



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
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Order F13-13

## CITY OF QUESNEL

Elizabeth Barker  
Adjudicator

July 3, 2013

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**Summary:** The applicant requested the cellphone bills belonging to the Mayor of the City of Quesnel for a three year period. The City withheld the information in the “Number called” and the “To” and “From” columns of the bill on the grounds that disclosure would constitute an unreasonable invasion of third-party privacy under s. 22(1) of FIPPA. The adjudicator found that this was personal information, and that the City was obligated to refuse to disclose it pursuant to s. 22(1).

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, s. 22.

**Authorities Considered: B.C.:** Order No. 63-1995, [1995] B.C.I.P.C.D. No. 36; Order No. 64-1995, [1995] B.C.I.P.C.D. No. 37; Order No. 65-1995, [1995] B.C.I.P.C.D. No. 38; Order 00-18 [2000] B.C.I.P.C.D. No. 21; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 04-17, [2004] B.C.I.P.C.D. No. 17; Order P12-01, [2012] B.C.I.P.C.D. No. 25; Order F13-04, [2013] B.C.I.P.C.D. No. 4.

## INTRODUCTION

[1] This inquiry concerns a request by a resident of the City of Quesnel (“City”) for the Mayor’s cellphone bills for 2009, 2010 and 2011.

[2] As a sample, the City provided the applicant with two of the Mayor’s cellphone bills for this period, including the dollar amount of the bills, but withheld information in the “Number Called”, and the “To” and “From” columns pursuant to sections 19 and 22 of the *Freedom of Information and Protection of Privacy Act*

("FIPPA"). The City offered to provide the same information provided in these two bills for the remaining 34 bills.

[3] The applicant disagreed with the City's response and requested that the Office of the Information and Privacy Commissioner ("OIPC") conduct a review. During mediation, the City withdrew its reliance on s. 19. Mediation did not resolve the s. 22 issue, however, and it proceeded to inquiry under Part 5 of FIPPA.

## ISSUE

[4] Is the City required to refuse access to the records under s. 22 of FIPPA?

## DISCUSSION

[5] **Background**—The applicant requested that the City provide a copy of the Mayor's phone bills for 2009, 2010 and 2011. The applicant argues she has the right to know the cost of the personal calls made by the Mayor with her taxpayer-funded cellphone. The applicant believes that the Mayor should reimburse the City for any calls that were not City related business.

[6] In response to her request, the City provided two of the Mayor's cellphone bills from which it withheld information in the "Number Called", and the "To" and "From" (*i.e.*, the geographic location of each phone) columns. All other details, including the charges associated with each call, were disclosed. The City's response to the applicant's request was as follows:

These two months' bills (14 pages) were requested for review by the Mayor as a sampling of a more expensive and less expensive monthly invoice, and to get an idea of how many calls were considered of a confidential nature or with a personal number (by an xx) that should require third party notice before any release. The actual cost to the City for the noted (by an x) personal calls was \$4.65 on one and \$9.15 on the other, plus taxes... If you wish this information provided in the same format for the other 34 months requested, please confirm by e-mail and I will have staff prepare such information as soon as possible.<sup>1</sup>

[7] The applicant did not accept the City's offer to provide this same information for the remaining 34 months.

[8] The City also prepared and provided the applicant with a one page summary of the Mayor's total monthly cellphone cost for the period December 2008-December 2011. This was not a document requested by the applicant,

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<sup>1</sup> City's March 5, 2012 reply to the applicant's request for information.

and, as she points out in her submission, it is not responsive to her request. Therefore, I will not consider it further.

[9] **Records at Issue**—The records before me consist of 228 pages of the Mayor’s monthly cellphone bills for a 36 month period. In addition to the date, time, duration and cost of each call, the bills provide the number of the phone connected to the Mayor’s (in the “Number Called” column), and the geographic location of both phones (in the “To” and “From” columns). The Mayor’s number also appears numerous times in the “Number Called” column whenever she accessed the voice mail/call forward system.

[10] Relying on s. 22 of FIPPA, the City refused to disclose the information in the “To”, “From” and “Number Called” columns of the bills.

### ***Harm to Personal Privacy – Section 22(1)***

[11] FIPPA requires that public bodies withhold personal information when disclosure would be an unreasonable invasion of a third-party’s personal privacy. The test for determining whether disclosure would be an unreasonable invasion of privacy is contained in s. 22 of FIPPA. Numerous orders have considered the application of s. 22, and the principles for its application are well established.<sup>2</sup> I have applied those principles here.

### ***Is the information in dispute personal information?***

[12] The first step in the s. 22 analysis is to determine if the information in dispute is personal information. I find that it is and my reasons are as follows.

[13] Two definitions in Schedule 1 of FIPPA are relevant here:

“personal information” means recorded information about an identifiable individual other than contact information.

“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.

