

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 75-1996  
January 4, 1996**

**INQUIRY RE: A refusal by the City of Surrey to provide bonus information about two management employees to the Canadian Union of Public Employees (CUPE), Local 402**

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**1. Introduction**

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner in Victoria on October 16, 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 the Canadian Union of Public Employees (CUPE), Local 402 of a decision of the City of Surrey (the City) to deny access under section 17(1) of the Act to the bonus percentage information in the contract agreements with the City Manager and the General Manager, Parks and Recreation.

On September 27, 1995 the Office issued a Notice of Written Inquiry to the applicant, the City, and the Municipal Officers Association of British Columbia as an intervenor. The City was represented by Donna B. Kenney, City Clerk/Head. The intervenor was represented by Margaret K. Warwick, President.

**2. Issue under review**

This inquiry concerns the application of section 17(1) of the Act to the bonus percentage information in the contract agreements between the City and the third parties. The relevant section of the Act reads as follows:

***Disclosure harmful to the financial or economic interests of a public body***

17(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of

British Columbia or the ability of that government to manage the economy, including the following information:

- ...
- (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;
  - (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;
  - (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
  - (e) information about negotiations carried on by or for a public body or the government of British Columbia.

Under section 57(1) of the Act, at an inquiry into a decision to refuse an applicant access to all or part of a record, it is up to the public body to prove that the applicant has no right of access to the record or part thereof. In this case, the City of Surrey has to prove that CUPE has no right of access to the information in dispute under section 17(1).

### **3. The records in dispute**

The specific information that is in contention is the amount of the performance bonus percentage to be paid by the City to two individuals, as described in their contracts with the City. This information was severed from the records which were disclosed to the applicant.

### **4. CUPE's case as the applicant**

CUPE's analysis of the City of Surrey's position is "that the release of the severed information could harm the financial or economic interests of the City, or in other words create a competitive disadvantage in their efforts to hire staff for the positions these two individuals hold." CUPE's minor point in favour of disclosure of the information in dispute is that the contracts of these two persons do not expire for some years to come, "so unless they resign or are terminated the release of this information does not create any financial or competitive disadvantage for the City."

CUPE's major point in favour of disclosure is the public's right to know how its tax dollars are being spent on the services they receive: "We would argue that fixed yearly wages of all bargaining unit (union) employees are well known through the collective agreement and that exempt employees should be treated no differently."

CUPE uses the specific example of budget cuts in a particular service centre managed by one of the two exempt employees. Depending on the performance objectives in his contract, this

person can enjoy personal financial gain as a consequence of those cuts, despite what CUPE perceives as inferior levels of service to the public. CUPE argues that the public has a right to know how much this person “gains financially in the execution of his duties.” It wants to know his percentage bonus and the basis of the calculation of the dollar amount. According to CUPE:

The taxpayer must know how much money is going into their employees’ pockets to assess whether they are getting full value for their dollars and at the very least have an informed say through their elected councillors.

## **5. The City of Surrey’s case**

The City is relying on section 17(1) of the Act to prevent disclosure of the information in dispute:

The City of Surrey maintains that its ability to negotiate specific items of a contract, in confidence, is an essential requirement for a public body in order to obtain the best employee or contract for a job. To publicize these details would hamper future contract negotiations with other parties and would, therefore, restrict the ability of the local public body to manage the administration, concerns, and resources of a community effectively and economically.

The use of contracts for senior management is part of a new management system to encourage top performance for all employees. One of the employees in this review is currently the only senior manager employed on a contract basis. The City wants to be able to negotiate separately “with each key employee ... for this system to become effective and economic.” If bonus amounts become public knowledge, then future managers will be attempting to achieve at least the current rate for an equivalent position, thus compromising the City’s negotiating position. City Council and the City Manager have to continue to be able to make offers in confidence:

The harm in releasing this information is that a person would have the ability to see what bonus benefits are offered before they would even consider applying for a position. Currently, no one can see what other non-contract employee bonus benefits are, so why should they be permitted to see what the contract employee bonus benefits are?

