



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

Decision F07-02

CITY OF VANCOUVER

Justine Austin-Olsen, Adjudicator

February 6, 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*, ss. 22(1), 22(2)(f), s. 56.

Authorities Considered: B.C.: Order 01-03, [2001] B.C.I.P.C.D. No. 3; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 02-57, [2002] B.C.I.P.C.D. No. 59; Decision F06-04, [2006] B.C.I.P.C.D. No. 16; Decision F07-01, [2007] B.C.I.P.C.D. No. 3.

Cases Considered: *British Columbia Teachers' Federation v. British Columbia (Information and Privacy Commissioner)*, 2006 BCSC 131.

1.0 INTRODUCTION

[1] The City of Vancouver ("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] On February 18, 2005 the respondent filed a request for access to records held by the City using the standard form provided by the City for that purpose. The respondent worded his request as follows:

Falsely accused of depositing used materials in the lane which were not mine. Request persons responsible for complaint.

[4] The City provided the respondent with a copy of the complaint form relating to his request, severing the name, address and telephone number of the complainant under s. 22(1) of FIPPA (the "complaint form"). This in turn prompted the respondent to request a review of the City's decision to this Office.

[5] Attempts at mediation were unsuccessful and so the matter was to proceed 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 in this case.

The parties' positions

[6] The City's submissions in this application are very brief and consist essentially of the following argument:¹

The Commissioner has declined to hold an inquiry when the application of the Act to the information under dispute was "plain and obvious." The Commissioner's decisions F05-05 and F05-03 are examples of such decisions. The City submits that in this case it is plain and obvious that the name, phone number, address and identifiable information of the complainant cannot be disclosed to the applicant.

[7] The respondent filed a 2-page submission in which he emphasized that he was falsely blamed for leaving used construction materials in the lane that he says did not belong to him. He goes on to provide detail on what apparently occurred at his residence as a result of the complaint made against him, which seems to have involved subsequent visits from the police and various city employees, and submits:

My human rights, my civil rights and charter of rights and freedoms and privacy were violated. The Commissioner should hold an inquiry under s. 56(1) for the wrong damage done to my property.

¹ City's submission, p. 2.

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.² 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] The brevity that marks the City's submission means that in effect it is relying on the complaint form to "speak for itself" that the application should be granted. While it is true that, in an inquiry under Part 5 of FIPPA, the burden of proof that s. 22(1) does not require a public body to refuse access to personal information lies on the person seeking access (in this case, the respondent), that is not the situation here.

[11] 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.

[12] The result of what I have said above is that the City's application can succeed only if the complaint form does in fact "speak for itself" and makes out an irrefutable case that s. 22(1) applies.

[13] As I have noted above, the City severed the complainant's name, address and telephone number from the complaint form under s. 22(1). In Order 01-53, and in many others, the Commissioner has commented at length about the proper application of s. 22,³ and, without repeating what was said there, I have considered the complaint form accordingly. Section 22(1) requires a public body to refuse to disclose personal information to an applicant if the disclosure would

² Order 01-03, [2001] B.C.I.P.C.D. No. 3; Order 02-57, [2002] B.C.I.P.C.D. No. 59.

³ Order 01-53, [2001] B.C.I.P.C.D. No. 56 at paras. 22-24. See also, *British Columbia Teachers' Federation v. British Columbia (Information and Privacy Commissioner)*, 2006 BCSC 131 at para. 45.

be an unreasonable invasion of a third party's personal privacy. Section 22(2) provides that in coming to a determination under s. 22(1), all relevant circumstances must be considered. The only relevant circumstance in this case, listed under s. 22(2) or otherwise, is s. 22(2)(f), whether the personal information has been supplied in confidence.

[14] The complaint form includes a statement enclosed in a printed box, with the indication that it "must be initialed":

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*.

[15] The box has been marked, although it is not apparent from looking at the complaint form whether it was marked by the complainant, or the person who took the complaint. Regardless, it is obvious that what the City was attempting to do with this notice was provide some express notice or assurance that the City may receive complaints on a confidential basis.

[16] It appears clear from the face of the complaint form, particularly viewed in light of previous orders, that what was severed from the record by the City was personal information, and that the complainant supplied that personal information to the City in confidence in connection with the complaint lodged against the respondent.

[17] I have considered carefully the submissions of the respondent, but they reveal no other relevant factors which might alter the balance in favour of disclosing the complainant's personal information to him. Although he is clearly unhappy with how he was treated by the City and feels that he has been unjustly targeted, as noted in previous decisions, these are not factors which would change the outcome if an inquiry were to be held:⁴

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:⁵

...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.

The respondent here has not advanced any position which could materially affect the outcome if an inquiry were held....

⁴ Decision F07-01, [2007] B.C.I.P.C.D. No. 3 at paras. 14-15.

⁵ Decision F06-04, [2006] B.C.I.P.C.D. No. 16 at para. 15.

[18] I find that the above comments apply equally to the arguments advanced by the respondent in this case.

3.0 CONCLUSION

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

February 6, 2007

ORIGINAL SIGNED BY

Justine Austin-Olsen
Adjudicator

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