



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

Decision F07-04

**DISTRICT OF WEST VANCOUVER**

Justine Austin-Olsen, Adjudicator

July 23, 2007

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**Summary:** The District's application requesting that an inquiry under Part 5 not be held is granted.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, s. 15(1)(d), s. 56.

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

## **1.0 INTRODUCTION**

[1] The District of West Vancouver (the "District") 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 District's request that this matter not proceed to inquiry.

## **2.0 DISCUSSION**

### ***The access request***

[3] This case involves yet another access request for the name of a complainant in an investigation of an infraction of a municipal bylaw. In September 2006, the District received a complaint regarding an alleged

parking violation involving vehicles that were regularly being parked on a roadside (including one belonging to the respondent) and which were said to be obstructing traffic.<sup>1</sup> The vehicle belonging to the respondent was parked adjacent to the road at the foot of the driveway to her home.

[4] On October 14, 2006, the Bylaw Enforcement Officer, Chris Cottrill, visited the residence of the respondent and advised her husband that a complaint had been received, and that the District would impose a fine of \$45 per day if the vehicle continued to be parked in that location.<sup>2</sup> In response to questions by the respondent's husband, Mr. Cottrill confirmed that the District investigates and enforces parking bylaw infractions on the basis of complaints, but he would not disclose the identity of the complainant in this case.<sup>3</sup>

[5] Following a telephone conversation with the respondent, the District wrote to her on October 17, 2006 and advised her as follows:

The District of West Vancouver does not release [complainant] names, pursuant to s. 15(1)(d) [of FIPPA] as disclosure would "reveal the identity of a confidential source of law enforcement information." As mentioned in our telephone conversation this morning, the District received six similar requests in 2006 and this information was not released in any of these cases.

[6] The letter went on to indicate that, should the respondent choose to pursue the request further, a *Request for Access to Records* form was included. On October 23, 2006 the respondent made a formal request for access to records related to the complaint made about where her vehicle was parked. In her request the respondent asked for, among other things, the name of the complainant and the community in which the complainant resides. On November 14, 2006 the District responded to the respondent's formal access request, severing identifying information about the complainant under s. 15(1)(d) and the personal information of another third party under s. 22(1).

### ***The parties' positions***

[7] The respondent argues that the affidavit evidence of Mr. Cottrill that the complaint was received "on the morning of September 22, 2006"<sup>4</sup> is inconsistent with the actual record of the complaint ("Request for Service Detail") which indicates a "call" time of 4:39 p.m.<sup>5</sup> The respondent says that "this creates uncertainty concerning when, if, and how confidentiality was addressed in this case."<sup>6</sup>

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<sup>1</sup> Affidavit of Chris Cottrill, para. 3.

<sup>2</sup> Affidavit of the respondent, para. 6.

<sup>3</sup> Affidavit of the respondent, para. 6.

<sup>4</sup> Affidavit of Chris Cottrill, para. 3.

<sup>5</sup> Submission of the respondent, para. 1.

<sup>6</sup> Submission of the respondent, para. 1.

[8] The respondent further submits that the District “apparently does not use written statements regarding confidentiality because none has ever been produced.”<sup>7</sup> The significance of this, according to the respondent, is that “[w]here confidentiality has been upheld under the Act, the municipalities in question have used written statements including disclosure that identity may be disclosed in court proceedings.”<sup>8</sup> The respondent refers to Decision F06-04<sup>9</sup> and Order 00-01<sup>10</sup> in support of her contention.

[9] The respondent then goes on to allege that the District has failed to comply with s. 8(1) of FIPPA “because it has never stated the reasons why confidentiality should apply”<sup>11</sup> and that the District “in effect argues that bylaw complainants are afforded confidentiality automatically and as a matter of law.”<sup>12</sup> The respondent then argues that parking on or near a public street is not a “clandestine” activity, and since the “information will remain obvious at all times...the complainant is not a source of information that would otherwise be unavailable.”<sup>13</sup> The respondent then contrasts this case with Decision F06-04 and Order 00-01 by saying that in those cases the municipal body received numerous complaints, “whereas West Vancouver District has [in this case] chosen to act with vigour based on only one complaint.”<sup>14</sup>

