

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 310-1999
June 7, 1999**

**INQUIRY RE: A decision by the District of Campbell River and the
North Island 9-1-1 Corporation to refuse access to parts of a contract**

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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 May 17, 1999 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review by the Campbell River Fire Fighters Association (the applicant) of a decision by the District of Campbell River (the District) and the North Island 9-1-1 Corporation (the Corporation) to refuse to disclose certain information from a contract between these two public bodies regarding fire dispatch services.

2. Documentation of the inquiry process

On November 26, 1998 the applicant sent identical requests to the District and the Corporation for a copy of the contract for fire dispatch services between the two public bodies. On January 4, 1999 the District responded by denying access to the entire contract under sections 17(1)(b), (d) and (e), and 21(1)(a)(ii), 21(1)(b) and 21(1)(c)(i) and (iii) of the Act. The Corporation responded with identical reasons for denial on January 6, 1999.

The applicant requested reviews of these two decisions by my Office. The Office opened two review files, one for the District on February 16, 1999 and one for the Corporation on February 23, 1999, with the ninety-day review timelines due to expire on May 17, 1999 and May 24, 1999 respectively. Mediation resulted in the disclosure of the contract in severed form on March 26, 1999. The portions withheld comprised paragraph 3.2 and the second half of paragraph 4.6. The exceptions to disclosure remained those listed above.

The applicant informed the Office on April 19, 1999 that it wished the remaining issues to go before the Information and Privacy Commissioner in a formal inquiry. The Office issued the Notice of Written Inquiry to the applicant and the two public bodies on April 23, 1999.

3. Issue under review and the burden of proof

In their initial submissions, both public bodies abandoned their reliance on section 21. I therefore reviewed only their application of sections 17(1)(b), (d) and (e) of the Act to portions of the contract for fire dispatch services between the District of Campbell River and the North Island 9-1-1 Corporation. These sections read as follows:

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:

...

(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 on the parties in this inquiry. Under section 57(1), where access to information in the record has been refused under section 17, it is up to the public body, in this case the District and the Corporation, 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 is a contract for fire dispatch services between the District and the Corporation, specifically the severed and withheld portions: paragraph 3.2 and the second half of paragraph 4.6.

5. The Campbell River Fire Fighters Association's case as the applicant

The applicant objects to the fact that the District and the Corporation refuse to disclose the entire agreement for fire fighting services, since “we strongly believe that the agreement between the two parties should be public information. The 911 Corporation is entirely funded by us, the taxpayers, and we feel we have the fundamental right to view this document.”

The applicant also contests the submission of the District to the effect that disclosure of the information in dispute would assist the applicant in the course of labour negotiations.

I have presented below the applicant’s submissions on the application of specific sections of the Act.

6. The District of Campbell River’s case

The District has been involved in contract negotiations for fire-fighting services with the applicant in this inquiry since October 1998. The main issue is compensation. The District believes that the applicant wants access to the information in dispute for purposes of contract negotiation. It submits that disclosure would harm the financial or economic interests of the District.

I have presented below the District’s submissions on the application of specific sections of the Act to the records in dispute.

7. The North Island 9-1-1 Corporation’s case

The Corporation was incorporated under the *Company Act* of B.C. to provide centralized emergency answering service, including fire, ambulance, and medical emergencies, for the northern and western parts of Vancouver Island. The Corporation has an agreement to provide these services to the District of Campbell River. A number of positions in the District’s fire department are funded under this agreement. (Submission of the District, paragraphs 1.7 to 1.12)

The Corporation made all of its submission on an *in camera* basis. Since I have accepted them on that basis, I am not able to discuss its contents in a public forum. However, it presents essentially the same submissions and arguments as the District on the applicability of section 17 of the Act.

