

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 111-1996  
June 6, 1996**

**INQUIRY RE: A request by an applicant for access to exit survey responses held by the Ministry of Agriculture, Fisheries and Food**

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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 on April 26, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). The request for review arose from a refusal by the Ministry of Agriculture, Fisheries and Food (the Ministry) to release personal information submitted to it by respondents to an exit survey.

On October 2, 1995 the applicant requested from the Ministry “all information relating to interviews conducted by the Ministry of Agriculture, Fisheries and Food on its former employees. This type of interview is normally known as exit interview, but could exist in other terms. Please also include information regarding the Ministry’s policy, practice on this topic. Please include all information between January 1, 1991 to September 29, 1995.” This request was subsequently clarified as being limited to individual exit survey responses and any Ministry reports related to exit surveys.

On December 1, 1995 the Ministry provided the applicant with a severed copy of the final version of an exit survey report (the report) prepared by a consultant. Severances to the report were made under section 13(1) of the Act. On January 9, 1996 the public body further disclosed to the applicant an earlier draft copy of the report, again severed under section 13(1) of the Act, and copies of the actual survey responses, from which information was severed under section 22(1) of the Act.

On January 29, 1996 the applicant requested from the Office of the Information and Privacy Commissioner a review of the survey report severances referred to above. Mediation resulted in all of the section 13 severances for both the draft and final versions of the exit survey report being released in their entirety. The section 22 severances from the individual exit survey responses were released to the applicant on April 22, with the exception of information which

would tend to identify individual respondents. This latter information remains in dispute and is the subject of this inquiry. This April 22 release occurred after issuance of the Notice of Inquiry, which is relevant to an issue raised by the applicant that I shall address later in this Order.

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

This inquiry, as noted above, arose out of a request for review submitted to this Office on January 29, 1996. The original Notice of Inquiry was issued April 4, 1996 and amended April 12, 1996 to correct an error relating to the application of the policy of this Office relating to the schedule of submissions. A Portfolio Officer's fact report was prepared April 10, 1996, and amended April 23, 1996, to make reference to the disclosure of information from the survey responses.

In a related matter, a Notice of Cancellation of Written Inquiry was sent by this Office to the applicant on the basis of the significant change in the Ministry's position on the disclosure of information from the survey responses. The written inquiry went ahead as scheduled. I will address the applicant's objection to the Notice of Cancellation below. The applicant's written submission to this inquiry was received by this Office on April 19, 1996 and the public body's reply was received April 26. The applicant sent an initial unsolicited reply, that is, outside the process employed by this Office, on May 7, 1996. In like manner, the Ministry registered its objection to any consideration by me of the applicant's reply by way of a letter of objection sent to my Office on May 13, 1996.

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

The issue under review is whether the Ministry should release personal information that would actually or likely allow individual exit survey respondents to be identified. In other words, would the release of this information constitute an unreasonable invasion of the personal privacy of third parties, contrary to section 22 of the Act?

The most relevant parts of section 22 are as follows:

- 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
  - ...
  - (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.
- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
- ...
  - (d) the personal information relates to employment, occupational or educational history,  
...
  - (g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party,  
....

With respect to third-party personal information withheld by the Ministry under section 22 of the Act, section 57(2) requires the applicant to prove that disclosure of the personal information would not be an unreasonable invasion of any third party's personal privacy.

#### **4. Applicant's request and objections relating to process**

The applicant requested that his name not be published in the text of this Order, given the potential adverse impact on his future career opportunities, since he has been a career public servant. That is not a difficult request to honour, since it is the custom of this Office not to identify most applicants by name in Orders.

The applicant has, however, made several other objections relating to the request for review and inquiry process of this Office. Specifically, the applicant has objected to the attempt by this Office to cancel the written inquiry on the basis of a release of information at the "eleventh hour" by the Ministry, the apparent continuation of the mediation process after the first Notice of Inquiry was issued by this Office, and the amendment of the Portfolio Officer's fact report to reflect the fact of the late release of additional information.

I should deal with these procedural matters at the outset. The Act imposes a mediation scheme on requests for review. A high settlement rate for such requests is essential to the efficient and economic implementation of the Act by my Office. The Portfolio Officers who work with me have achieved very high settlement rates. My instructions to them are and have been that mediation can continue up to the time when I issue an Order. Although it is less likely for a matter to settle after a Notice of Inquiry has been issued to a public body and the parties, it is in the best interests of the taxpayers, public bodies, and applicants that mediation efforts continue, where there is a reasonable prospect of achieving an equitable settlement of outstanding issues. On this point, I agree with the submission of counsel for the Ministry that restricting the period of mediation would force numerous unnecessary inquiries.

