

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 99-1996  
April 22, 1996**

**INQUIRY RE: A decision by the British Columbia Securities Commission to sever certain information about third parties from records that an applicant requested**

**Fourth Floor  
1675 Douglas Street  
Victoria, B.C. V8V 1X4  
Telephone: 604-387-5629  
Facsimile: 604-387-1696  
Web Site: <http://www.cafe.net/gvc/foi>**

### **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 March 13, 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 of a decision of the British Columbia Securities Commission to sever certain information regarding third parties from the records that an applicant requested.

### **2. Documentation of the inquiry process**

On April 28, 1995 the applicant sought access to "all correspondence between B.C. Securities Commission and any news media outlet or organization including Vancouver Stockwatch, the Vancouver Sun, Province and the Globe and Mail," which contain references to the applicant and a particular company with which he had been associated. On June 23, 1995 the Securities Commission prepared a package for the applicant which contained personal information regarding two third parties. The Securities Commission advised the third parties that this information was to be released and advised them of their right to appeal this decision to my Office. On July 23, 1995 the third parties requested a review of this decision to release their personal information. As a result of mediation, the Securities Commission agreed to sever the personal information of the third parties and to release the remainder of the information. On November 6, 1995 the applicant wrote to my Office to request a review of the Securities Commission's decision to sever the third parties' personal information.

### **3. Issue under review at the inquiry**

The issue under review in this inquiry is whether the release of the identifying information severed from the records in question would be an unreasonable invasion of the third parties' privacy under section 22 of the Act. This section reads 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

(a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,

...

(c) the personal information is relevant to a fair determination of the applicant's rights,

...

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

...

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,

....

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

...

(c) an enactment of British Columbia or Canada authorizes the disclosure,

....

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

#### **4. The records in dispute**

The records in dispute consist of seven letters, which contain twelve pages, exchanged between the Securities Commission and certain third parties. The following type of identifying

information, amounting to no more than twenty or thirty repetitive lines, has been severed from the seven letters: the name and occupation of the third party author and his or her employer and its business address; a description of the kind of work that he or she does; and several references to the other third party, which do not use his or her name.

## **5. The applicant's case**

The applicant, a businessman resident in this province, was until 1994 the president and CEO of a public company. He sought access to all of the records concerning himself and this company from the Securities Commission, which severed from seven letters the identity of the author, the author's employer, and the name of a third party referred to in the records. The applicant now wants access to the latter information.

Evidently on the basis of voluminous correspondence and documentation associated with this matter, the applicant appears to know the occupation of the author and also alleges that "he, for a period of time, possessed certain [non-public] files of the Commission which he received from another unnamed third party ... for the purpose of returning such files to the Commission." (Submission of the Applicant, paragraphs 14, 16)

While the applicant was the senior executive of the company in question, he provided the Securities Commission "with confidential information respecting his personal history and business affairs." A subsequent series of newspaper articles was critical of the public disclosure and business practices of the company and the applicant. The applicant asserts that he voluntarily resigned his position to facilitate approval of a final prospectus for his company by the Securities Commission by a certain date. He has not returned to his former position. (Submission of the Applicant, paragraphs 20-22)

The applicant advanced several reasons, discussed below, why the Act should not be relied on to refuse him access to the information in dispute. He seeks full access to the unsevered records in their original form.

## **6. The British Columbia Securities Commission's case**

The Securities Commission decided not to take part in this inquiry. Its position, as set out in a letter to my Office from its Chair, is that the severing of the identities of the two third parties "was a reasonable and practical compromise .... Since the applicant was not satisfied by this compromise, we think it appropriate for the applicant and the third parties to make submissions on their respective rights to disclosure and to privacy and for the Commissioner to decide the matter."

## **7. The third party author's case**

This person was either the author of, or the recipient of, the seven letters in dispute. Simply put, his or her view is that "disclosure of my identity is an unreasonable violation of my privacy rights," especially in light of the circumstances in which the original letters were exchanged between the author and the Securities Commission:

"... common sense dictates that the privacy rights of an Author who tendered correspondence under duress and deprivation of constitutional rights must be protected." (Submission of the Third Party Author, paragraphs 33, 34)

## **8. The other third party's case**

This third party is simply alluded to in the letters in dispute. I have read his or her seven-page submission to me, but I really cannot discuss its contents in detail without running substantial risks of conclusively identifying him or her to the applicant. In addition, most of his or her submission is not directly relevant to the matter before me in this inquiry.