8. Discussion

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

The District’s case, it submits, depends largely on the general language of the opening words of this section, arguing that the succeeding subsections are not meant to be

exhaustive of the kinds of records that can be withheld: (See Order No. 75-1996, January 4, 1996)

It is therefore submitted that even if the information does not fall neatly into one of the subordinate clauses of section 17, the public body is still authorized to refuse disclosure of information where the disclosure can be expected to reasonably harm its financial or economic interests. (Submission of the District, paragraph 2.5)

For this purpose, the District submits that it need only establish a reasonable expectation of harm. I agree, as I have stated previously that the Act requires a higher standard than a mere possibility of harm. (See Order No. 159-1997, April 17, 1997; Order No. 193-1997, October 7, 1997; and Order No. 288-1999, January 12, 1999, p. 11)

The District argues that the identity of the applicant in this case is “relevant to the public body’s assessment of whether the disclosure could reasonably be expected to harm its financial or economic interests.” (Submission of the District, paragraph 2.8) I agree that this is indeed the case in the circumstances of this inquiry and that the District may be legitimately concerned “that the union intends to use details of the agreement to further its interests during the contract negotiations.” (Submission of the District, paragraph 2.9)

The District’s core submission is that disclosure of additional details of its contract with the Corporation “could reasonably be expected to jeopardize the continuation of the 9-1-1 Contract [which] will have a detrimental effect on the financial and economic interests of the District of Campbell River.” (Submission of the District, paragraph 2.15) That is a judgment that the District is allowed to make under the language of section 17(1) of the Act.

Section 17(1)(b): Financial information that is reasonably likely to have monetary value

The applicant’s position is that the agreement has already been negotiated between the two parties and thus has no monetary value to them. Thus this subsection is not applicable. The District itself acknowledges that this subsection is “not likely applicable.” (Submission of the District, paragraph 2.5)

Section 17(1)(d): Premature disclosure of a proposal or undue financial loss or gain to a third party

The applicant submits that this subsection is not applicable, since the agreement has already been implemented.

The District submits that it obtains a financial benefit from its contract with the Corporation, since the persons doing the work of the Emergency Dispatch Centre reside in and contribute to its employment base in a time of financial uncertainties in the

traditional economy of the area. (Submission of the District, paragraph 2.10) Furthermore, if the Corporation terminated the contract, the District would have to hire its own dispatchers and reacquire expensive new equipment. (Submission of the District, paragraph 2.12 to 2.14) I find this to be a persuasive point in the context of the application of section 17(1) to the records in dispute.

Section 17(1)(e): Information about negotiations

The applicant submits that this subsection is not applicable, “because we are not requesting information about the negotiation process but the agreed-to end results between the two public bodies.” The District does not address this subsection directly but refers to it as an illustration of the range of circumstances contemplated by section 17(1).

9. Review of the records in dispute

For purposes of understanding the financial and economic significance to the District of the information in dispute, I have received, accepted, and reviewed an *in camera* submission and affidavit from the District.

On the basis of all of the *in camera* material, I am able to appreciate the challenge to its financial and economic interests that the District perceives in disclosure of the limited information still in dispute. Since section 17 of the Act is permissive, I agree that the District is in the best position to assess the reasonableness of the prospects of harm to its interests in such circumstances. Thus I find that it has met its burden of proof.

The reply submission of the applicant does contest the general and specific submissions of the District, but it does not do so persuasively. The applicant appears to hold the view that disclosure of a record in dispute is somehow a discrete decision. In fact, it is subject to a determination of the head of a public body (the District and the Corporation in this inquiry) that disclosure would harm its interests on the basis of grounds set out under section 17 of the Act.

I find that the District and the Corporation have acted in compliance with the Act in their decision to apply section 17 to the information in dispute.

10. Order

I find that the District of Campbell River and the North Island 9-1-1 Corporation are authorized to withhold the information in dispute under section 17(1) of the Act.

Under section 58(2)(b) of the Act, I therefore confirm the decision of the heads of the District of Campbell River and the North Island 9-1-1 Corporation to withhold the information in dispute under section 17(1) of the Act.

David H. Flaherty
Commissioner

June 7, 1999