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Order F11-19

MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL

Jay Fedorak, Adjudicator

August 9, 2011

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Summary: A journalist requested cost estimates for establishing a provincial police force. The Ministry withheld portions of the records under s. 13 on the grounds they revealed advice or recommendations. The adjudicator found the disputed information constituted advice as previous orders and case law have interpreted the term. Therefore, the Ministry was authorized to withhold it.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 13(1), 13(2)(d), 13(2)(e).

Authorities Considered: B.C.: Order F10-15, [2010] B.C.I.P.C.D. No. 24; Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order F06-16, [2006] B.C.I.P.C.D. No. 23; Order No. 231-1998, [1998] B.C.I.P.C.D. No. 24; Order No. 251-1998, [1998] B.C.I.P.C.D. No. 46.

Cases Considered: *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, [2002] BCCA 665.

INTRODUCTION

[1] This case involves cost estimates for the government of British Columbia to establish a provincial police force to replace the Royal Canadian Mounted Police (“RCMP”). The applicant, a journalist for *The Globe and Mail* newspaper, is challenging a decision by the Ministry of Public Safety and Solicitor General (“Ministry”) to withhold portions of information from three documents concerning the estimated costs of creating a provincial police force. The Ministry said it severed the information because disclosure

could harm the financial interests of the Ministry, under s. 17 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), and harm the relationship between the Ministry and the RCMP under s. 16. The Ministry also withheld under s. 13 information that it said constituted policy advice from Ministry employees to the Minister. During the inquiry, the Ministry said it ceased to rely on ss. 16 and 17. Therefore, my analysis and findings relate only to whether the withheld information constitutes policy advice and recommendations in accordance with s. 13.

ISSUE

[2] The question that I must decide is whether disclosure of the information at issue would reveal policy advice or recommendations developed by the Ministry or for the Minister. If so, I must decide whether it constitutes an appraisal or an economic forecast.

DISCUSSION

[3] **Background**—A representative from the government of British Columbia is leading negotiations for seven provinces, three territories and many municipalities with the government of Canada on the renewal of a federal, provincial and territorial policing agreement.

[4] Currently, the Ministry, BC municipalities, and the government of Canada share the cost of RCMP policing, according to a formula established under the agreement.

[5] Ministry employees have generated cost estimates for replacing the RCMP with a regional police force for the Lower Mainland. They have also generated a cost estimate for replacing the RCMP with a provincial police force.

[6] **Records at Issue**—The records consist of three documents. The first is a "Confidential Fact Sheet" prepared for the Minister on the subject of "Regional Lower Mainland Police Force Costs". The second and third documents are both on the subject of "Costs of replacing the RCMP with our own BC Provincial Police Force". The second document is a "Confidential Fact Sheet" and the third is a briefing note. The journalist has received about one-third of the information in these documents.

[7] **Does s. 13 Apply to the Information at Issue?**—The process for determining whether s. 13 of FIPPA applies to information involves two stages. The first stage is to determine whether in accordance with s. 13(1), the disclosure of the information "would reveal advice or recommendations developed by or for a public body or a minister".

[8] If it does, it is necessary to consider whether the information at issue also constitutes any of the categories of information listed in s. 13(2) of FIPPA. This subsection stipulates that "the head of a public body must not refuse to disclose

under subsection (1)” any of the listed information. The applicant cites s. 13(2)(d) “an appraisal” and s. 13(2)(e) “an economic forecast”.

Does the information withheld constitute policy advice and recommendations?

[9] The purpose of s. 13(1) is to protect a public body’s internal decision-making and deliberative processes, in particular, while those processes are still underway. Previous orders and case law have characterized the purpose of s. 13(1) as being to allow full and frank discussion of advice or recommendations on a proposed course of action within a public body, preventing the harm that would occur, if the deliberative process of government decision and policy-making were subject to excessive scrutiny. These orders have also found that a public body is authorized to refuse access to information, such as options and their implications, which would allow an individual to draw accurate inferences about advice or recommendations. This includes policy issues, possible options for changes to the policy and considerations for these various options, including a discussion of implications and possible impacts of the options.¹

[10] I take the same approach here.

[11] It is clear from the material before me that the Ministry must make a decision with respect to the provision of police services. It is negotiating a new agreement with the RCMP. At some point, the Ministry will have to decide whether to sign a new agreement or implement an alternative, involving the creation of one or more new police forces.

[12] The Ministry describes the information it withholds from disclosure as follows:

- estimated costs of different policing models – both “one time” costs and ongoing administrative and operational costs;
- statements regarding the assumptions and limitations imbedded in the options being discussed – i.e. what has not yet been considered, and what cannot be anticipated;
- statements outlining staff and infrastructure resources that would be required for different options; and
- impact of different models on ongoing initiatives between the RCMP and the Province.

[13] I am unable to describe the information further, other than to say, having reviewed it, I agree with these descriptions.

¹ See Order F10-15, [2010] B.C.I.P.C.D. No. 24, para. 23; Order 02-38, [2002] B.C.I.P.C.D. No. 38, paras. 102-127, and Order F06-16, [2006] B.C.I.P.C.D. No. 23, para. 48; *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, [2002] BCCA 665.

[14] It is clear from the Ministry's descriptions, and my review of the records, that the passages include possible options for the provision of police services and considerations for these various options, including a discussion of implications and possible impacts of the options. I find that this information constitutes advice, as previous orders and case law have interpreted the term.

[15] I now turn to the questions as to whether any of the exceptions in s. 13(2) apply.

Does the information consist of an appraisal or an economic forecast?

[16] As I noted above, s. 13(2) stipulates that a public body must not refuse to disclose "an appraisal" or "an economic forecast". The journalist submits that these two provisions apply to the information at issue. The journalist describes the information as "an appraisal of the cost" of implementing a provincial police force and the "forecasted economic consequences to B.C. taxpayers" of creating such a body.

[17] I disagree that the information constitutes "an appraisal" in accordance with s. 13(2)(d). Previous orders have not defined that term, other than to find that a draft report on wildlife management and an estimate of expected revenue from the sale of property do not constitute appraisals.² Black's Law Dictionary defines the term as "the determination of what constitutes a fair price; valuation; estimation of worth". In this case, the Ministry is projecting an estimate of the initial and ongoing budgetary requirements necessary for the creation and operation of a new police force. I find that this does not constitute an appraisal because it is not an estimation of the worth of the proposed police force, but rather the operational financial obligations it would impose.

[18] I also disagree that this constitutes "an economic forecast" in accordance with s. 13(2)(e). Previous orders have not dealt with this provision. The provincial government's *Policy and Procedures Manual* ("Manual") that provides ministries and other public bodies with direction in interpreting FIPPA is not binding on me, but does provide useful guidance in this case. The Manual defines "an economic forecast" as "a report or other record predicting trends in the economy". I accept this approach here and find that the records at issue do not deal with the economy as a whole or in part. They merely provide estimates of the operational costs of a government program.

[19] I find that no other provisions of s. 13(2) of FIPPA apply. Therefore, I conclude that the Ministry has met its burden of proof and s. 13(1) applies to the information at issue.

² Order No. 231-1998, [1998] B.C.I.P.C.D. No. 24; Order No. 251-1998, [1998] B.C.I.P.C.D. No. 46.

CONCLUSION

[20] For the reasons given above, I confirm that s. 13(1) of FIPPA authorizes the Ministry to withhold the information at issue.

August 9, 2011

ORIGINAL SIGNED BY

Jay Fedorak
Adjudicator

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