

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 60-1995
October 31, 1995**

INQUIRY RE: A refusal by the Vancouver Police Department to disclose records of registered handgun owners in the City of Vancouver to the Kitsilano News

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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 August 3, 1995 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 Russ Francis (the applicant), of the Kitsilano News, of a decision by the Vancouver Police Department (VPD) to refuse access to records of registered handgun owners in the City of Vancouver.

The applicant requested the records on April 11, 1995. The Police Department responded on April 28, 1995 by refusing access to the records under sections 15(1)(e), (j), and (k) and 19(1) of the Act. The applicant's request for a review of this decision arrived in the Office of the Information and Privacy Commissioner (the Office) on May 8, 1995. The ninety-day time limit for completing an inquiry in this review began on that date and expired on August 7, 1995.

2. Documentation of the inquiry process

On July 8, 1995 the Office issued an advance Notice of Inquiry and, on July 17, 1995, a formal Notice of Written Inquiry. Initial submissions were due on July 28, 1995 and final submissions on August 3, 1995.

On July 19, 1995 the Police Department notified the applicant and the Office that it was also applying section 22(1) of the Act to the records. Deadlines for submissions remained the same, since the applicant indicated that he could accommodate the burden of arguing section 22(1) within the original time frame.

3. Issue under review at the inquiry

This inquiry centres around the applicability of sections 15(1)(e), (j) and (k), 19(1), and 22(1). The applicant also raised section 25(1)(b). These sections read in appropriate part as follows:

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

...

(e) endanger the life or physical safety of a law enforcement officer or any other person,

...

(j) facilitate the commission of an offence under an enactment of British Columbia or Canada, or

(k) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

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, or

(b) interfere with public safety.

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,

(b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,

...

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

...

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

....

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

...

(i) the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a public body, not including personal information supplied in support of the application for the benefit, or

....

Information must be disclosed if in the public interest

25(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

...

(b) the disclosure of which is, for any other reason, clearly in the public interest.

4. The records in dispute

The records in dispute consist of approximately 40,000 certificates issued for restricted weapons, of which handguns are a type. The certificates, which are in alphabetical order, contain the name of the owner, the owner's home address, and a description of the restricted weapon.

5. The applicant's case

The applicant wants to know, "in the public interest," which elected officials and other public figures own guns and the extent of legal handgun ownership in the City of Vancouver. He has no interest in publishing the addresses of such owners but requires access to them to confirm identities. In his view, section 22(4)(i) of the Act permits disclosure, since each permit is a "licence, permit, or other similar discretionary benefit granted to the third party by a public body." He does not seek information supplied in support of the application for a permit.

The applicant emphasized that the Kitsilano News has no wish to threaten individual and public safety, as prohibited by section 19 of the Act: "Were I to believe that a single death, injury or serious criminal offence would occur as a result of the release of the records I am seeking, I should immediately withdraw my request. I do not believe such an occurrence would follow the release."

6. The Vancouver Police Department's (VPD) case

The police made their public safety arguments under both sections 15 and 19 of the Act. According to the police, the risks of disclosure of the records in dispute are increased theft of such handguns, their increased use to cause serious physical harm or death during home break-ins, and greater threats to the safety of law enforcement officers and the public generally. In 1993, 99 such guns were reported stolen in Vancouver in 80 incidents. In the same year, 217 of the 220 restricted weapons seized or recovered by the police in Vancouver were handguns. In the

same year, the police seized or recovered 189 weapons in relation to violent incidents. (Submission of the VPD, pp. 4-6; Affidavit of Inspector David H. Jones, paragraphs 3, 5, and 6)

7. Discussion

The public interest in disclosure

The applicant's view of the spirit of the Act is that "unless there is a strong public benefit to withholding records, they should be disclosed - even if there has been an inviolate, traditional secrecy around them." This is only partially true, since the spirit of the Act is also embodied within its exceptions. In other words, there are legitimate exceptions in the Act, and disclosure is not always in the public interest.

