

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 171-1997
June 26, 1997**

INQUIRY RE: A decision of the Cariboo Regional District to sever information from records under section 19 of the Act

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on March 19, 1997 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision by the Cariboo Regional District (the District) to sever information from records on the basis of section 19 of the Act.

2. Documentation of the inquiry process

On September 12, 1996 the applicant, a resident of Quesnel, submitted a request to the Cariboo Regional District for records described as (a) a copy of a Cariboo Regional District Board order to demolish the “Jones” home [I am using “Jones” as a pseudonym for the subject of the District’s demolition order, and to distinguish this person from the applicant in this case, who is a different individual]; (b) a copy of the contract with the contractor; and (c) a copy of the payment record to the contractor. On October 10, 1996 the District responded denying access to the records under section 12.1 (now section 12(3)) of the Act.

On October 18, 1996 the applicant wrote to my Office requesting a review of the decision of the District to withhold the records.

My Office opened this request for review on October 24, 1996. On November 25, 1996 the District advised the applicant in writing that it was also relying on sections 15(1), 19(1), and 21(1) to withhold the records. During the mediation period, the

District disclosed the requested records to the applicant with certain information severed under section 19 only.

On February 20, 1997 the applicant advised in writing that he wished to proceed to an inquiry to gain access to the information severed under section 19 of the Act. The original timeframe for the review process was extended several times until March 19, 1997.

3. Issue under review at the inquiry

The issue to be reviewed in this inquiry is the District's decision to sever information from the records under section 19 of the Act, which reads in part as follows:

Disclosure harmful to individual or public safety

19(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

(a) threaten anyone else's safety or mental or physical health

....

Section 57 of the Act establishes the burden of proof in an inquiry. Under section 57(1), where access to information in records has been refused under section 19, it is up to the public body, in this case the Cariboo Regional District, to prove that the applicant has no right of access to the record or part of the record.

4. The records in dispute

The records in dispute pertain to a 1991 decision by the Cariboo Regional District to demolish the "new" home of a particular individual in the town of Wells, which was located next to his old home. The applicant wants to know what advice the Administrator of the District gave to it in this respect.

The specific records in dispute include a contract between the Cariboo Regional District and a contractor; a resolution to demolish from an *in camera* meeting of the District's board; and the record of a payment to a contractor. In each instance information that would directly or indirectly identify the contractor has been severed; the remainder of each record has been released.

The applicant also questions several of the severances of information from the records in dispute, including the amount on a cheque paid to the contractor.

5. The applicant's case

The applicant has been pursuing his request for information pertaining to the destruction of the Jones home for a number of years. He concludes that the Cariboo Regional District, together with its Directors and the Administrator, "are trying to avoid disclosure of their actions in carrying out the destruction of Mr. [Jones's] home and wish to avoid the disclosure of the costs to the public of the execution of the event." (p. 2) The applicant argues that the public should be allowed to judge for itself the merits of this particular decision, even if it reflects poorly on the District.

6. The Cariboo Regional District's case

The Cariboo Regional District does not wish to disclose the identity of the person it contracted with to demolish the Jones home. It states that its action to remove this unsafe residential structure was carried out on an order of the Supreme Court of British Columbia made pursuant to a legal proceeding brought by the District to enforce a municipal by-law. The demolition apparently led to the creation of a "Help Jones Committee." The applicant in this inquiry acted as one of its spokespersons. The information that the District has severed from the released records could reasonably be expected to identify the contractor.

The District submits that this is "a very emotional issue for the Applicant and his associates."

The Cariboo Regional District further states that it has a contractual obligation to the contractor not to release his identity, based on a verbal agreement:

The Contractor, to avoid reprisal, was meticulous in ensuring that there were no visible markings on his equipment while at the demolition site that could serve to identify him... [H]e still feels very strongly that his continued anonymity is of paramount importance to his well being.

The District concludes that the contractor has a right to privacy and a right to protection from potential harm, because a reasonable expectation of harm exists. In its view, the disclosure of his identity "holds the potential to threaten the safety, mental or physical health of the Contractor and/or his family and/or workers." The District further submits that individuals associated with the "Help Jones Committee" have "threatened harm on numerous occasions. The potential exists that their threats will escalate into action should they have a target identified for them to focus on."

7. The submission of the third party

The initial submissions in this inquiry did not include any direct submission from the contractor who carried out the demolition of the Jones home. I decided that I could not make an order in this inquiry without hearing from him and invited a submission,

which I received on an *in camera* basis. I cannot discuss the contents of this submission other than to indicate that I have taken careful account of its contents in the decision made below.

