours spent locating and retrieving a record, or
  - (b) time spent severing information from a record.
- (5) The head of a public body may excuse an applicant from paying all or part of a fee if, in the head's opinion,
- (a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or
  - (b) the record relates to a matter of public interest, including the environment or public health or safety.

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(1), where access to information in the record has been refused under section 21(2), it is up to the public body, in this case the Ministry, to prove that the applicant has no right of access to the record or part of the record.

Under section 57(2), if the record or part that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

Section 57 is silent with respect to the burden of proof for a decision about a request for a fee waiver under section 75 of the Act. As I decided in Order No. 90-1996, April 8, 1996, p. 3, the burden of proof is on the applicant under such circumstances, because the waiver of a fee imposed under the Act constitutes a discretionary financial

benefit. It is logical that the party seeking the benefit should prove his or her entitlement on the basis of the criteria set out in the Act.

#### **4. Procedural objections**

The applicant objected to my receiving a submission from the Ministry in response to the applicant's reply submission, while denying the applicant the same opportunity. It should be pointed out that my Office did give the applicant an opportunity to make a submission in response to the Ministry's reply, and he did so. Having reviewed both replies to the reply submissions, I can say that the Ministry has put forward information purporting to clarify the real nature of the applicant's request for information. I do not find it necessary to consider this, however, because the documents submitted by the applicant in the course of his request for information speak for themselves. The Ministry also refers to the applicant's concerns about how the Ministry used the applicant's information in its submission. I do not find this matter to be relevant to the issues in this inquiry.

#### **5. The records in dispute**

The records in dispute are 1,896 Certificates of Forfeiture of Real Property issued by the Crown in the fifteen years before the date of the applicant's access request. Only the name and mailing address of the property owner have been severed in each certificate.

#### **6. The applicant's case**

Following forfeiture of the applicant's property to the Crown in 1989, the applicant challenged the validity of the Notice of Forfeiture under the *Taxation (Rural Area) Act*. In 1992 the British Columbia Court of Appeal held that the Notice of Forfeiture failed to comply with the notice provisions under this legislation. The applicant contends that this decision reflects the current state of law in the province with respect to notices of forfeiture. The applicant intends to commence a class proceeding on the basis of this decision. He feels that the Ministry is fighting his efforts to obtain access to information which he requires for the class proceeding in an effort to "delay the inevitable payment to all of the owners of forfeited property." (Reply Submission of the Applicant, paragraph 9)

The applicant recognizes that the information he is seeking is available from other sources but indicates that the main reason for this request is that all of the information can be conveniently obtained from one source. The applicant relies on sections 22(2)(a) and (c), 33(i)(ii), and 35(b) of the Act in support of his request for review.

I have considered the applicant's submissions in relation to specific sections of the Act below.

#### **7. The Ministry of Finance and Corporate Relation's case**

The Ministry takes issue with the applicant's characterization of the current state of law in this province and points out that the Legislature amended the *Taxation (Rural Area) Act* following the Court of Appeal decision to provide that "every notice of forfeiture given under the Act before September 29, 1992 is deemed to comply with the notice requirements of that Act." (Submission of the Ministry, paragraph 1.11) The Ministry notes that section 3 of the *Taxation (Rural Area) Act* provides for confidentiality of information and that information under the Act can only be disclosed to the public through the Rural Property Taxation Roll and the Statement of Taxes Paid in Arrears.

The Ministry submits that it has properly withheld the information in dispute on the basis of sections 21(2) and 22(1) of the Act, and that it has acted in compliance with section 75 of the Act. I have discussed below its arguments on the application of specific exceptions to the information in dispute.

## **8. Discussion**

It should be observed at the outset that the applicant has received the information which he initially requested in the request for access to records. The applicant requested copies of Certificates of Forfeiture or the legal descriptions of all properties which have been forfeited to the Crown for non-payment of property taxes in the past fifteen years. I note that the applicant received legal descriptions for all of the properties forfeited to the Crown in the past fifteen years albeit in the form of severed Certificates of Forfeiture. Since the Ministry has not raised this as an issue, I will proceed to consider the application of sections 21 and 22 to the names and addresses contained in the Certificates of Forfeiture.