The applicant also tried to argue for mandatory disclosure in the public interest under section 25(1)(b) of the Act. I do not find any public interest favouring disclosure of the records in dispute in this case; in fact, I believe there is a considerable public interest in non-disclosure for reasons pursued further below.

The records in question: Restricted Weapon Registration Certificates

These records are located in a national database maintained by the Firearms Registration and Administration Section of the Royal Canadian Mounted Police (RCMP). The Vancouver Police Department has a copy of approximately 40,000 certificates issued for restricted weapons. They are not in a computerized database. Each certificate lists the name of the owner, his or her home address, and a description of the restricted weapon. They are kept in alphabetical order in a manual format. (Submission of the VPD, pp. 2-3)

Section 15: Disclosure harmful to law enforcement

The Vancouver Police relied on sections 15(1)(e) and (j) to justify its refusal to release records identifying owners of handguns. I have no difficulty accepting the argument that identifying owners of handguns and the guns held by them could increase the risk of their theft, thus possibly facilitating the commission of an offence, and thus possibly endangering the physical safety of law enforcement personnel and other persons. (Submission of the VPD, pp. 9-11)

Section 19: Disclosure harmful to individual or public safety

In this connection, the police emphasized that disclosure of who owns handguns increases the risk that they will be targets for thieves, resulting in greater risk of violent crimes occurring and of police themselves being at risk during street checks. (Submission of the VPD, pp. 1, 8)

The reality in a case of this sort is that release of the records in dispute to the applicant, a print reporter, would be to release them to the public. The applicant's stated concerns about public safety would be lost if such records indeed reached the public domain.

Under section 19(1)(a) and (b), I accept the argument of the Vancouver Police Department that disclosure of the records in dispute could reasonably be expected to threaten the safety and health of specific persons and also interfere with public safety. (Submission of the VPD, pp. 7-9) This finding is in accord with my choice of prudence in such matters, as expressed in my Order No. 28-1994, November 8, 1994, p. 8.

Section 22: Privacy considerations

In support of his public interest argument, the applicant cited the example of Mayor Philip Owen of Vancouver, a strong advocate of strengthened gun controls: "If it should turn out, for instance, that he owns a vast arsenal of restricted weapons, this would be of overriding public interest, reflecting on his credibility as an elected official."

The police responded by noting that there is no authority under the Act to select public figures for particular scrutiny of this sort. (Submission of the VPD, p. 3) From a privacy perspective only, I find that these same public figures, who may have chosen to possess licensed firearms, have at least as great a privacy interest as members of the general public in keeping such information confidential.

I agree with the position of the Vancouver Police Department that "a person intending to acquire a handgun might have any number of personal reasons for wishing this fact not to become publicly known." (Submission of the VPD, p. 6) It might even discourage some persons from acquiring handguns legitimately through a registration process that is tightly controlled. (Submission of the VPD, p. 9)

I accept the arguments of the Vancouver Police Department to the effect that disclosure of information about registered owners of handguns would be an unreasonable invasion of their personal privacy. (Submission of the VPD, pp. 11-13) This section 22 argument is especially strong with respect to the risks of unfair exposure of an individual to harm (section 22(2)(e)) and the fact that disclosure will not promote public health and safety (section 22(2)(b)).

With respect to the applicant's effort to rely on section 22(4)(i) to authorize disclosure of a discretionary benefit granted to an individual by a public body, this section has no application in the current case, because the issuance of handgun licences is in the hands of the RCMP, which is not a public body under the British Columbia Act.

8. Finding and Order

I find that the Vancouver Police Department is authorized to refuse access to the records in dispute under sections 15, 19, and 22 of the Act.

Under section 58(2)(b) of the Act, I confirm the decision of the Vancouver Police Department to refuse access to the records in dispute to the applicant.

October 31, 1995

David H. Flaherty
Commissioner