[14] Commissioner Denham recently wrote in Order P12-01:

I accept that, in order to be personal information, the information must be reasonably capable of identifying a particular individual either alone or when combined with information from other available sources. The information need not identify the individual to everyone who receives it;

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<sup>2</sup> See for example, Order 01-53, [2001] B.C.I.P.C.D. No. 56, and Order 00-18 [2000] B.C.I.P.C.D. No. 21.

it is sufficient in a case such as this if the information reasonably permits identification of the individual to those seeking to collect, use or disclose it.<sup>3</sup>

[15] The applicant acknowledges that it would be possible to identify a caller by using other available sources of information and submits, “Phone records may make it easy to reference the person making the call and who was called by using a reverse directory; however the only purpose of the request is to determine the amount of funds which should rightfully be reimbursed to taxpayers for personal use of the publicly-funded phone.”<sup>4</sup>

[16] The City explains its position as follows: “The City maintains that any phone calls from individuals to the Mayor, in both her capacity as an elected official and on a personal level, are personal information and should not be disclosed as per Section 22(1).”<sup>5</sup> It asserts that it could be possible to identify the caller and perhaps even the nature of their call (e.g., a bylaw complaint about a neighbour), if the number is combined with a reverse directory and the date and time of the call.

[17] I agree that it would be a relatively simple matter to learn the identity of the individual associated with a telephone number by using a reverse directory. Moreover, a telephone number, when combined with the other information in the bill, may reveal personal information such as when and for how long someone spoke with the Mayor and who initiated the call. A telephone number may also disclose personal information about the nature of the call such as the Mayor’s personal matters (e.g., a medical appointment).

[18] I have also considered whether any of the phone numbers are “contact information”, so fall outside the definition of personal information. Although it is reasonable to conclude that a portion of the phone numbers reflected on the bills are “business telephone numbers”, they are not “contact information” in this context. They do not appear on the bill in order “to enable an individual at a place of business to be contacted.” The numbers are recorded on the bills in order to document and justify the cost associated with each call. In conclusion, I find that all of the phone numbers on the bills are personal information.<sup>6</sup>

[19] The City also withheld the geographic location information about each call (the “To” and “From” columns). I find that this is personal information about where the Mayor and the person with whom she was speaking were located at

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<sup>3</sup> Order P12-01, [2012] B.C.I.P.C.D. No. 25, at para. 82. Though this case concerned personal information under the *Personal Information Protection Act*, the Commissioner adopted and applied this definition under FIPPA in Order F13-04, [2013] B.C.I.P.C.D. No. 4; see para. 23.

<sup>4</sup> Applicant’s initial submission, p. 1.

<sup>5</sup> City’s initial submission, p. 3.

<sup>6</sup> For other orders finding that telephone numbers are personal information, see the following orders: Order No. 63-1995, [1995] B.C.I.P.C.D. No. 36; Order No. 64-1995, [1995] B.C.I.P.C.D. No. 37; Order No. 65-1995, [1995] B.C.I.P.C.D. No. 38; Order 04-17, [2004] B.C.I.P.C.D. No. 17.

a particular point in time. Even if the phone number was not disclosed, the location of the caller, combined with the timing or frequency of calls, may allow the applicant to draw accurate inferences about the caller's identity given that the majority of the locations reflected on the bills are small communities and the applicant's materials demonstrate her knowledge and involvement in local municipal issues.

### **Section 22(4)**

[20] The second step in this analysis is to decide if any of the factors in s. 22(4) apply. If so, disclosure of the personal information is deemed not to be an unreasonable invasion of third-party personal privacy. I find that none of the factors in s. 22(4) apply to the circumstances of this case.

### **Section 22(3)**

[21] The third step is to decide if disclosure of the personal information is presumed to be an unreasonable invasion of personal privacy because of one or more of the factors listed in s. 22(3) apply. The City submits that the presumption in s. 22(3)(j), which reads, "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", plays a role here; once the records are released to the applicant, it has no control over whether the information is given to others who may use it for mailing lists, solicitations or other purposes. My review of the evidence and submissions uncovered no indication that the information contained in the records will be used for mailing lists or solicitations by telephone or any other means. Therefore, I find that none of the presumptions in s. 22(3) apply.

### **Relevant circumstances – Section 22(2)**

[22] In the fourth step, I have considered relevant circumstances, including those in s. 22(2):

➤ ***Is disclosure desirable for the purposes of subjecting the activities of the City to public scrutiny? (s. 22(2)(a))***

[23] The applicant explains, "If this information is not made available it will provide all elected officials with an opportunity to use public money for their own personal use as there is no investigative opportunity for taxpayers to calculate the amounts used for personal use. Personal use of public funds is a very serious situation and needs to be open for inspection".<sup>7</sup> The City, on the other hand, submits that the applicant's desire to scrutinize information related to the Mayor's cellphone calls does not override the privacy interests of third parties.

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<sup>7</sup> Applicant's initial submission, p. 3.