### ***The Availability of Personal Information under the Taxation (Rural Area) Act***

A legislative scheme exists under which the public may have limited access, under certain circumstances, to Certificates of Forfeiture. First, there is a confidentiality provision in section 3 that limits disclosure to certain specific circumstances. Secondly, Rural Property Taxation Rolls are open to the public for inspection. Statements of Taxes Paid or in arrears on a specific property are also available to any person making an application. In this connection, searchers can obtain access to information from BC Online, a government agent, or the Surveyor of Taxes. The public may also search a paper copy of the Taxation Roll:

In order to carry out a search of the Taxation Roll, or obtain a statement of taxes paid or in arrears, the person requesting the search must have some information about the specific property they want searched. A person needs to either know the 'property folio number,' legal description of the property, or the 'property identification number.' [Notes omitted] Therefore, there are inherent privacy protections in carrying out a search of these databases. For example, a person cannot

carry out a search for all properties which have been forfeited to the Province in the last 15 years. There are procedural difficulties [the need for specific search criteria] in doing that. (Submission of the Ministry, paragraphs 1.17, 5.04, 5.06; see also paragraphs 1.12 to 1.16)

***Section 2(2): This Act does not replace other procedures for access to information or limit in any way access to information that is not personal information and is available to the public.***

The applicant points out that the records in dispute are available from the Land Title Registry, the BC Assessment Authority, and BC Online for a fee ranging from \$5 to \$10 per item. The Ministry agrees that the applicant may now be able to obtain the names of owners from Land Title Offices, because he now has the property folio numbers, legal descriptions of the properties, or property identification numbers, which permit him to carry out such searches, although “the cost and time involved in carrying out these searches provides some means of privacy protection...” (Submission of the Ministry, paragraph 5.05) This raises the difficult issue, which I discuss in more detail below, of whether the Ministry should have released some of the information that it has already disclosed on the Certificates.

The Ministry correctly argues that the fact that the applicant may obtain the information in dispute by other means does not give him a right of access under the Act. (Submission of the Ministry, paragraph 5.06; and Reply Submission of the Ministry, paragraph 1) I agree that the availability of information from other sources does not establish entitlement to information under the Act.

***Section 21(2): The head of a public body must refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.***

The applicant points out that the main reason for his request to the Ministry is that the information he wants is available from a single source.

The Ministry submits that the information in dispute falls under this section, because it is “information reported by third parties to report taxable property for provincial purposes. This information is also gathered for the purpose of determining tax liability and collecting a tax...” (Submission of the Ministry, paragraph 5.03) As the Ministry points out, section 21(2) is a mandatory exception. The head of a public body must refuse to disclose information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax. Based on my review of the legislative scheme and the Certificates of Forfeiture, I am satisfied that the information in dispute falls squarely within the scope of section 21(2). The names and addresses of the former property owners constitute information gathered for the purpose of determining tax liability and/or collecting a tax.

***Section 22(1): The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy***

The applicant submits that the owners of property on the 1996 forfeiture list still have until December 1997 to pay their taxes and penalties and redeem their property. However, he notes that the Ministry disclosed sufficient information to enable one to access the names of the owners from the Land Title Offices, which could “cause harm or embarrassment and exposure to ambulance chaser tactics by unscrupulous people who might prey on citizens in distress from various causes such as ill health, Death, financial reversals, etc.” The applicant contends that the Ministry provided this information without a thought for privacy, despite its concern about releasing the names of previous owners from past years.

The fact that the Ministry may have improperly disclosed the legal descriptions does not address the fact that the personal information contained on the Certificates of Forfeiture must be withheld, if disclosure would be an unreasonable invasion of a third party's personal privacy.

The applicant emphasizes that the names of all property owners in the province are public information, available “to anyone wishing to pay the appropriate fees.” As I indicated above, the fact that information may be available from other sources does not establish entitlement under this Act.

