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**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 231-1998
April 28, 1998**

INQUIRY RE: A decision by the Ministry of Environment, Lands and Parks to withhold a Draft Report on Moose Management.

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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 February 11, 1998 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 a decision by the Ministry of Environment, Lands and Parks (the Ministry) not to disclose the Draft Report on Moose Management (Draft Report) requested by the Valley Fish and Game Club (the applicant).

2. Documentation of the inquiry process

The applicant made a request on September 15, 1998 for a copy of the Draft Report on Moose Management prepared by Ian Hatter in the late summer of 1997. The Ministry responded on October 10, 1997 denying access to the report under section 13 of the Act. The applicant wrote to my Office on October 23, 1997 to request a review of the Ministry's decision. Subsequently a Notice of Written Inquiry was issued on December 17, 1997 for an inquiry to be held on January 21, 1998. Both the applicant and the Ministry requested further extensions, which resulted in a new inquiry date of February 11, 1998. On January 19, 1998 the Ministry disclosed a portion of the requested report to the applicant.

3. Issue under review and the burden of proof

The issue under review is the Ministry's application of section 13 of the Act to withhold the balance of the Draft Report on Moose Management. The relevant provisions of section 13 read as follows:

Policy advice or recommendations

- 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)
- ...
- (d) an appraisal,
- ...
- (f) an environmental impact statement or similar information,
- ...
- (j) a report on the results of field research undertaken before a policy proposal is formulated,
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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 13, it is up to the public body to prove that the applicant has no right of access to the record or part of the record.

4. The record in dispute

The record in dispute in this inquiry is a 36-page Draft Report entitled “Moose Conservation and Harvest Management in Central and Northern British Columbia” dated August 22, 1997. The report is written by Ministry employee Ian Hatter, Ungulate Specialist, Management and Conservation Section, Wildlife Branch. Attached to the Draft Report are two appendices which are 2 pages and 57 pages in length respectively. The Ministry has provided me and the applicant with a detailed table that lists the page numbers of the severances from the text and description of what has been severed. Information has been severed on most pages of the text. (Submission of the Ministry, paragraphs 4.01 to 4.02)

5. The applicant’s case

The submission of the applicant was prepared by the President of the Valley Fish and Game Club in Lake Cowichan and the President of Region One of the B.C. Wildlife Federation, which is based in Chemainus. The latter is not a party to this inquiry.

The applicant is seeking the Draft Report in order to compare it with the final report when it is published: “We are concerned some of the findings/recommendations in the initial report will be suppressed for political reason at the expense of the moose and their habitat.” The applicant submits that it was instrumental in securing the Ministry’s

audit of moose management practices in the Peace Liard region of the province (central and northern). The applicant's submission reflected a detailed understanding of issues in moose. (Submission of the Applicant, pp. 2 to 5)

The applicant argues that the severed information should be disclosed on the basis of section 13(2)(d), (f), and (j) of the Act. I have presented below its detailed submission on these subsections.

6. The Ministry of Environment, Lands and Parks' case

I have discussed below the Ministry's submission on the application of section 13 of the Act to the records in dispute.

7. Discussion

The Ministry submits that Mr. Hatter was instructed by the former Deputy Director of the Management and Conservation Section to carry out an assessment of review of moose conservation and harvest management in central and northern British Columbia. The Draft Report is expected to be finalized soon, at which time it will be made available to the public. The Ministry's position is that it has severed the parts of the Draft Report which would reveal advice or recommendations developed by a public body.

Section 13: Policy advice, recommendations or draft regulations

The Ministry submits that section 13 "is intended to allow full and frank discussion of advice or recommendations within the public service, preventing the harm that would occur if the deliberative process of government decision and policy making was subject to excessive scrutiny...." (See Order No. 212-1998, January 16, 1998, p. 3; and Order No. 159-1997, April 17, 1997) According to the Ministry:

... the information it has severed from the Draft Report is information which will either expressly or implicitly reveal recommendations and advice developed by and for the Public Body.... The disclosure of the severed information would clearly reveal suggested courses of action to be taken by the Public Body as to the conservation and harvest management of moose in central and northern British Columbia.... In the deliberative process of government decision making and policy development it is essential that public bodies have the ability to protect, as authorized, the free flow of advice and recommendations.... (Submission of the Ministry, paragraph 5.06)

In the view of the applicant, section 13(1) does not justify the Ministry's severances. The applicant considers the Draft Report to be "an appraisal" and that section 13(2)(d) provides for the disclosure of this type of information. The applicant also submits:

The other area of this report that have [*sic*] been withheld should be released under [section 13(2)(f) and (j)]. This paper is a report of field research undertaken before a policy proposal is formulated and also it deals with the environment and ecology in the area of moose and moose habitat. (Submission of the Applicant, p. 1)

The Ministry disagrees with the applicant and submits that none of the information in dispute falls within any of the categories of information set out in section 13(2) of the Act. The Ministry's position is that the Draft Report is not an "appraisal" under section 13(2)(d) of the Act because it does not purport to estimate the value of property or set a price on an asset or liability. It also argues that the Draft Report is not an "environmental impact statement or similar information" under section 13(2)(f) of the Act because it is an evaluation of current moose conservation and harvest management strategy, and provides advice and recommendations for changes in strategy; it does not assess the environmental impact or consequences of a proposed project or activity. Finally, the Ministry takes the position that section 13(2)(j) does not apply because the Draft Report and the parts of the Draft Report which have been severed are not a "report on the results of field research undertaken before a policy proposal is formulated." (Reply Submission of the Ministry, paragraphs 3 to 10) I agree with the Ministry that section 13(2)(d), (f), and (j) does not apply to the record in dispute. I also agree with the Ministry that the withheld information reveals advice or recommendations developed by or for a public body and that section 13(1) of the Act applies to that information

Review of the records in dispute

I have reviewed each of the severances in the records in dispute and confirm that the Ministry has applied section 13(1) of the Act appropriately. I therefore find that the Ministry is authorized to refuse access to the information it has withheld under section 13(1) of the Act.

My decision in this inquiry follows the explicit precedent set in Order No. 215-1998, February 23, 1998, which was issued just after the completion of the inquiry in this matter.

8. Order

I find that the head of the Ministry of Environment, Lands and Parks was authorized to refuse access to the withheld records under section 13(1) of the Act. Under section 58(2)(b), I confirm the decision of the head of the Ministry of Environment, Lands and Parks to refuse access to the records.

David H. Flaherty
Commissioner

April 28, 1998