



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
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Order F15-18

CITY OF KELOWNA

Tim Mots
Adjudicator

April 2, 2015

Quicklaw Cite: [2015] B.C.I.P.C.D. No. 19
CanLII Cite: 2015 BCIPC 19

Summary: An applicant requested the City of Kelowna (the “City”) provide information related to a bylaw complaint. The applicant was not satisfied with the City’s response and asked the Commissioner to conduct an inquiry. The City requested the Commissioner exercise her discretion under s. 56 of FIPPA to not hold an inquiry. The adjudicator granted the City’s request because it was plain and obvious that disclosure of the requested information would reveal the identity of a confidential source of law enforcement information so s. 15(1)(d) of FIPPA applied.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 15, 22 and 56.

Authorities Considered: B.C.: Order 00-01, 2000 CanLII 9670 (BC IPC); Order F08-11, 2008 CanLII 65714 (BC IPC); Order F10-14, 2010 BCIPC 23 (CanLII); Decision F06-04, 2006 CanLII 17221 (BC IPC); Decision F07-01, 2007 CanLII 2527 (BC IPC); Decision 07-04, 2007 CanLII 67284 (BC IPC); Decision F13-01, 2013 BCIPC 13 (CanLII).

INTRODUCTION

[1] An applicant made a request for information about a bylaw complaint concerning himself and his property. The City of Kelowna (the “City”) provided records responsive to his request but withheld some information from the records under s. 13 (policy advice or recommendations), s.14 (solicitor client privilege), s. 15 (law enforcement) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”).

[2] The applicant asked the Office of the Information and Privacy Commissioner (“OIPC”) to review the City’s decision. Mediation resulted in disclosure of all the requested information with the exception of the bylaw complainant’s name, address and phone number, which the City continued to withhold under s. 15 of FIPPA. The City also applied s. 22 (unreasonable invasion of personal privacy) to the bylaw complainant’s name, address and phone number. The applicant was not satisfied with this response and asked that this matter proceed to an inquiry under Part 5 of FIPPA.

[3] The City asks that the Commissioner exercise her discretion under s. 56 of FIPPA to not hold an inquiry under Part 5 of FIPPA. The City submits that it is plain and obvious that disclosure of the bylaw complainant’s name, address and phone number would reveal the identity of a confidential source of law enforcement information (s. 15(1)(d) of FIPPA) and would be an unreasonable invasion of the complainant’s personal privacy (s. 22 of FIPPA).

ISSUE

[4] Should the Commissioner exercise her discretion under s. 56 of FIPPA to not hold an inquiry to review the City’s decision to withhold information because it is plain and obvious that ss. 15(1)(d) and 22 of FIPPA apply?

[5] **INFORMATION AT ISSUE** The City is withholding the bylaw complainant’s name, address and phone number from a one page “Service Request” form.

DISCUSSION

[6] **Analysis**—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.

[7] A number of previous orders have set out the principles for the exercise of discretion under s. 56 of FIPPA. In Order F08-11 Senior Adjudicator Francis provided a list of principles to follow when exercising discretion under s. 56 of FIPPA. She states:

- the public body must show why an inquiry should not be held
- the respondent (the applicant for records) does not have a burden of showing why the inquiry should proceed; however, where it appears obvious from previous orders and decisions that the outcome of an

inquiry will be to confirm that the public body properly applied FIPPA, the respondent must provide “some cogent basis for arguing the contrary”

- the reasons for exercising discretion under s. 56 in favour of not holding an inquiry are open-ended and include mootness, situations where it is plain and obvious that the records fall under a particular exception or outside the scope of FIPPA, and the principles of abuse of process, *res judicata* and issue estoppel
- it must in each case be clear that there is no arguable case that merits an inquiry.¹

[8] I have followed this approach in this case.

