



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

Decision F08-06

TOWNSHIP OF LANGLEY

Celia Francis, Senior Adjudicator

July 16, 2008

Quicklaw Cite: [2008] B.C.I.P.C.D. No. 23

Document URL: <http://www.oipc.bc.ca/orders/section56/DecisionF08-06.pdf>

Summary: Langley's request that an inquiry not be held respecting its decision to withhold minor amounts of personal information under s. 22 is granted.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 56, ss. 22(1), 22(2)(a), 22(3)(j), 22(4)(c) & (i).

Authorities Considered: **B.C.:** Decision F08-05, [2008] B.C.I.P.C.D. No. 22; Order F08-14, [2008] B.C.I.P.C.D. No. 24; Decision F07-04, [2007] B.C.I.P.C.D. No. 20; Order F06-03, [2006] B.C.I.P.C.D. No. 20.

1.0 INTRODUCTION

[1] The Township of Langley ("Langley") has requested, under s. 56 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), that an inquiry under Part 5 of FIPPA not be held respecting the respondent's request for records. For reasons which follow, I have exercised my discretion to grant Langley's request that this matter not proceed to inquiry.

[2] The respondent's son represented her throughout this matter and some of the correspondence is from him, on her behalf. I have referred here only to the respondent, for ease of reading. I have also listed in the attached appendix the provisions of FIPPA to which the parties referred in their submissions.

[3] This decision is related to Decision F08-05¹ and Order F08-14,² which I am issuing concurrently.

2.0 DISCUSSION

The access request

[4] The respondent initially requested access to documents related to permit applications made by the owners of a neighbouring property. Langley disclosed approximately 50 pages in response to this request. The respondent wrote back to say that Langley's response was incomplete and listed a number of records she said were missing. The respondent also wrote to this Office to complain about the inadequacy of Langley's search for records.

[5] Langley treated the follow-up letter as a new request and in response disclosed approximately 120 more pages to the respondent, severing some information under s. 22 of FIPPA. This Office considered that the new response resolved the complaint about the inadequacy of Langley's search.

[6] The respondent then requested a review of Langley's decision to withhold information under s. 22. Mediation was not successful in resolving the issue and the respondent asked that the matter of the severing be set down for inquiry under Part 5. At that point, Langley made its request under s. 56 that an inquiry not be held.³

[7] This Office invited and received responses to Langley's s. 56 application from the respondent and third parties. Langley then had an opportunity to reply and did so. Langley also provided me with copies of the responsive records, both the fully disclosed records and those from which it severed minor amounts of third-party personal information, principally names and addresses in correspondence dealing with bylaw compliance matters. The records flow from "property use complaints" the respondent made to Langley about the third parties' property, including the presence of a mobile home on that property which the respondent believes does not comply with zoning and other requirements.

[8] After this Office had received all the submissions on this s. 56 application, the respondent sent this Office three faxed communications. One objected at some length to the contents of the third parties' response and one asked for more time to provide still further comment on that response. The third fax asked that this application be suspended while the RCMP dealt with the respondent's son's complaint to the RCMP about the third parties. I have not considered the

¹ [2008] B.C.I.P.C.D. No. 22.

² [2008] B.C.I.P.C.D. No. 24.

³ The information in the three preceding paragraphs is drawn from Langley's initial submission, that is, its s. 56 application letter of February 25, 2008, which included copies of the respondent's two requests.

first two communications in arriving at my decision in this case, as they are not germane to the issue before me. I therefore did not invite the other parties to comment on them. I also decline the respondent's request to suspend this application while the RCMP deal with her son's complaint, as it is a separate process that has no bearing on this matter.

The parties' arguments

[9] Langley takes the position that it is plain and obvious that s. 22 of FIPPA applies to the withheld information. It said it disclosed complete copies of the records except for two pages which contain the personal information of third parties, including names, addresses and telephone numbers.⁴ In Langley's view, the withheld information falls under s. 22(3)(j) which, it said, states that disclosure of personal information is presumed to be an unreasonable invasion of third-party privacy if the information consists of a third party's name, address or telephone number.⁵

[10] The withheld information is exactly that type of information, Langley said, and it is therefore plain and obvious that it applied s. 22 properly to this information. Langley also argued that disclosure of the withheld information would not result in the respondent receiving any further substantive information, given that the respondent has received complete copies of almost all of the records, including a copy of an accessory building permit. (This permit is for the mobile home to which the respondent objects.) Thus, it said, an inquiry is not warranted in this case.⁶

[11] The third parties said they supported Langley's s. 56 application. They said they are the registered owners of the property about which the respondent made her request. The third parties said the respondent's son is not the registered owner of the property adjacent to theirs, although he is often present. They expressed concern about the possible uses the respondent's son could make of the personal information in question.⁷

[12] The respondent believes an inquiry should proceed on this matter. She argued that it is possible that the Commissioner might find that the withheld information is "contact information" as defined in FIPPA, as it could be said to relate to individuals acting in their capacity as owners, employers or employees on the property in question. She added that she would argue at an inquiry that ss. 22(4)(c),⁸ 22(4)(i) and 22(2)(a)⁹ apply. She also (correctly) pointed out that

⁴ Although Langley said it severed two pages, the records show that it severed the same kinds of third party information in a number of pages.

