

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 69-1995  
December 13, 1995**

**INQUIRY RE: A decision by the District of Squamish to refuse access to the addresses of electors contained in a List of Registered Electors**

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**1. Introduction**

As Information and Privacy Commissioner, I conducted a written inquiry on September 15, 1995 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of the applicant's request for review of the decision of the District of Squamish (the District) to refuse access, under section 22(1) of the Act, to addresses of individual electors contained in a List of Registered Electors.

**2. Documentation of the inquiry process**

The applicant submitted a request on May 18, 1995 for access to a "copy of list of electors with addresses of electors as the statement by Clerk R. Miles declares." The District wrote to the applicant on June 9, 1995 to acknowledge receipt of the request and to refuse access to part of the records. It severed the addresses of all electors listed in the records and provided access only to the names listed therein. The applicant wrote to the Commissioner on June 16, 1995 for a review of the District's decision to refuse access to part of the records.

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

The District of Squamish acted in the first instance to refuse access under the terms of section 63 of the *Municipal Act*. Thus the first question before the inquiry is the relationship of the *Municipal Act* and the *Freedom of Information and Protection of Privacy Act*.

The second issue at stake in this inquiry is the application of section 22 of the latter Act to the personal information contained in the District's list of voters. Is the District required to deny the applicant access to the addresses of registered electors in the District, because

disclosure of this information would be an unreasonable invasion of the third parties' personal privacy?

The relevant portions 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
- (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,
  - (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
- ...
  - (i) the personal information consists of the third party's name, address or telephone number and is to be used for mailing lists or solicitations by telephone or other means.
  - ...

Under section 57(2) of the Act, the burden of proof is on the applicant to prove that disclosure of the addresses of electors to him would not be an unreasonable invasion of their personal privacy.

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

The records consist of a computer-generated list of data arranged in six columns: voter number; name (alphabetically by surname, followed by all given names); street address; city; elector type (whether resident or property owner); and a provincial voter ID number. The list provided to the applicant contained only three columns: voter number; name of elector; and elector type.

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

The applicant wants the full list of electors for the District of Squamish. He is not satisfied with the list minus addresses. In his view, section 22(1) of the Act does not apply and portions of section 22(2) (discussed below) favour disclosure. Moreover, he argues that the changes to the *Municipal Act* concerning non-disclosure of addresses of electors are not well enough known and need to be examined before the next municipal elections.

#### **6. The District of Squamish's case**

The applicant was a candidate in the District's municipal by-election on June 10, 1995. He received a copy of the list of electors for electoral uses under Part 2 of the *Municipal Act*. The District removed the addresses of electors "for privacy reasons," as authorized by section 63(10) of the latter Act. The applicant then sought the full list of electors under the *Freedom of Information and Protection of Privacy Act*. The District refused this request under section 22(1) of the Act.

I have discussed the basic elements of the District's case in appropriate detail below.

#### **7. Discussion**

##### ***The Municipal Act, Part 2***

Part 2 of the *Municipal Act* sets out "a comprehensive and exhaustive legislative framework for the inspection, receipt and use of the list of registered electors." (Submission of the District, p. 2) Section 36.1, which was given royal assent on June 21, 1995, sets out a notwithstanding clause:

36.1. To the extent of any inconsistency or conflict with the *Freedom of Information and Protection of Privacy Act*, Parts 2 and 3 of this Act apply despite that Act.

This notwithstanding clause only becomes operative if there is "any inconsistency or conflict" between the two pieces of legislation. It is my view that none exists in the present case and that both Acts apply.

Section 63 of the *Municipal Act* concerns the list of registered electors. It must contain both the names and addresses of resident electors or non-resident property electors. A person

seeking to inspect the list “must sign a statement that the person will not inspect the list or use the information included in the list except for the purposes of this Part.” A person nominated as an election candidate has a right of access to the list under similar controlled conditions (subsection 8). Furthermore,

63(10) The chief election officer may amend a list of registered electors that is to be provided under subsection (8), or that is to be available for public inspection, by omitting or obscuring the address of an elector or other information about an elector in order to protect the privacy or security of the elector.

(11) If requested by an elector, the chief election officer must amend a list of registered electors as authorized by subsection (10) in relation to the information regarding the elector.

Section 63(11), which is mandatory, is especially progressive from the point of view of promoting informational self-determination by an individual. Registered electors, especially vulnerable persons, deserve to be more fully aware than they currently are of this particular provision of the *Municipal Act*.