[24] While I accept that public scrutiny of the personal use of publicly-funded resources is desirable, I do not agree with the applicant's assertion that disclosure of the full cellphone bill is the only means by which this can be accomplished. There appears to me to be a less privacy-intrusive means of obtaining the information the applicant seeks. She could simply have asked the City to provide the cost of the Mayor's personal calls. In fact, they did provide her with this information by marking the Mayor's personal calls on the two disclosed bills and offering to do the same with the remaining 34 bills. The applicant does not explain why she did not accept their offer, but I presume it is because she wanted to scrutinize the calls herself in order to determine which were personal. Her desire to do so, however, does not warrant the resulting invasion of third-party personal privacy that such a disclosure would cause. Therefore, I am not persuaded, in the circumstances of this case, that s. 22(2)(a) is a sufficiently compelling factor favouring disclosure of the personal information.

➤ ***Was the personal information supplied in confidence?  
(s. 22(2)(f))***

[25] The applicant submits: "All callers, when making a call to a government cellphone number should understand their number may be recorded on the other party's cellphone bill. For those concerned about privacy they can prevent their number from being recorded. It is an 'implied consent' that allows the disclosure of the phone number and therefore not considered private."<sup>8</sup>

[26] The City submits that individuals speaking with the Mayor would expect their telephone number, and the fact that they spoke with the Mayor, to be treated as confidential. The Mayor provided examples of the sorts of calls that she believes callers would expect to be kept confidential, such as residents of a seniors care home calling to complain about the building manager, or calls about alleged unethical actions of a city councillor. The City also maintains that reviewing the records to distinguish information that should be treated as confidential would be excessively time consuming and place an undue burden on municipal resources. Moreover, the Mayor adds that it may not be possible for her to distinguish between personal calls and calls related solely to her role as Mayor because she receives both work and personal calls from some individuals.

[27] The City explains that it has never released cellphone numbers in the past, and it is unlikely a reasonable person would consider that a call to the Mayor would result in the disclosure of their phone number to a third party. It adds that confidentiality as to identity, time and length of a call encourages citizens and residents to contact their elected representatives and is important to the democratic functioning of government. In addition, the City disagrees with the applicant's assertion that a caller is presumed to have given consent for the

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<sup>8</sup> Applicant's reply submission, para. 1.

disclosure of their phone number and the date and duration of their call whenever they call a public official.

[28] I think that individuals have a reasonable expectation that the fact that they spoke with the Mayor will remain confidential, and that any incidental recording of their telephone number, and the details of their call, will not be disclosed to a third party without their consent. I disagree with the applicant's assertion that unless someone takes steps to block their number, they have consented to the disclosure of their phone number. It is unlikely that most callers were even aware that their phone number would later appear on the Mayor's cellphone bill. I take the same view as former Commissioner Flaherty who noted in Order No. 63-1995, "A person calling or being called by the Mayor's office, who has his or her phone number recorded by an automated system, may not in fact be consenting to the disclosure of that private information to a third party."<sup>9</sup>

[29] In conclusion, I find that disclosure of the personal information would be an unreasonable invasion of third-party personal privacy.

### **Severing**

[30] I have also considered whether the City has met its obligation to reasonably sever the records under s. 4(2) of FIPPA. It has disclosed the majority of the two bills, including the date and duration of calls and the charges owing, and offered to do the same for the remaining bills. Although the Mayor's cellphone number has been disclosed at the top of each bill, it has been withheld in the "Number Called" column, where it appears whenever the Mayor accessed the call forward/voice message system. In my view, it would not be an unreasonable invasion of the Mayor's personal privacy to disclose these occurrences of her phone number. However, it would not be reasonable to require the City to sift through 36 months of phone bills in order to do so. The administrative burden would far outweigh any value to the applicant, who clearly indicated that she is only interested in the cost of personal calls. Knowing when the Mayor accessed her voice mail would not provide that information.

[31] On a related note, on the two sample bills previously disclosed to the applicant, the City marked with asterisks which calls were personal rather than business. The City was not obligated to do this because the applicant's request was only for copies of the Mayor's cellphone bills for 2009-2011. The fact that the City marked the bills as they did to further assist the applicant is to be commended. However, I recognize that doing the same for the remaining 34 bills would take an inordinate amount of the City's time and would unreasonably interfere with its operations, given that there are hundreds of calls per bill and they date back several years. Therefore, I will not oblige the City to do so. I leave it to their discretion.

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<sup>9</sup> Order No. 63-1995, [1995] B.C.I.P.C.D. No. 36.

## CONCLUSION

[32] I find that all the information withheld from the “Number Called”, the “From” and “To” columns is personal information and I am not persuaded that there are sufficiently compelling factors in favour of its disclosure. Therefore, I find that disclosing this information would be an unreasonable invasion of third-party privacy under s. 22.

[33] For the reasons given above, under s. 58 of FIPPA, I make the following order:

1. I require the City to refuse to disclose the information in the “Number Called”, “From” and “To” columns of the Mayor’s cellphone bills in accordance with s. 22.
2. Subject to #1 above, the City must now fulfill the applicant’s request by providing a copy of the Mayor’s cellphone bills for 2009, 2010, and 2011, on or before **August 15, 2013**, and concurrently, to provide me with a copy of its cover letter and the records sent to the applicant.

July 3, 2013

## ORIGINAL SIGNED BY

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Elizabeth Barker, Adjudicator

OIPC File No.: F12-48842