⁵ Paras. 6-9, Langley's initial submission.

⁶ Paras. 9-10, initial submission.

⁷ Third parties' response of March 30, 2008.

⁸ The respondent said she thought this section might apply as the names of the property owners are likely available through the Land Title Office and legislation has created the Land Title Registry as a public data base.

s. 22(3)(j) applies to disclosure where the name, address or telephone number would be used for mailing lists or solicitations. She will not use the information for this purpose, she said.¹⁰ I accept the respondent's comments on this last point.

[13] Langley rejected the respondent's suggestion that the withheld information is "contact information", saying the information in question relates to the third parties in a personal capacity and the respondent is not seeking the information to contact the third parties for business purposes but as a FIPPA applicant. Langley argued that s. 22(4)(c) is moot as it has disclosed the property owners' names on the permit. It also does not believe that s. 22(2)(a) applies as it has already disclosed most of the records, except for some minor severing, and disclosure of the withheld information would not facilitate public scrutiny of Langley's activities. If the respondent wishes to subject its activities to scrutiny, she can do so without the disputed information, in Langley's view.

Issue

[14] 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.

[15] As Adjudicator Austin-Olsen said in Decision F07-04:¹¹

[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, *res judicata* or issue estoppel clearly apply. 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. [citations omitted]

[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.

⁹ The respondent did not say why she thought these latter two sections might apply.

¹⁰ Respondent's response of March 31, 2008.

¹¹ [2007] B.C.I.P.C.D. No. 20.

[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.

Analysis

[16] This case is similar to the one in Decision F07-04 in that, while the respondent does not have the burden of showing why an inquiry should proceed, neither has she provided a “cogent basis” for arguing that Langley has not applied s. 22 of FIPPA properly. She does not dispute Langley’s statement that it has disclosed most of the records—and indeed this is evident from the records themselves. She also acknowledges that the withheld information includes the names of the property owners, information it is clear she has already received in the form of the permit that Langley disclosed. Thus I agree with Langley that the potential applicability of s. 22(4)(c) is moot at this point.

[17] I also see no relevance in s. 22(4)(i) here. The respondent did not say why she thought this section might apply. However, without deciding the matter, and assuming for the purposes of this discussion that the accessory building permit which Langley has disclosed is the kind of discretionary benefit to which s. 22(4)(i) refers, the applicant has already received a copy of the permit. This does not mean that the withheld information also falls under s. 22(4)(i).

[18] The respondent also said she would like the inquiry to proceed as she believes the Commissioner might find that the withheld information is “contact information”. Her two requests and the records themselves show, however, that there was no business reason for the requests. Rather, they relate to her and her son’s complaints to Langley about the neighbouring property, a purely private matter.

[19] Similarly, there is no obvious basis for considering the applicability of s. 22(2)(a) in this case. The records reveal that Langley went to some lengths to investigate and deal with the complaints. They provide the respondent with ample scope to scrutinize Langley’s actions in this area and I readily agree with Langley that disclosure of the minimal amounts of withheld information would not assist in placing its activities under further scrutiny.

[20] The impetus behind the respondent’s insistence on pursuing an inquiry in this matter appears to spring from her and her son’s dissatisfaction with the outcome of the “property use complaints”, that is, that Langley has not caused the removal of the mobile home from the neighbouring property. The respondent has not shown that she has a genuine need for disclosure of the remaining information, for example, to pursue the complaints further. Indeed, it is clear

from the records that she and her son have actively pursued the complaints for some time, and could continue to do so, without the withheld information.

[21] Moreover, many previous orders have found that disclosure of this type of personal information is an unreasonable invasion of third-party privacy under s. 22(1).¹² The respondent has not shown how or why there would be a different outcome in this case.

3.0 CONCLUSION

[22] In these circumstances, where it is plain and obvious—including in light of previous orders respecting similar third-party personal information—that the requested information is protected by s. 22, I have decided that no inquiry should be held under Part 5 of FIPPA respecting the respondent's request for access to information. This Office's file for the respondent's access request will be closed.

July 16, 2008

ORIGINAL SIGNED BY

Celia Francis
Senior Adjudicator

OIPC Files: F07-30891 & F07-31213

¹² See Order F06-03, [2006] B.C.I.P.C.D. No. 20, at para. 8, for example.

Appendix

Relevant definitions from Schedule 1 of FIPPA:

"contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;

"personal information" means recorded information about an identifiable individual other than contact information;

Relevant provisions of Section 22:

Disclosure harmful to personal privacy

- 22 (1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.
- (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether
- (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny, ...
- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if ...
- (j) the personal information consists of the third party's name, address, or telephone number and is to be used for mailing lists or solicitations by telephone or other means.
- (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if ...
- (c) an enactment of British Columbia or Canada authorizes the disclosure, ...
- (i) the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a public body, not including personal information supplied in support of the application for the benefit,