Parties' submissions

[9] The City submits that Order 00-01² held that bylaw investigations are law enforcement matters within the meaning of s. 15(1) of FIPPA. It argues that the bylaw complainant is a confidential source of law enforcement information, therefore, the City is authorized to withhold the information in dispute under s. 15(1)(d) of FIPPA. It submits that similar determinations have been made in past Decisions.³

[10] The City also argues that the information in dispute is the bylaw complainant's personal information and was compiled and is identifiable as part of an investigation into a bylaw offence, so disclosure would be a presumed unreasonable invasion of the bylaw complainant's personal privacy under s. 22(3)(b) of FIPPA. It submits that the bylaw complainant's personal information was supplied in confidence which is a relevant circumstance under s. 22(2)(f) weighing against disclosure. The City provided excerpts from the *City of Kelowna's Freedom of Information and Protection of Privacy Policy and Procedures Manual*, which states that a complainant's personal information will remain confidential unless the personal information is required for legal action. The City states that it followed FIPPA and its policy and procedures when it refused to disclose the bylaw complainant's personal information to the applicant.

[11] I understand from the applicant's submission that he feels the City has treated him unfairly and with bias. He feels that the OIPC has sided with the City. His concerns relate to allegations of criminal wrongdoing and libellous behaviour on the part of the City. He explains that he has voluminous evidence supporting his allegation, and he requests more time to produce this evidence. However, the

¹ Order F08-11, 2008 CanLII 65714 (BC IPC) at para. 8.

² Order 00-01, 2000 CanLII 9670 (BC IPC).

³ Decision F06-04, 2006 CanLII 17221 (BC IPC); Decision F07-01, 2007 CanLII 2527 (BC IPC); Decision 07-04, 2007 CanLII 67284 (BC IPC) and Decision F10-14, 2010 BCIPC 57 (CanLII).

applicant's submissions and evidence do not address the s. 56 issue and whether it is plain and obvious that ss. 15 and 22 of FIPPA apply to the information in dispute.

Analysis

[12] First, I will consider whether it is plain and obvious that s. 15(1)(d) applies in these circumstances. The relevant provisions are these:

Disclosure harmful to law enforcement

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

"law enforcement" means

- (a) policing, including criminal intelligence operations,
- (b) investigations that lead or could lead to a penalty or sanction being imposed, or
- (c) proceedings that lead to a penalty or sanction being imposed.

[13] In Order 00-01, former Commissioner Loukidelis, found that municipal bylaw enforcement investigations are "law enforcement" for the purposes of s. 15(1) of FIPPA. Further, past Decisions have found that the identifying information of bylaw complainants fall under s. 15(1)(d) of FIPPA when there is evidence that there was some form of assurance given that their identity would be kept confidential.⁴ In this case, the City has satisfied me that the City's *Freedom of Information and Protection of Privacy Policy and Procedures Manual* provides that the identity of bylaw complainants will be kept in confidence. Therefore, it is clear that the information at issue in this case falls under s. 15(1)(d) of FIPPA.

[14] Previous Decisions under s. 56 have stated that the applicant must provide a cogent basis for arguing that an inquiry should proceed.⁵ In this case, the applicant has not provided a clear and convincing argument why an inquiry should proceed.

⁴ Order 00-01, 2000 CanLII 9670 (BC IPC), Decision F07-01, 2007 CanLII 2527 (BC IPC) and Decision 07-04, 2007 CanLII 67284 (BC IPC).

⁵ For example: Decision F10-14, 2010 BCIPC 57 (CanLII) and Decision F13-01, 2013 BCIPC 13 (CanLII).

Findings

[15] The information in dispute reveals the complainant's identity and it clearly relates to the investigation of a bylaw offence, which meets the definition of law enforcement in FIPPA. Further, the information before me illustrates that the City treats such bylaw complainants as a confidential source of law enforcement information. Therefore, based on the evidence in this case and past decisions on this topic, where s. 15(1)(d) was found to apply to the exact same type of information, I am satisfied that it is "plain and obvious" that the City may refuse to disclose the bylaw complainant's name, address and phone number under s. 15(1)(d) of FIPPA. Given my finding regarding s. 15(1)(d), there is no need for me to also consider whether it is plain and obvious that the information in dispute must be withheld under s. 22(1). In conclusion, I find that there is no arguable issue in this case that warrants an inquiry.

CONCLUSION

[16] Based on the reasons outlined above, this matter will not proceed to inquiry under Part 5 of FIPPA, and this office's file will be closed.

April 2, 2015

ORIGINAL SIGNED BY

Tim Mots, Adjudicator

OIPC File No.: F14-55831