The City explains that the bonus information in dispute is in fact only an annual increment. It sets aside an amount equivalent to the increment negotiated by CUPE for its members and then specific exempt staff are awarded a proportionate amount from that pool, “depending on how successfully they have met their objectives.” The amount received is included in the gross salary of the individual in the annual report of the City’s finance department.

## **6. The Municipal Officers’ Association of B.C.’s case as an intervenor**

The Municipal Officers’ Association only addressed the general policy considerations that arise under section 22(4)(e) and (f) of the Act, not the merits of this particular inquiry. It

“believes that public bodies should be careful in each case to disclose only the bottom line remuneration and benefits of a municipal officer,” not personal information of a sensitive nature, such as marital status or a medical condition. According to the Municipal Officers’ Association, the goal is to prevent an unreasonable invasion of the personal privacy of a municipal officer.

## **7. Discussion**

### ***The “Confidentiality Clause” in the employment contract***

One of the exempt employees has the following clause in his contract:

Except as required by law, in the ordinary course of business, or for the purposes of implementation or enforcement of this agreement, the District will use its best efforts to ensure that the terms of this Agreement are not disclosed to anyone other than an officer or elected official of the District.

The City feels obligated to respect that statement. I note simply that the *Freedom of Information and Protection of Privacy Act* now applies to such agreements. See Order No. 46-1995, July 5, 1995, p. 5.

### ***Management benefits in the City of Surrey***

The City presented me, as Schedule A of its submission, with a printed brochure concerning additional benefits provided to exempt/management employees of the City. This document reveals at page 18 that the salary of a manager upon appointment is based on stated criteria, including “availability in the market.” Moreover, the guidelines for performance-based annual salary changes are also set out in explicit detail using both descriptive terms (excellent, exceeded expectations, etc.) and percentage amounts to correspond with such categories and whether or not a person is at or above maximum salary awards already. In contrast, the bonus percentages at stake in this inquiry were negotiated on an individual basis. CUPE argues that the City’s reluctance to release this bonus information is “because the bonuses must exceed those allowed” under the rules just cited.

### ***Section 17(1): The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy***

Although it is not finally determinative of the application of this section, the basic exception set out in section 17(1) is elaborated in five subordinate sections. I find that none of these accurately describe the information in dispute in this review (which is a specific bonus rate). In particular, it is not financial information that belongs to a public body that has, or is reasonably likely to have, monetary value. It is also not information about negotiations carried on by or for a public body but specific factual information in a contract that was the result of such negotiations.

In my opinion, this section protects information about ongoing or completed negotiations with, for example, unionized or excluded employees rather than information contained in agreements reached as a result of such negotiations. Thus Surrey would have the right to protect its negotiating position with a manager or a union, but not the terms of a contract.

I do not agree with the City that the information in dispute “relates to specific and ongoing negotiations between the City” and the two senior managers involved and that disclosure could “harm the financial or economic interests of the City with respect to these ongoing negotiations.” The evidence submitted by the City does not support this position.

Order No. 1-1994, January 11, 1994, dealt with the application of section 17. I noted there that it can only be applied to information in dispute on the basis of evidence of harm. I find that the City of Surrey has not met the burden of proof of the harm that could occur to it in the case of the information in dispute in this particular inquiry, especially since the specific bonus details of the employment contracts are already in place for a fixed period of time, ending in both cases in 1999. Surrey’s projected fears of harm are speculative and not concrete. I am not persuaded that disclosure of the information in dispute in this case could reasonably be expected to harm the financial or economic interests of the City of Surrey.

## **8. Order**

I find that the City of Surrey was not authorized under section 17(1) of the Act to refuse access to the information in the record in dispute. Under section 58(2)(a) of the Act, I require the City to give CUPE, Local 402 access to the requested information.

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David H. Flaherty  
Commissioner

January 4, 1996