***Section 22(2): In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,***

The applicant submits that he requires the names of the forfeited owners to inform them of the Court of Appeal ruling, so that they can scrutinize the activities of the Ministry. The Ministry submits that this subsection does not apply. Although I have considered the applicant's submission under section 22(2)(a), it is my view that this consideration does not justify disclosure. There are other less intrusive means of informing former property owners of the Court of Appeal decision. I agree with the Ministry that the Court of Appeal scrutinized the government's activities in the forfeiture process.

***Section 22(2)(c): the personal information is relevant to a fair determination of the applicant's rights,***

The applicant wishes to proceed with an action under the *Class Proceeding Act* of B.C. and, for that purpose, needs the names of the owners of forfeited property in order to examine “[t]he extent of the abuse by Finance of the citizens of BC....” The Ministry

submits that the names and addresses of owners of forfeited property are irrelevant to the rights of the applicant. The Ministry also submits that the applicant's argument is misguided since all of this information is not required to launch a class action suit. (Reply Submission of the Ministry, paragraph 9)

The applicant has failed to present sufficient evidence to establish that the disclosure of this information is relevant to a fair determination of the applicant's rights vis-à-vis his class proceeding. As the Ministry points out, the applicant's submission misconstrues the requirements under the *Class Proceeding Act*.

***Section 22(3): A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if... (e) the personal information was obtained on a tax return or gathered for the purpose of collecting a tax.***

The applicant submits that the information he is seeking was not obtained on a tax return. The Ministry, for its part, relies on this subsection and the following one, in particular, for refusing to disclose the information in dispute, since they are presumptions that the applicant must overcome. (Submission of the Ministry, paragraphs 5.09 to 5.12)

For the reasons outlined in relation to section 21(2), I find that the personal information was gathered for the purpose of collecting a tax. I agree with the Ministry that the presumption in section 22(3)(e) is not overcome on the evidence of this case.

***Section 22(3)(f): the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,***

The applicant submits the reasons for forfeiting property are numerous:

Ill health could be a cause for the neglect, leaving the country, or just plain moving and losing touch of records could be a cause of the forfeiture. In my case it was negligence by a lawyer's office in not paying the taxes on time on my behalf.

The Ministry points out, appropriately, that "a person whose property was forfeited for reasons unrelated to financial history or creditworthiness, has that much more reason not to have his or her name and address disclosed, because its disclosure may unfairly damage their reputation (section 22(2)(h))." (Reply Submission of the Ministry, paragraph 5)

For its part, the Ministry submits that disclosure of the disputed information "will identify those individuals who have failed to pay a debt owing to the Province and is therefore information about third party monetary activities and financial standings." It is also "identifying and sensitive information relating to tax collection and the financial

history or creditworthiness of third parties.” (Submission of the Ministry, paragraphs 5.14, 5.15)

I agree with the Ministry’s submission and conclude that the applicant has failed to meet his burden of proof under section 22 of the Act.

### ***Disclosure of Legal Descriptions and Property Folio Numbers***

It is appropriate to discuss the disclosure of the property folio numbers and the legal descriptions of the properties by the Ministry. Section (3) of *the Taxation (Rural Area) Act* sets out the circumstances under which information/records may be disclosed and recognizes that the taxation roll itself is open to the public. This roll provides a listing of all properties in the province subject to taxation and includes the particulars of the owners. The only criteria required for a property to be listed on this public roll is that the property is taxable. In contrast, the records sought by the applicant identify a specific group of properties and individuals based solely on forfeiture of their property. They are in effect a refinement of the public list based on a single factor. The only reason these properties are identifiable in this way relates directly to the financial activity of the owners.

Further, the properties on which Certificates of Forfeiture have been filed include those properties which were later redeemed by or on behalf of the owners and thus were only forfeited for a very brief period.

The property identifiers of forfeited properties enable the applicant to identify the specific property owners by name. In the absence of such information the applicant would not have been in a position accurately to identify the individual owners of such forfeited properties without carrying out a search of the ownership history of every property in each Land Title Office for the last fifteen years. If the applicant was to search the BC Assessment roll, he would not find the ownership of forfeited properties that are now vested in the Province, because those properties are not assessed taxes.

