



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Decision F06-04

CITY OF VANCOUVER

Celia Francis, Adjudicator
May 24, 2006

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Summary: The public body's request that an inquiry under Part 5 not be held is granted. No inquiry will take place.

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

Authorities Considered: **B.C.:** Order 00-01, [2000] B.C.I.P.C.D. No. 1; Order 02-57, [2002] B.C.I.P.C.D. No. 59; Order 01-03, [2001] B.C.I.P.C.D. No. 3; Order 00-18, [2000] B.C.I.P.C.D. No. 21; Order 00-52, [2000] B.C.I.P.C.D. No. 56.

1.0 INTRODUCTION

[1] This decision stems from a request by the City of Vancouver ("City") that I decline, under s. 56 of the *Freedom of Information and Protection of Privacy Act* ("Act"), to hold an inquiry under Part 5 of the Act respecting a request, which I describe below, made by the access applicant ("the respondent").

[2] For reasons which follow, I have decided to exercise my discretion not to proceed to an inquiry on this matter.

2.0 DISCUSSION

[3] **2.1 The Access Request**—The respondent sent the following request to the City:

I am requesting the names of the people who are complaining or reporting me about the use of my garage. They have indicated to the inspector that they will continue phoning the city until I no longer have the use of my garage. My daughter

was doing upholstery work in my garage ... but moved ... This is causing stress to my health and I would like to clear this misunderstanding up so there will be no more complaints. The inspector says I am doing nothing wrong in the garage.

[4] The City responded by disclosing copies of complaints it had received about the respondent's use of his garage. However, it withheld the names, addresses and telephone numbers of the complainants under s. 22(1) of the Act.

[5] The respondent requested a review of the City's decision, citing reasons similar to those in his request. He added that he works on his hobbies in his garage and that he sometimes gets together with his friends to work on projects in the garage. He said that the complaints are false and there has not been noise in the middle of the night as the complainants allege. He said he is requesting the names of the people who complained so he "can clear this matter up with them".

[6] During mediation, the City told the respondent that it had decided to apply s. 15(1)(d) of the Act to the severed information, as well as s. 22(1). Mediation did not resolve the issue and the matter was set down for an inquiry under Part 5 of the Act. At that point, the City sent a letter asking that the Information and Privacy Commissioner exercise his discretion under s. 56 of the Act not to hold an inquiry on this matter.

[7] **2.2 The City's Arguments**—The City said that Order 00-01¹ supports its position to withhold the information in dispute under s. 15(1)(d). In that order, it said, the Commissioner found that local government bylaw investigations are "law enforcement" for the purposes of s. 15 and that the identifying information of complainants who provided information should be withheld under s. 15(1)(d).

[8] In this case, the City said, three of four complainants were told their identifying information would be kept in confidence. Releasing this information would reveal the identity of a confidential source of law enforcement information, it concluded.

[9] The City then said that the names, addresses and telephone numbers of the complainants are personal information and that the complainants had supplied this information in confidence. It again pointed out that its complaint forms tell complainants that their identifying information will be kept in confidence and that confidential supply is a factor public bodies must consider in deciding whether to disclose personal information under the Act. The City referred to Order F05-07, Order F05-03 and the Commissioner's letter of July 9, 2003 as examples of cases where the Commissioner had declined to hold an inquiry where the application of the Act was "plain and obvious". This is another such case, in the City's opinion.

¹ [2000] B.C.I.P.C.D. No. 1.

[10] **2.3 The Respondent's Case**—The respondent did not make a submission in this matter, although the office sent him two copies of the City's submission and more than once extended the deadline for his response to the City's submission, by some weeks in total. The applicant's request and request for review, as outlined above, provide the only indication of the applicant's position in this matter.

[11] **2.4 Issue**—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 53, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

[12] Section 56 confers discretion as to whether to hold a Part 5 inquiry respecting a request for review. As noted in earlier decisions, there may be a variety of reasons why this discretion might be exercised in favour of not holding an inquiry. These include the factors expressed in Order 02-57² and Order 01-03.³

[13] **2.5 The Records in Dispute**—The City attached copies of the five complaints to its s. 56 submission. Two are unsigned letters that appear to be identical but which are date-stamped as having been received on two separate dates. The other three are City complaint forms which have been filled out by hand. The City disclosed the complaint information on the forms but blacked out the names, addresses and telephone numbers of the complainants. The forms contain a box with the following text:

(The complainant has been informed that any information that could reasonably reveal their identity will be kept in confidence, pursuant to the *Freedom of Information and Protection of Privacy Act*.)

[14] **2.6 Confidential Source**—Section 15(1)(d) of the Act allows a public body to withhold information where its disclosure could reasonably be expected to reveal the identity of a confidential source of law enforcement information. As the City noted, the Commissioner found in Order 00-01 that the public body in that case was authorized to withhold the identify of an informant in a bylaw enforcement matter, as follows:

3.5 Protection of Confidential Law Enforcement Sources – Langley also relied on s. 15(1)(d), which authorizes a public body to refuse to disclose information “if the disclosure could reasonably be expected to ... reveal the identity of a confidential source of law enforcement information”. It withheld the identities – and identifying information – of a number of individuals who had complained to Langley about the applicant's use of her property. The Property Use Complaint

² [2002] B.C.I.P.C.D. No. 59.

³ [2001] B.C.I.P.C.D. No. 3.

Forms used to initiate bylaw complaints contain the following notice to complainants:

Anonymity will be maintained between the complainant and the alleged violator, except where necessary in a court of law. However, should this matter proceed to Court, you may be required to give evidence as a witness and your name and filed complaint will become public information.

The explicit assurance of confidentiality is qualified because there is a duty to disclose to an accused all information relevant to the proceedings. For the purposes of this inquiry, however, I accept that this notice means anyone who complains about a bylaw infraction using this form is a “confidential source of law enforcement information” for the purposes of s. 15(1)(d) of the Act. Disclosure of the name or other identifying information of informants would “reveal the identity” of those confidential sources of law enforcement information. Accordingly, Langley is authorized to refuse to disclose that information to the applicant.

[15] The Commissioner made similar findings in Order 00-18⁴ and Order 00-52.⁵ The situation here is also similar and it is clear that the City is authorized to withhold the complainants’ identifying information. The applicant’s claim of being stressed and his desire to “clear this matter up” with the complainants do not provide any basis on which I might conclude that the outcome in an inquiry on this case would be any different from previous orders on this topic.

3.0 CONCLUSION

[16] In these circumstances, where it is plain and obvious that the requested information is protected by s. 15(1)(d), I have decided that no inquiry should be held under Part 5 of the Act respecting the applicant’s request for review. In view of my decision on the s. 15(1)(d) aspect of this matter, I need not consider the City’s argument regarding s. 22. The office’s file on the review will be closed.

May 24, 2006

ORIGINAL SIGNED BY

Celia Francis
Adjudicator

OIPC File: F05-26446

⁴ [2000] B.C.I.P.C.D. No. 21.

⁵ [2000] B.C.I.P.C.D. No. 56.