



Decision F05-02

## CITY OF VICTORIA

Celia Francis, Adjudicator  
April 8, 2005

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**Summary:** The City of Victoria asked that, under s.56, this office not proceed with an inquiry under Part 5 of the Act respecting the respondent's request for review under the Act. No responsive record exists. Therefore no inquiry will be held in this matter.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, s. 56.

### 1.0 INTRODUCTION

[1] This decision responds to the City of Victoria's request that this office not proceed with an inquiry under Part 5 of the *Freedom of Information & Protection of Privacy Act* ("Act") respecting the respondent's request for review under the Act. The Information and Privacy Commissioner has, under s. 49(1) of the Act, delegated this matter to me for decision.

[2] For the following reasons, I have decided to exercise my discretion under s. 56(1) of the Act to decline to hold an inquiry in this matter.

### 2.0 ISSUE

[3] The City of Victoria has asked that I exercise my discretion under s. 56 of the Act not to hold an inquiry on this matter.

[4] Section 56(1) of the Act reads as follows:

#### **Inquiry by commissioner**

56(1) If the matter is not referred to a mediator or is not settled under section 55, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

[5] This language confers discretion as to whether an inquiry under Part 5 should be held respecting a request for review. As the Information and Privacy Commissioner has found in earlier s. 56 decisions, there may be a variety of reasons why that discretion should be exercised one way or another. I have reviewed the respondent's and the City's submissions in this matter and have decided to exercise my discretion under s. 56 against holding an inquiry under Part 5.

### 3.0 DISCUSSION

[6] **3.1 Background** – The respondent sent a letter to the fire department at the City saying someone had made an “invalid complaint” to the Victoria Fire Department about “a missing or destroyed fire escape ladder landing etc” at an apartment building where the respondent apparently lives and carries out unspecified duties. The respondent said he had received a visit about the fire escape landing from a fire department inspector and that he had been terminated from his duties at the building a few days later. He closed his letter as follows:

It is imperative for us to know the name or names of the people who made this invalid complaint for likely court purposes.

[7] The fire department inspector himself responded to the request—apparently on behalf of the City—by telling the respondent he could not provide the respondent with any personal information. Although the respondent referred to the *Freedom of Information and Protection of Privacy Act* (“Act”) in his request, the inspector did not refer to any exception in the Act as authority for denying the applicant's request. He did, however, recommend that the respondent contact this Office “regarding your options on how to possibly obtain this information”.

[8] The inspector then said:

I also wish to reiterate, as indicated in my 14 January 2004 letter to you, that it was I who initiated any action regarding the fire escape platform. The complaint received by the fire department was about a totally unrelated matter and was found to be unfounded.

[9] The respondent requested a review of the City's decision and, after mediation by this office, the City made a request to this office that the Commissioner exercise his discretion under s. 56(1) of the Act respecting the holding of an inquiry against holding an inquiry.

[10] **3.2 Parties' Submissions** – The respondent claims to know the identity of the person who complained about him but still considers the City should provide it to him. Among other things, he also says the complaint was “frivolous and malicious” and that it led to the loss of his job.

[11] The fire inspector, on behalf of the City, states that:

The Victoria Fire Department has not received any written complaint(s) about [the respondent] or his performance.

[12] The inspector says he received a telephone call from an individual regarding a locked fire exit at the respondent's building. He visited the building, spoke with the respondent and determined that the complaint about the fire exit was unfounded. During his visit, the fire inspector said he noticed a problem with the fire escape and later took steps to have the fire escape repaired. He says he has explained to the respondent many times that it was he who initiated the action regarding the fire escape. He adds:

It was not the result of any phone call or letter. There is no anonymous letter or informant. The only information I have withheld from [the respondent] is the identity of the original caller about the inside fire exit and the complaint, as stated before, was deemed to be unfounded.

[13] The fire inspector says the City is of the view that the identity of the original caller should not be included in this matter as the two issues are unrelated.

#### **4.0 CONCLUSION**

[14] I accept the City's statement that there is no record of a complaint against the respondent regarding the fire escape. I am therefore satisfied that no inquiry should be held under Part 5 of the Act on this issue. It is not clear if there is a record of the original telephone call about the fire exit but I agree with the City that the two matters are unrelated. There is thus no record that is responsive to the respondent's access request in the first place. For this reason, I exercise my discretion under s. 56 not to hold an inquiry under Part 5 of the Act on this matter and our file will be closed.

[15] I will note in passing that it would have been helpful if the City had in the first place simply told the respondent that no record responsive to his request exists, rather than telling him it could not disclose personal information. If it had, this matter might not have proceeded to this stage. I also note that the fire inspector's response to the respondent's access request did not comply with the requirements of s. 8 of the Act.

April 8, 2005

#### **ORIGINAL SIGNED BY**

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Celia Francis  
Adjudicator