

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 88-1996
February 29, 1996**

INQUIRY RE: A request for review of a decision by the Ministry of Transportation and Highways to give partial access to a letter written by a third party

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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 in Victoria on February 16, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review by the applicant, who received partial access to a letter written to the Ministry of Transportation and Highways (the Ministry) by a third party. The applicant wants the Ministry to provide her with access to the entire letter. This case appears to be a continuation of the events that led to Order No. 34-1995, February 3, 1995.

2. Documentation of the inquiry process

The applicant wrote to the Ministry on April 11, 1995 to request access to any information that the Ministry of Transportation and Highways possesses concerning herself and, on May 5, 1995, to request access to “any letter written by [third parties].” After notice to the two third parties under section 23 of the Act and subsequent mediation by this office, the applicant ultimately received a severed version of the subject letter on September 8, 1995. Some information was severed by the Ministry under section 22 of the Act.

The applicant then wrote to this office on September 15, 1995 to request a review of the Ministry’s decision.

3. Issue under review at the inquiry and the burden of proof

The issue under review in this inquiry is the application of section 22 of the Act to the letter written by the third party and sent by her to the Ministry. The section reads in part as follows:

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
- ...
- (e) the third party will be exposed unfairly to financial or other harm,
 - (f) the personal information has been supplied in confidence,
 - (g) the personal information is likely to be inaccurate or unreliable, and
 - (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

Section 57 of the Act establishes the burden of proof. Under section 57(2), since the record contains personal information about the third party, it is up to the applicant to prove that disclosure of the additional information from the letter in dispute would not be an unreasonable invasion of the third party's personal privacy.

4. The record in dispute

The letter in dispute was written by one third party (whose name, address, telephone number, and handwriting are known to the applicant) and contains the personal information, largely by way of opinion, about the applicant, several other third parties, and the other third party in this inquiry. The applicant received a version of the letter which disclosed her own personal information and most of the letter.

5. The applicant's case

In Order No. 87-1996, February 29, 1996 I ordered disclosure of two letters written to the Ministry by the applicant in this case, who was earlier a third party. In this case she wants access to the text of another letter written to the Ministry by her neighbour and in-law in Port Alberni.

Her concluding comment in her reply submission is as follows:

I would like to declare that I have never intimidated or harassed anyone and have no intention or desire to do so. This is not a 'personal issue' or a 'family feud' as some individuals want the Ministry to believe. Parking of vehicles on the road right of way in front of our driveway is a serious issue and is continuing to occur.

6. The Ministry's case

The Ministry is of the view that the applicant has not met her burden of proof in this case. (Submission of the Ministry, paragraph 1.03) In particular, the third parties have not consented to the disclosure of personal information about them as set forth by the writer. Under section 22(2)(e) of the Act, the Ministry is of the view, based on past performance, that disclosure of this information will expose those identified unfairly to harassment or intimidation. (Submission of the Ministry, paragraphs 5.02 to 5.05) The Ministry is also concerned that the personal information in dispute may be inaccurate or unreliable (section 22(2)(g)), cause unfair damage to reputations (section 22(2)(h)), and should be regarded as information supplied in confidence (section 22(2)(g)). (Submission of the Ministry, paragraphs 6.01 to 8.06)

The Ministry concludes that “on a consideration of all relevant factors listed in section 22 and of the general context of the relations between the parties, disclosure of their personal information in a form that would identify them would unreasonably invade their personal privacy.” (Submission of the Ministry, paragraph 10.01)

I also reviewed an *in camera* affidavit submitted by the Ministry.

7. The third parties' cases

The third parties do not wish their personal information released to the applicant.

8. Discussion

The applicant has received all of a three-page handwritten letter in dispute except for about a dozen lines and a similar number of words, which concern third parties named in the letter and not the author of the letter. I agree with the Ministry that it has severed this small amount of information for legitimate purposes. (See submission of the Ministry, paragraphs 11.01 and 11.02)

9. Order

Under section 22(1) of the Act, I find that disclosure of the personal information severed from the record in dispute would be an unreasonable invasion of the privacy of the third parties. I find that the Ministry is required to refuse access to the information. Under section 58(2)(c), I require the head of the Ministry of Transportation and Highways to refuse access to the severed information.

David H. Flaherty
Commissioner

February 29, 1996