The applicant objects to the fact that my Office cancelled the written inquiry on the basis of additional disclosures of records by the Ministry. Since the inquiry is now going forward, I regard the issue of whether or not such a cancellation or adjournment should have occurred as moot. However, I also fully agree with the submission by counsel to the Ministry to the effect that the decision of the public body had changed to such an extent that the original issue no longer existed, so it made sense to cancel the inquiry and allow the applicant to review the new package of documents released to him with the option of requesting a further review.

The policy of my Office on this issue reads as follows:

Where a public body substantially changes its decision during mediation, the request for review may be considered closed. If the applicant is not satisfied with the public body's second decision after reviewing the records released, he or she may request another review within 30 days after being notified of the second decision. The 90 day time period will begin to run from the time the Commissioner receives a new request for the applicant. (Office of the Information and Privacy Commissioner for British Columbia, Policies and Procedures, section III, C(2), January 1996)

#### **5. The records in dispute**

The records in dispute consist of excerpts from individual exit survey responses provided to the Ministry voluntarily by individuals leaving its employment. The Ministry has severed "the writer's name, dates of employment, and references to other people, projects, worksites, and positions or roles in the workplace." (Submission of the Ministry, paragraphs 4.01, 5.08)

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

The applicant claims that he has the right to the identifiable information from the exit surveys, because the purpose of the Act is to open up government: "The general public, as taxpayers, has the right to information on the performance of the public body." He is especially concerned with the actual performance of management practices in human resources with particular reference to incompetence and inefficiencies. His general view is that the privacy of respondents should be subordinated to the public interest.

I have discussed below other points in his submission that I considered relevant.

#### **7. The Ministry of Agriculture, Fisheries and Food's case**

The Ministry is of the view that it has provided the applicant with as much information as possible while severing out personal identifiers. In support of its position, it cited my Order No. 3-1994, February 23, 1994, p. 4; Order No. 52-1995, September 15, 1995, p. 7; Order No. 71-1995, December 15, 1995, p. 7; and Order No. 86-1996, February 23, 1996, p. 4. (Submission of the Ministry, paragraph 5.06)

I have discussed below the specific arguments made by the Ministry as I considered it appropriate to do so.

## **8. Further submissions by both the applicant and the public body**

The applicant, by a letter sent to my Office on May 7, 1996, after the formal close of the inquiry on April 26, advanced several reasons why I should disregard certain assertions made in the Ministry's reply to the applicant's case.

The Ministry, in turn, has advanced certain arguments as to why I should disregard the applicant's further submission. I should note that in neither instance did the parties to this inquiry seek leave from this Office to deposit further submissions. Both are clearly beyond the time limits set out in the Act for completion of the inquiry and are also contrary to the policy of this Office and the written schedule of submissions set out in the Notice of Inquiry. However, I have the jurisdiction to receive, in accordance with the principles of administrative fairness, additional submissions or evidence where justice so demands.

On June 2, 1996, as I was preparing to release this Order, I received two more submissions from the applicant asking me to postpone the two inquiries that he has before me in order to conduct an investigation at his urging. I find no reason to do so.

In the present matter, I have reviewed all of the late submissions of the applicant and the Ministry and determined that they are not germane to my decision in this particular inquiry.

## **9. Discussion**

### *The exit survey questionnaire*

As part of this inquiry, I have had an opportunity to review the exit survey questionnaire in use in this Ministry, and I wish to comment on it. I first reviewed the covering letter signed by a personnel assistant to any individual leaving the employ of the Ministry. It reads in part:

The information you provide can be kept confidential (within the provisions of the Freedom of Information and Protection of Privacy Act) if you prefer, but it will be more useful if it can be shared with the Assistant Deputy Minister in your division. Please note that there is room on the questionnaire ... to indicate your preference for confidentiality.

In my judgment, someone who fills out this form, in person or over the telephone, should have an explicit right to confidentiality for all of the information that he or she is asked to provide, not least because question 11 asks about workplace conditions, including whether "you were ever subjected to harassment or discrimination by your colleagues or someone holding a position above your position level?" Two lines are provided to provide additional explanation about this sensitive matter. Another question asks what the individual liked least about his or her job.

Questions 26 and 27 raise some further concerns about the protection of privacy. At present, they read:

26. Can the information in this questionnaire be shared with the appropriate management staff so that changes can be made or considered?
27. Can the information in this questionnaire be shared with the Employment Equity Steering Committee?

In my view, only questions 9, 10, and 16(b) on the survey are directly responsive to the concerns of employment equity addressed in question 27. From a privacy perspective, it would be inappropriate to share the complete, identifiable questionnaire with the Employment Equity Steering Committee. I also question why management staff require the completed questionnaires in identifiable form to make “changes.” In fact, it seems likely that the Personnel Assistant could readily strip off the name of the respondent, which is the only identifier in the survey itself, before allowing the information in it to be used for either administrative or statistical purposes. My views on this matter are reinforced by the applicant’s claim that there are 16 members of the Employment Equity Steering Committee and four staff in the Personnel Branch, if I have understood his figures correctly. (Submission of the Applicant, pp. 5, 6) There is no possible need for identifiable exit surveys to be given such wide circulation.