[10] The respondent concludes her argument by complaining that “West Vancouver District has suppressed the complainant’s identity to the financial and other detriment of me and my family.” She refers to her affidavit in support, where she says that she had previously obtained permission from the District to create an additional parking space to accommodate her third vehicle at the foot of her driveway,<sup>15</sup> which she then paid a contractor to install in 2002 at a cost of \$786.45.<sup>16</sup> She says this money is wasted and the cost to provide an alternative parking space (presumably on her property instead of the District’s) would require an engineer’s consultation (approximately \$2000) and construction costs that would “likely be in excess” of \$5000.<sup>17</sup>

[11] In its initial submission the District provides evidence of its policy and practice for dealing with parking violations. The procedure that the Bylaw Enforcement Officer is directed to follow is set out in the *By-Law Enforcement Practice and Procedure Manual*, and includes the following step:<sup>18</sup>

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<sup>7</sup> Submission of the respondent, para. 2.

<sup>8</sup> Submission of the respondent, para. 2.

<sup>9</sup> [2006] B.C.I.P.C.D. No. 16.

<sup>10</sup> [2000] B.C.I.P.C.D. No. 1.

<sup>11</sup> Submission of the respondent, para. 4.

<sup>12</sup> Submission of the respondent, para. 5.

<sup>13</sup> Submission of the respondent, para. 6.

<sup>14</sup> Submission of the respondent, para. 7.

<sup>15</sup> The respondent provided no other details about the nature of this permission.

<sup>16</sup> Affidavit of the respondent, para. 4.

<sup>17</sup> Affidavit of the respondent, para. 10.

<sup>18</sup> Affidavit of Elizabeth Holitski, para. 4; Exhibit A to the affidavit of Elizabeth Holitski.

- 1.1 Observes parking violation taking place or received a complaint regarding a parking violation. Informs person filing the complaint that all complainant information remains confidential with the District and would only be revealed if the complainant was required to testify in Court or to appear before Council to provide information on the complaint. At that time they would have the opportunity to withdraw their complaint if they chose to remain anonymous, however, it could affect the District's ability to proceed with any enforcement action.

[12] Mr. Cottrill deposed that he spoke with the complainant in person at the West Vancouver Municipal Hall. His evidence is that the complainant asked about confidentiality and that he advised that the complainant's identity would remain confidential.<sup>19</sup> Later that same afternoon, Mr. Cottrill visited the location given by the complainant to investigate the allegation.

[13] In its reply submission the District says that this case is factually similar to Decision F07-01 and Decision F06-04 and that, as such, the result should be the same – I should exercise my discretion not to hold an inquiry.<sup>20</sup> The District then goes on as follows:<sup>21</sup>

The District submits that the [respondent's] submissions are not relevant to an analysis of whether an Inquiry should be held. Much of the submissions are related to the [respondent's] frustrations about the District's policy of confidentiality in bylaw enforcement matters, how the policy was administered, the alleged impact the policy has had on the [respondent], and the motives of the complainant.

[14] The District then provides a response to each of the points raised by the respondent in her submission. It is not necessary for me to reproduce them here in detail because I agree with the District's assessment of the respondent's arguments in this matter that they are, for the most part, not relevant to the issue before me.

### ***Discussion***

[15] 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.

[16] 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,

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<sup>19</sup> Affidavit of Chris Cottrill, para. 3.

<sup>20</sup> Reply submissions of the District, p. 1.

<sup>21</sup> Reply submissions of the District, p. 2.

*res judicata* or issue estoppel clearly apply.<sup>22</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 issue which merits adjudication in an inquiry.

[17] In an application of this kind under s. 56, it is the party asking that an inquiry not be held (in this case the District) 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 current policy of this Office that, when mediation is unsuccessful, the matter in dispute is referred for an inquiry.

[18] That being said, it is in my view precisely this type of case which is contemplated by the permissive language of s. 56. In cases where it appears obvious from previous Orders and Decisions of this Office that the outcome of an inquiry will be to confirm that the public body has properly applied the provisions of FIPPA, the respondent must provide some cogent basis for arguing the contrary. That has not occurred here.

[19] In Order 00-01, and in other orders, Commissioner Loukidelis definitively stated that enforcement of a municipal bylaw is "law enforcement" under s. 15 of FIPPA.<sup>23</sup>

...There is no doubt that local government bylaw enforcement investigations, under the authority of the *Municipal Act* and the local government's bylaws, qualify as "law enforcement" investigations for the purposes of s. 15(1)(a). See Order No. 39-1995, with which I agree.