It is arguable that third party business information gathered for the purpose of collecting taxes has been released. The applicant is now requesting the disclosure of the actual names of third parties whose business interests are shown on the Certificates. I raise this to alert the Ministry to the need to be vigilant in future cases in disclosing information of this nature.

A further issue that deserves mention is the fact that many years may have passed since the properties of a majority of these individuals were forfeited and perhaps redeemed. These individuals’ right to be forgotten should be considered. There are a variety of reasons why a property owner defaults and the property is forfeited. To continue to identify a limited number of these owners of forfeited property years later seems to be an unreasonable invasion of their personal or business privacy.

There are other less intrusive means of advising the affected individuals, as the applicant wishes to do, while giving these individuals the opportunity to determine if they wish to be identified as an owner of forfeited property or to be “forgotten” in this context.

***Section 33: A public body may disclose personal information only ... (i) for the purpose of ... (ii) making a payment owing by the government of British Columbia or by a public body to an individual,***

The applicant submits that the decision of the Court of Appeal “is the precedent for the repayment to all of these individuals for the loss of property and costs and damages.” The Ministry submits that section 33(i)(ii) of the Act does not apply to a decision of a public body if the decision was made in response to a request for access to information under the Act. It is my view that the permissive authority of section 33(i)(ii) may not be used to override the mandatory provisions under Part 2 of the Act. I also agree with the Ministry’s position that section 33 does not serve to compel disclosure, but rather to provide a public body with the authority to disclose personal information in a limited number of circumstances. In any event, I do not find that the submission of the applicant supports the application of section 33(i)(ii) to the information severed from the Certificates. (Reply Submission of the Applicant, paragraph 7)

***Section 35: A public body may disclose personal information for a research purpose, including statistical research, only if ... (b) any record linkage is not harmful to the individuals that information is about and the benefits to be derived from the record linkage are clearly in the public interest,***

The applicant submits that the Court of Appeal has ruled that those who have forfeited property to the Crown “are entitled to have their property returned and to be compensated for their losses and damages.... The upholding of this ruling is definitely in the public interest.”

I have considered the applicant’s submission but conclude that section 35 does not apply in the circumstances of this case. The information in dispute is not being sought for a “research or statistical purpose.”

***Section 75(1): The head of a public body may require an applicant who makes a request under section 5 to pay to the public body fees for the following services ... (5) The head of a public body may excuse an applicant from paying all or part of a fee if, in the head’s opinion, ... (b) the record relates to a matter of public interest, including the environment or public health or safety.***

The applicant has asked for a review of the fees charged by the Ministry and puts forward an argument based on public interest. He submits that the right of citizens to own property and not to be abused by the bureaucracy is in the public interest. In his view, the Ministry and/or the Ombudsman should have informed the owners of the

decision of the Court of Appeal. In his view, the Ministry should return the fees charged to him for his access request because of the public interest involved.

The Ministry emphasizes that the applicant has never asked the Ministry for a fee waiver, despite being invited to do so during the processing of his access request. (Submission of the Ministry, paragraphs 1.04, 1.09, and 5.16 to 5.20) The Ministry is correct that this issue is not properly before me, because of this omission. (Submission of the Ministry, paragraph 2.01) See Order No. 55-1995, September 20, 1995, p. 6; and Order No. 90-1996, March 8, 1996, p. 11. I agree that I should not be reviewing a matter of a fee waiver without having a decision of a head of a public body before me. (Submission of the Ministry, paragraph 5.19)

## **9. Order**

I find that the Ministry of Finance and Corporate Relations is required under sections 21(2) and 22(1) of the Act to sever information from the records requested by the applicant. Under section 58(2)(c) of the Act, I require the Ministry to refuse access to the severed information.

I make no order in respect of the fees assessed by the Ministry of Finance and Corporate Relations. The applicant has not requested a fee reduction or waiver by the Ministry under section 75(5) of the Act, and so the fee issue is not properly before me at this time.

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David H. Flaherty  
Commissioner

March 6, 1998