## **9. Discussion**

### ***Section 8(1) of the Securities Act: Confidentiality Requirement***

This section requires every person acting under the authority of the *Securities Act* to keep confidential all facts, information, and records obtained or furnished under it. The applicant argues that there was a breach of confidence in this regard, since there is prima facie evidence in the records in dispute that the author and the third party possessed confidential non-public files of the Securities Commission relating to the applicant, including personal information. (Submission of the Applicant, paragraphs 28-30, 36, 37) Whatever the merits of this position, it has no relevance to a decision that I have to make on an access request under the *Freedom of Information and Protection of Privacy Act*. Similarly, I have no jurisdiction to consider whether or not the applicant is able to exercise his legal right to privacy pursuant to section 1 of the *Privacy Act*, R.S.B.C., 1979, c. 336. (Submission of the Applicant, paragraphs 31, 32) The applicant is also very concerned that without learning the identities of the author and the other third party, he will be unable to determine how certain confidential records came into their possession. (Submission of the Applicant, paragraphs 33, 34) Such matters need to be pursued in other forums.

### ***The third party author's case***

Most of this submission is geared to a refutation of, or at least a commentary on, the submission of the applicant and the actions of the Securities Commission with regard to him or her. Regrettably, that is not what I have to pass judgment on with respect to an access request under the Act, and I find most of this submission irrelevant to this inquiry. The points of contention between these two parties are many but are not ones over which I have jurisdiction.

### ***Section 22(2)(a): the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,***

The applicant argues that disclosure of the identities of the third parties is desirable for the purpose outlined in this section, including the alleged breach of confidentiality mentioned above. (Submission of the Applicant, paragraphs 33, 34) In fact, this section simply establishes a "relevant circumstance" that the chair of the Securities Commission had to consider in determining whether disclosure of the identities in dispute would be an unreasonable invasion of

privacy. He eventually decided that it did not in the circumstances of the present case, and I see no persuasive reason to disagree with this determination, especially given the privacy interests of the third parties and the fact that the entire contents of the seven letters have been disclosed. (See Order No. 18-1994, July 21, 1994, p.5; Order No. 27-1994, October 24, 1994, pp. 7-8, 10, 11)

***Section 22(2)(c): the personal information is relevant to a fair determination of the applicant's rights,***

As in the previous section, the applicant argues that disclosure of the identities in dispute is necessary for the fair determination of his rights, especially with respect to the issue of alleged access by others to confidential records in the custody of the Securities Commission. (Submission of the Applicant, paragraphs 27 to 31) Again, this is simply a "relevant circumstance" to the decision on disclosure, and I see no persuasive reason to disagree with the ultimate determination of the chair of the Securities Commission on the matter. Whatever legal rights the applicant may think that he has at stake in connection with the letters in dispute cannot be settled by means of an access request under the *Freedom of Information and Protection of Privacy Act*.

***Section 22(2)(e): the third party will be exposed unfairly to financial or other harm,***

The applicant asserts that the third parties cannot reasonably claim that they will be exposed unfairly to financial or other harm, because they had allegedly obtained access to confidential Securities Commission files in violation of the provisions of the *Securities Act*. (Applicant's letter to the Information and Privacy Commissioner, November 6, 1995, p. 2; and Submission of the Applicant, paragraph 36)

I am of the view that disclosure of the identifying information in dispute under the Act would unfairly expose the third parties to financial or other harm in the tangled circumstances of the present case, where suspicions and allegations are flying in all directions among all of the parties. (See Order No. 78-1996 January 18, 1996, p. 5)

***Section 22(2)(h): the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.***

The applicant further asserts that the third parties cannot reasonably claim that their reputations will be unfairly damaged, because they had allegedly obtained access to confidential Securities Commission files in violation of the provisions of the *Securities Act*. (Applicant's letter to the Information and Privacy Commissioner, November 6, 1995, p. 2; and Submission of the Applicant, paragraph 36.)

I am of the view that disclosure of the identifying information in dispute under the Act might unfairly damage the reputation of the third parties in the circumstances of the present case. (See Order No. 78-1996, p. 5)

I find that the applicant has not met his burden of proof under the Act.

## **10. Order**

Under section 22(1) of the Act, I find that disclosure of the personal information severed from the records in dispute would be an unreasonable invasion of the privacy of third parties. I find that the B.C. Securities Commission is required to refuse access to the information. Under section 58(2)(c), I require the head of the B.C. Securities Commission to refuse access to the severed information.

April 22, 1996

David H. Flaherty  
Commissioner