



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

Decision F07-01

**CITY OF CHILLIWACK**

Justine Austin-Olsen, Adjudicator  
January 29, 2007

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**Summary:** The City's application to request that an inquiry under Part 5 not be held is granted.

**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 00-18, [2000] B.C.I.P.C.D. No. 21; Order 00-52, [2000] B.C.I.P.C.D. No. 56; Order 01-03, [2001] B.C.I.P.C.D. No. 3; Order 02-57, [2002] B.C.I.P.C.D. No. 59; Decision F06-04, [2006] B.C.I.P.C.D. No. 16.

## 1.0 INTRODUCTION

[1] The City of Chilliwack ("City") has made an application pursuant to s. 56 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") to request that an inquiry under Part 5 of FIPPA not be held with respect to an access to information request made by the respondent.

[2] I have considered the submissions of the parties and, for the reasons that follow, I have exercised my discretion and granted the City's request that this matter not proceed to inquiry.

## 2.0 DISCUSSION

### *The access request*

[3] The respondent requested from the City access to records related to a complaint that was made about his dogs "...in order to address any issues this

person has.”<sup>1</sup> Although worded in a roundabout way, it is clear from the information request form that the respondent filled out that he was seeking the identity of the person who made the complaint to the City.

[4] In response, the City provided the respondent with two pages of records related to the complaint, severing the complainant’s name, address and telephone number under ss. 15 and 22 of FIPPA.<sup>2</sup>

[5] Since the matter did not settle in mediation, it was to proceed along the usual course to an inquiry under Part 5 of FIPPA. The City then initiated this application under s. 56 requesting the Information and Privacy Commissioner exercise his discretion not to hold an inquiry.

### ***The parties’ positions***

[6] The City submits that it is authorized to withhold the complainant’s personal information under s. 15(1)(d) of FIPPA because its disclosure would reveal a confidential source of law enforcement.<sup>3</sup> The City refers to Orders 00-01<sup>4</sup>, 00-18<sup>5</sup> and 00-52<sup>6</sup> and Decision F06-04, which I discuss further below, in support of its contention.<sup>7</sup> The City goes on to say that, in addition to s. 15(1)(d), it is required by s. 22(1) of FIPPA to refuse the respondent access to the complainant’s personal information.

[7] The respondent’s position is that a hearing should be held “to grant access to what should be public information.” He notes that the complaint about his dogs was “deemed unfounded” and goes on to list “the reasons [he is] requesting that the complainant’s identity be revealed...”. Among other things, the respondent says that the matter is not of a serious criminal nature and that the City ought to have advised the complainant to speak with him first before acting on the complaint.<sup>8</sup> In conclusion, the respondent submits:<sup>9</sup>

In a free and democratic society all rights and freedoms should be protected. In this situation our rights and freedoms have been denied. We have been subject to harassment by the neighbour hiding behind the privacy act. I do not believe the true intent of this act is to abuse one party while permitting another to cowardly hide behind the act when there were other avenues available.

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<sup>1</sup> City’s initial submissions, appendix A.

<sup>2</sup> City’s initial submission, appendix B.

<sup>3</sup> City’s initial submission, p.3.

<sup>4</sup> Order 00-01, [2000] B.C.I.P.C.D. No. 1.

<sup>5</sup> Order 00-18, [2000] B.C.I.P.C.D. No. 21.

<sup>6</sup> Order 00-52, [2000] B.C.I.P.C.D. No. 56.

<sup>7</sup> City’s initial submission, pp. 2-3.

<sup>8</sup> Respondent’s submission, paras. 1, 2 and 5.

<sup>9</sup> Respondent’s submission, para. 6.

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## **Discussion**

[8] Section 56(1) of FIPPA reads as follows:

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.

[9] Section 56 confers discretion as to whether to hold a Part 5 inquiry respecting a request for review. As noted in earlier decisions, there are a variety of reasons why this discretion might be exercised in favour of not holding an inquiry. These include circumstances where the principles of abuse of process, *res judicata* or issue estoppel clearly apply.<sup>10</sup> Other circumstances are where it is plain and obvious that the records in dispute are subject to an exception to disclosure or that they fall outside FIPPA's scope. In each case, however, it must be clear that there is no arguable issue which merits adjudication in an inquiry.

[10] In an application of this kind under s. 56, it is the party asking that an inquiry not be held (in this case the City) who bears the burden of demonstrating why that request should be granted. The respondent does not bear an equal burden of demonstrating why an inquiry should be held. This reflects the policy of this Office that, when mediation is unsuccessful, the matter in dispute is referred for an inquiry.

[11] As noted by the City, the Adjudicator in Decision F06-04 considered an application which is factually similar to the one before me. In that case, the Adjudicator held:<sup>11</sup>

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

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<sup>10</sup> Order 01-03, [2001] B.C.I.P.C.D. No. 3; Order 02-57, [2002] B.C.I.P.C.D. No. 59.

<sup>11</sup> Decision F06-04, [2006] B.C.I.P.C.D. No. 16 at paras. 14-15.

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.

The Commissioner made similar findings in Order 00-18 and Order 00-52. The situation here is also similar and it is clear that the City is authorized to withhold the complainants’ identifying information....

[12] In this case, the City similarly utilizes a policy of dealing with complaints about alleged bylaw infractions on a confidential basis. The relevant paragraph in the City’s Policy Directive No. H-1: Handling Bylaw Enforcement Complaints, reads as follows:<sup>12</sup>

All information received, including the complainant’s identity, is to be kept confidential. Information is not to be released unless by request made pursuant to the *Freedom of Information and [Protection of] Privacy Act*, by order of the Court, or by permission of the complainant....

[13] Although somewhat awkwardly worded, it is clear that what this Policy Directive aims to do is to treat the information received as confidential, unless that information is required to be disclosed under FIPPA, by court order, or with the consent of the complainant. As was the Adjudicator in Decision F06-04, I am satisfied that individuals who make complaints to the City about alleged bylaw infractions are confidential sources of law enforcement for the purposes of s. 15(1)(d) of FIPPA, and the City is authorized to refuse the respondent access to the complainant’s identity.

[14] As for the respondent’s arguments about why he should be granted access, I can do no better than repeat what the Adjudicator said in Decision F06-04 about similar arguments that were raised:<sup>13</sup>

...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

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<sup>12</sup> City’s initial submission, appendix C, Policy Directive No. H-1, para 3.

<sup>13</sup> Decision F06-04, [2006] B.C.I.P.C.D. No. 16 at para. 15.

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conclude that the outcome in an inquiry on this case would be any different from previous orders on this topic.

[15] The respondent here has not advanced any position which could materially affect the outcome if an inquiry were held. I find that it is plain and obvious in this case that s. 15(1)(d) applies and there are no arguable issues which merit adjudication in an inquiry.

[16] Given my decision with regard to s. 15(1)(d), there is no need for me to consider the City's argument about the application of s. 22(1).

### **3.0 CONCLUSION**

[17] For the reasons given above, this matter will not proceed to inquiry under Part 5 of FIPPA.

January 29, 2007

#### **ORIGINAL SIGNED BY**

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Justine Austin-Olsen  
Adjudicator

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