8. Discussion

Section 19(1): Disclosure harmful to individual or public safety

The Cariboo Regional District's Exhibit 2 is intended to offer evidence of the prospects of harm occurring to the contractor if his identity is disclosed directly or indirectly. I have reviewed this material in detail. The District makes two basic points:

These [specific] records demonstrate the high level of emotion associated with this issue as well as speaking to the mood and possible volatility of the proponents of the Help [Jones] movement.

These [specific] records demonstrate the actual threat of physical harm.

The District's initial point is that any further information disclosed in response to this access request will end up in the hands of Mr. Jones and/or others associated with the "Help Jones Committee." In my view, there is certainly nothing in the Act, nor in Exhibit 2, that precludes such redistribution of the released information. In addition, letters in Exhibit 2 written by the applicant in this inquiry display a responsible, reasoned, but unhappy tone. He does not appear to be threatening anyone with possible harm.

However, the Cariboo Regional District states that the contractor undertook the original demolition of Mr. Jones's house under RCMP protection and in an anonymous manner, because "he feared retaliatory action and took the steps he deemed necessary to protect himself from future harassment or worse." In its reply submission, the District further submits that "there is no legitimate purpose for [the applicant] and/or his associates to want the name of the contractor. He has provided no evidence as to a legitimate purpose for needing the individual's name." I agree that disclosure under the Act of the identity of the contractor could result in a scapegoat being identified and subsequent harassment of this individual on a personal and business level. I accept the Cariboo Regional District's submission that "[h]arassment of this nature has a tendency to escalate quite easily with it only being a matter of time before physical and mental well being becomes a critical issue."

On the basis of the information submitted to me by the Cariboo Regional District and the third party, I find on a balance of probabilities that the disclosure of the severed information in this inquiry, which would reveal the identity of the contractor, could reasonably be expected to threaten the safety or the mental or physical health of the contractor, his family, and his associates. Thus the CRD has met its burden of proof. I am prepared to defer to the views of the Cariboo Regional District and the third party on such a sensitive matter of health and safety. In my Order No. 28-1994, November 8,

1994; Order No. 39-1995, April 24, 1995; and Order No. 131-1996, November 19, 1996, I have consistently held that a public body should act prudently where the health and safety of others are at issue.

However, I remain sympathetic to the view that the costs incurred by the Regional District in connection with the demolition of the Jones property should be disclosed as a matter of accountability of public bodies. Unfortunately, the disclosure of the sums could lead to the possible determination of the contractor's identity, which I have already determined to be inappropriate under section 19 of the Act. I therefore must confirm the decision of the Cariboo Regional District to withhold the financial information, as well as the personal or corporate identifiers, of the Contractor.

The role of Portfolio Officers

The applicant's submission raises a number of questions about communications made by my Office with the public body and other parties as of February 11, 1997. (Submission of the Applicant, pp. 3, 4) He associates these actions and views with me. I can only assume that he is referring to exchanges of views during the mediation process conducted by a Portfolio Officer who works in my Office. I wish to assure applicants that I am not involved in mediation activities, and that I have approached the decision in the present inquiry with a fresh mind. Any prior involvement of a Portfolio Officer, including his or her professional or personal views on a matter in dispute, are not disclosed to me as the decision-maker on the issue. In this sense, my Office operates with a "firewall" in place for requests for review in order to ensure my neutrality and objectivity.

The presentation of evidence

The "evidence" before me in this inquiry consists of bare assertions, albeit assertions augmented by authentic-looking copies of correspondence and newspaper clippings. I would urge all participants in the inquiry process to remember that evidence, to be properly accepted as such, should be tendered in the form of a sworn affidavit with attached exhibits. Failure to do this does not invalidate my authority to make an Order in the circumstances of the case (as I perceive them to be), but may limit my ability to make a critical finding of fact in a situation where the parties differ sharply in what they allege to be certain relevant factual events.

In this case, there is no disagreement over the fact of the key event, that is, the demolition of the house. In like manner, there seems to be little disagreement over the fact of the correspondence on which the Cariboo Regional District seeks to rely in making its argument for the applicability of section 19 of the Act.

9. Order

I find that the Cariboo Regional District was authorized to refuse access to information in the records in dispute under section 19(1)(a) of the Act. Under

section 58(2)(b), I confirm the decision of the Cariboo Regional District to refuse access to the applicant.

David H. Flaherty
Commissioner

June 26, 1997