Although section 78(1) of the Act has now been repealed, it is clear to me that the detailed requirements of the *Municipal Act* apply in the present case (which is the basic position of the District), because they are much more refined than the *Freedom of Information and Protection of Privacy Act* for electoral purposes. (Submission of the District, pp. 2, 3, 5) These revisions to the *Municipal Act* incorporate a customized set of fair information practices in a manner that I fully support. I find that they are consistent with the provisions of the *Freedom of Information and Protection of Privacy Act*.

These electoral practices are applied by a local official, the chief election officer. In the present inquiry, she amended the list of registered electors, as authorized by section 63(10) of the *Municipal Act*, “by omitting the addresses of all electors in order to protect the privacy and security of the electors.” (Affidavit of Trudy Coates, paragraphs 7, 8) Because the applicant made a request under the *Freedom of Information and Protection of Privacy Act*, it was her determination that “because other means for objection to registration of electors or verification of electors’ registration were available, disclosure of these addresses to the applicant would be an unreasonable invasion of third parties’ personal privacy.” (Affidavit of Trudy Coates, paragraph 11) I defer to her judgment on this matter.

Although the applicant claims that these new provisions in the *Municipal Act* make it difficult for him to determine the residency of electors, “the District submits that the inclusion of subsections (9), (10), and (11) in 1994 expressly recognized the third parties’ right to privacy of personal information, and that these goals must be paramount to the ability to make an objection to the list of registered electors.” (Submission of the District, p. 4)

***The applicable provisions of the Act***

***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 he needs the addresses of electors in order to subject the District of Squamish to public scrutiny, since an election is an activity. I agree with the District that the *Municipal Act* provides sufficient alternative statutory means and practices to achieve that goal. (See Affidavit of Trudy Coates, paragraphs 8, 9)

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

The applicant believes that release of the disputed information is relevant to a fair determination of his rights, since, as a candidate in a local election, he wants to ensure that only eligible persons can vote. The District's response, with which I concur, is that the procedures outlined in Part 2 of the *Municipal Act* are sufficient to allow appropriate vindication of the applicant's rights. (Submission of the District, p. 6; Affidavit of Trudy Coates, paragraph 11) This can occur during a statutory viewing period for the full records or, on election day, at the poll.

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

The applicant states that no harm will come to third parties from the requested disclosure. I find that the chief election officer of the District exercised appropriate authority in making the determination that release of the addresses would threaten the privacy and security of electors under the *Municipal Act* and would be an unreasonable invasion of their privacy under the *Freedom of Information and Protection of Privacy Act*.

***Section 22(2)(f): The personal information has been supplied in confidence***

The applicant asserts that the personal information in question has not been supplied in confidence, because the District can release the information under the *Municipal Act* if it wishes to do so. While I agree that the information has not been supplied in confidence in the traditional sense of that term, disclosure of such information is now specifically governed by sections 63(10) and 63(11) of the *Municipal Act*, and the District had the authority to act as it did in the present matter.

***Section 22(2)(g): The personal information is likely to be inaccurate or unreliable***

The applicant states that the address information in dispute is likely to be accurate and reliable. While this statement is no doubt true, the decision on further disclosure is now governed by the provisions of section 63 of the *Municipal Act*.

***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 is of the view that disclosure of the information requested will not damage the reputation of any person referred to in the records. This particular argument seems to me to be irrelevant to the focus of the present inquiry.

***Section 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***

The District's position is that disclosure of the personal information in dispute in this inquiry would be an unreasonable invasion of personal privacy for electors. (Submission of the District, p. 5) Given this view, the burden of proof necessary to overcome this presumption rests on the applicant under section 57(2) of the Act, which the District argues that he has not done.

I agree with the District's submission on section 22 of the Act, but I find that it is not primarily determinative in this case, given the specificity and prevailing force of sections 36.1 and 63.10 and 63.11 of the *Municipal Act*. I choose to defer to the later and more precise instructions of the Legislature on this matter in the revisions to the *Municipal Act*.

I uphold the decision of the District under both the *Municipal Act* and the *Freedom of Information and Protection of Privacy Act* that disclosure of the addresses of its electors to this particular applicant would be an unreasonable invasion of their privacy.

## **8. Order**

I find that the provisions of the *Municipal Act* apply to authorize the District of Squamish to refuse access to the records in dispute. I also find, under section 22(1) of the Act, that it would be an unreasonable invasion of personal privacy of third parties for the District to disclose the records in dispute to the applicant, and that the District was required to refuse access.

Under section 58(2)(b) of the Act, I confirm the decision of the District of Squamish to refuse access under section 63 of the *Municipal Act*. Under section 58(2)(c) of the Act, I require the District of Squamish to refuse access to the records in dispute to the applicant under section 22.

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David H. Flaherty  
Commissioner

December 13, 1995