[20] Further, this Office has also stated in previous Orders and Decisions that s. 15(1)(d) of FIPPA will apply where there is evidence that the identities of complainants in bylaw investigations are treated by the investigating agency as confidential. Section 15(1)(d) reads as follows:

15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

(d) reveal the identity of a confidential source of law enforcement information,

[21] In Decision F06-04 the respondent sought the name of the complainants in a bylaw enforcement investigation, *i.e.* the same information sought by the respondent in this case. The Adjudicator determined that an inquiry should not proceed because, in her view, s. 15(1)(d) clearly applied.<sup>24</sup>

<sup>22</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>23</sup> At para. 17.

<sup>24</sup> At para. 14-15.

[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 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 00-18 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. 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.

[22] Decision F07-01, another case which is factually similar to this one, relied on the above to come to the same determination, that is, in the context of a municipal bylaw investigation the public body was authorized to refuse the applicant access to the name of the complainant under s. 15(1)(d) of FIPPA.<sup>25</sup>

[23] The respondent attempts to distinguish this case on the basis that the District apparently does not provide written notice or confirmation that the complainant’s identity will be kept confidential at the time the complaint is made.

<sup>25</sup> [2007] B.C.I.P.C.D. No. 3, at paras. 11-13.

However, as noted by the District in its reply submission, the observations by Commissioner Loukidelis in Order 00-18 make it clear that this is not a sufficient basis to distinguish it from other similar cases that I have referred to.<sup>26</sup>

...Of course, s. 15(1)(d) is not limited to cases where confidentiality is explicitly agreed to or explicitly requested; the section is silent on whether confidentiality is to be implicit or explicit. It may well be easier for a public body to establish confidentiality, of course, if it has an explicit confidentiality policy in place, but there is, strictly speaking, no requirement in s. 15(1)(d) for such a policy....

[24] In any case, the District does in fact have a written policy directing that the identities of complainants such as this are to be kept confidential which is set out in the *By-Law Enforcement Practice and Procedure Manual* referred to above. As well, from an evidentiary perspective, the important point for the District to establish is that it routinely treats this information as confidential, and there is no question here that it does. The District advised the respondent in its letter dated October 17, 2006 (before she even made her formal access request) that the same information had been withheld in six similar requests received by the District in 2006.

[25] There is one further point I feel compelled to address. That is the suggestion by the respondent that there is “uncertainty concerning when, if, and how confidentiality was addressed in this case” because of the difference between the “call” time of 4:39 p.m. shown on the Request for Service Detail and Mr. Cottrill’s testimony that he took the complaint in person in the morning.<sup>27</sup>

[26] In its reply submission the District addressed this point by explaining that the Request for Service Detail shows a “call” time of 4:39 p.m. because that is when Mr. Cottrill entered the information into the computer system, not when the complaint was actually received.<sup>28</sup> While I understand the respondent might want some explanation about why the “call” time differed from Mr. Cottrill’s evidence that he took the complaint in the morning, the respondent’s submission goes further than that. She has questioned the truthfulness of the sworn testimony of Mr. Cottrill that he discussed the issue of confidentiality with the complainant at all.

[27] Mr. Cottrill’s affidavit is a brief three paragraphs and addresses only what likely seemed to be the relevant issue at the time. There is no evidence at all that his sworn testimony is false or that he intended it to be misleading and I reject outright any allegation to the contrary by the respondent.

[28] I accept Mr. Cottrill’s evidence that he assured the complainant of anonymity at the time he received the complaint. In any event, given what I have said above it should be clear that even if Mr. Cottrill had failed to give this

<sup>26</sup> [2000] B.C.I.P.C.D. No. 21, at para. 30.

<sup>27</sup> Submission of the respondent, para. 1.

<sup>28</sup> Reply submissions of the District, p. 3.

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assurance to the complainant it would not, in the circumstances of this case, affect the District's ability to exercise its discretion to refuse the respondent access to the information under s. 15(1)(d).

### **3.0 CONCLUSION**

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

July 23, 2007

### **ORIGINAL SIGNED BY**

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Justine Austin-Olsen  
Adjudicator

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