Fortunately, the Ministry states its practices as follows in this regard:

The policy and practice within the Personnel Branch is to keep the Exit Surveys in strict confidence, and if a respondent consents, the information is shared only to the extent necessary for the purpose of carrying out or considering changes in the workplace, and if necessary for the employment equity program. Furthermore, in these circumstances, the Exit Survey is only shared with the Employment Equity Advisor (who directs the Public Body’s Employment Equity Program), and/or the appropriate assistant deputy minister. Note: this has only happened on rare occasions and is definitely not done routinely .... The Exit Survey information remains confidential in the hands of these individuals. In fact, because of the sensitivity of the information, the Employment Equity Advisor does not even share it with other members of the Employment Equity Steering Committee. Individual Exit Surveys are never circulated or discussed at the meetings of the Employment Equity Steering Committee. (Submission of the Ministry, paragraph 5.26, and Affidavits of Lynn Elwell and Jennifer Webb)

I commend those responsible for crafting and following such careful procedures with respect to the protection of sensitive personal information.

In essence, the Ministry needs to clarify the purposes of this survey before it is used for further exit interviews. I encourage the Ministry to stop collecting exit survey data until these matters have been clarified. My preference is for the data to be used only for research and statistical purposes and not administrative purposes in order to preserve the principle of functional separation. This principle is fully discussed in George T. Duncan, Thomas B. Jabine, and Virginia A. de Wolf, eds., Private Lives and Public Policies: Confidentiality and

Accessibility of Government Statistics (National Academy Press, Washington, D.C., 1993), pp. 4-6, 34-5, 50, 53-4, 134, 135, and 223. (See Order No. 3-1994, February 23, 1994, pp. 4, 6-7)

The applicant noted that more than ninety percent of 37 respondents answered “yes” to both questions 26 and 27. (Submission of the Applicant, p. 4) I find that fact irrelevant to the points that I have made in this discussion; in my judgment, such consent was not appropriately informed under the Act. The Ministry states that the exit survey “is entirely voluntary, and respondents to the survey are asked whether they want the survey kept completely confidential ....” (Submission of the Ministry, paragraph 104) I found no explicit information about voluntariness on the covering letter or the survey itself; this should be remedied. I have already indicated that the availability of complete confidentiality should also be made more explicit and, indeed, facilitated by making it possible for the contents of surveys to be anonymous.

### ***What the applicant wants to know***

The applicant identifies himself as a long-term employee of the Ministry “with a personal interest in social justice,” including employment equity and personal harassment. For this purpose, he believes that he needs to know the details of exit survey interviews. My response is that he has received exactly those details in the records requested, (minus unique identifiers), that are relevant to his concerns. This is responsive to his concern for a more open and accountable government. The other side of the Act, however, is concern for the privacy of those who filled out the exit interviews. Under section 22(1), disclosure of the identifiable information would be an unreasonable invasion of the personal privacy of third parties. (See Submission of the Applicant, paragraph 5.03) The applicant claims that respondents were informed that their information would be shared with management: in his view, “all respondents had fully evaluated potential harm or benefit to them by their decision to reply to 27 questions of the questionnaire.” (Submission of the Applicant, p. 5) With respect, I disagree with this statement.

### ***Section 22: Disclosure harmful to personal privacy***

The Ministry submits “that the information in dispute is information which could reasonably be expected to permit the Applicant to identify the respondents of the Exit Surveys, and therefore this is clearly the personal information of third parties, the disclosure of which is presumed under the Act to be an unreasonable invasion of the third parties’ personal privacy.” (Submission of the Ministry, paragraph 5.11)

The Ministry particularly cites sections 22(3)(d) and (g) of the Act in this regard. (Submission of the Ministry, paragraphs 5.13-5.20) It also argues that sections 22(2)(f), (g), and (h) are “highly relevant” in this case in considering the application of section 22(3) as cited. (Submission of the Ministry, paragraphs 5.21-5.30) I agree with the Ministry on both points.

I find that disclosure of the severed personal information is prohibited by section 22 of the Act as an unreasonable invasion of the privacy of the third parties. I also find that the applicant has not met his burden of proof under section 22 of the Act.

**10. Order**

I find that the head of the Ministry of Agriculture, Fisheries and Food was required to refuse access to the information withheld under section 22 of the Act. Under section 58(2)(c), I require the Ministry to refuse access to the records requested by the applicant.

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David H. Flaherty  
Commissioner

June 6, 1996