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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 43-1995
June 9, 1995

INQUIRY RE: A request for access to a letter from a third party responding to a complaint to the Town of View Royal

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1. Description of the review

As Information and Privacy Commissioner, I conducted an oral inquiry at the Office of the Information and Privacy Commissioner in Victoria on June 6, 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 made by the applicants of a decision of the Town of View Royal (the public body) not to release a letter written by a third party to the Town of View Royal, which mentioned the applicants.

On February 8, 1995, one of the applicants requested that the Town of View Royal provide him with a copy of the third party's letter to the Town, together with its attachments. The letter was written by the third party to the (then) Building Inspector for the Town of View Royal in reply to his letter to her. Although the attachments to this letter formed part of the original request, the applicants are no longer interested in them since the attachments do not mention them. After consultation with the third party, the Town replied to the applicants on March 3, 1995 refusing access to the letter under sections 22(1) of the Freedom of Information and Protection of Privacy Act. The basis for its decision is that the letter was submitted in confidence and its disclosure might unfairly damage the reputation of any person referred to in the record (the circumstances set out in sections 22(2)(f) and (g) of the Act).

The applicants requested that this Office conduct a review of the public body's decision on March 9, 1995. The notice of inquiry was distributed on May 16, 1995.

2. Documentation of the inquiry process

Under section 56(3) of the Act, the Office invited representations from the applicants, the public body, and the third party. The Office provided all parties with a Portfolio Officer's fact report (the fact report) outlining the agreed facts of the case, which was accepted by the parties as accurate for the purpose of conducting this inquiry.

All parties made representations at the oral inquiry. The applicants represented themselves, while the Town of View Royal was represented by Heinz Burki, Clerk/Administrator and Head for Freedom of Information and Protection of Privacy, and Trish Flanders, the Information and Privacy Coordinator. The third party was represented by her lawyer, Gurmail Manhas.

3. The record in dispute

The record in dispute is a letter written on May 6, 1994 by the third party to the Building Inspector for the Town of View Royal, in reply to a letter he had sent to her. The letter in dispute is not about the applicants but mentions them.

4. Issue under review at the inquiry

This inquiry concerned the application of the following sections of the Act, which read in appropriate part 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

> ....
>
> (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.

For the purposes of section 22, section 57(2) of the Act places on the applicants the burden of proving that the release of the record in question would not be an unreasonable invasion of the personal privacy of the third party.

5. The applicants' case

One of the applicants viewed the letter in dispute when he made a personal inquiry at the office of the Town of View Royal about sewer services to a strata title area where he, his wife, and the third party are owners of two of the seven units. When he saw the references to himself and his wife in the letter, he asked for a copy and was refused, after a new clerk consulted with others. Because he was shown the letter and because "several" other people had read it, he regards the letter as "in the public domain." He also regards the first statement about himself and his wife in the letter as "false."

It is the applicants' submission that the Town did not treat the letter as personal or confidential, because it showed the text to the husband. Since it contains personal information about the applicants, they want "such information" released to them.

The applicant pointed out that Schedule 1 of the Act defines personal information that a person has a right to protect from disclosure, but the definition excludes:

(i) the individual's personal views or opinions, except if they are about someone else;

The applicants state that they are the "someone else" that the third party has commented on, and they wish access to the information.

6. The Town of View Royal's case

The Town (population 6,300) explained that the letter in dispute originated in the context of a sundeck that the third party built at her home in April 1994. The Town subsequently received a phone call from one of the applicants at the end of the month concerning the new deck. The Town also received a complaint from another individual, which it read and returned. The Town then wrote to the third party "advising her of complaints received." It followed its customary practice of not releasing the names of the complainants to her. The Town testified that it was unaware of an ongoing dispute among some strata owners or residents, when it wrote to the third party.

When the third party spoke with the Town about the verbal and written complaint, she assumed that the current applicant was the verbal complainant, because of their previous strained relationship. After the third party sent the letter in dispute to the Town, she telephoned to ask that it be "dealt with in confidence."

According to the Town, the letter in dispute was inadvertently shown to the applicant by a new staff member who "was unaware of the situation. [The husband] had no business reading correspondence contained within the property file for [the residence of the third party]."

The Town has consistently refused to release the letter in dispute to the applicants, stating that it received the letter in confidence. It also testified that it refused release "as a courtesy" to the third party.

7. The third party's case

The third party explained in considerable detail the history of her strained relations with the applicants after she returned to live at her property in July 1993, and the applicants were involved with the strata council. She described the interactions with certain of her neighbours and council members, including the applicants, as "an intrusion on her life" and an "invasion of privacy."

The third party stated that the letter in dispute was written by her in response to a request from the Town, that she intended it to be personal and confidential, and that she would not otherwise

have written it. The dispute over the sundeck subsequently disappeared once the Town inspected it.

The third party's legal argument revolves around the claim that disclosure of the letter in dispute would be an unreasonable invasion of her privacy under section 22 of the Act. She relied on sections 22(3)(b), 22(3)(f), and 22(3)(g.1) of the Act.

In particular, the third party pointed out that she might have suffered "negative consequences" if she had failed to respond to the notice of complaints from the Town. She intended her letter to be kept in confidence. Had she been aware that an inquiry under the Act might arise in the present case, "then the most desirable and preferable choice would clearly have been oral communication. She submitted that the consequences of disclosure in the present case would lead to a 'chilling' of communication between citizens and public bodies."

The third party submitted that this inquiry process is being used in this instance "to invade the privacy of a private citizen" and "as a tool in what are essentially private right interests of two neighbours." She believes that this inquiry is not a proper forum "for the adjudication of relationships between private parties."

In her oral testimony, the third party added that release of her letter would only escalate local disputes at her strata. She has no physical fear of the applicants but is concerned about the possibility of their continued harassment of her and her neighbours, especially through the use of lawyers.

8. Discussion

The context for this neighbourhood dispute

The seven unit owners in this particular strata have had tangled interpersonal relations for the last several years, a situation that the third party attributes to the behaviour of the applicants. She attributes the lack of peace and privacy in this intimate neighbourhood in considerable measure to their roles on the strata council and as fellow residents. The hearing focussed, for the most part, on the request for access to the letter in dispute rather than the recriminatory atmosphere in which life in this strata is being led. Obviously, I have no position to take on the lack of harmony in this particular locale.

Material in the public domain

One of the issues raised by one of the applicants is that the letter in dispute is already in the public domain, because, early in 1995, he was shown a copy by an inexperienced clerk for the Town of View Royal. I wish to note that a record under the Act may be leaked to the media, published in a newspaper, circulated in photocopies, or be shown to a subsequent applicant. But a subsequent request for access to the same record, if one were to occur, would have to be treated like any other access request and processed under the relevant terms of the legislation. Of course, if a record is truly in the public domain, in the sense of existing in multiple copies with no

controls on their re-dissemination, then an access request is unnecessary. However, the letter in dispute in the current inquiry is not in the public domain in that sense.

The need for a written policy on the handling of complaints

The Town of View Royal was incorporated in 1989 out of the Capital Regional District. Its policy is to require two complaints before it investigates a matter. Furthermore, its policy is not to release the names of complainants, although this is not documented in written form. The Town further explained that this particular complaint did not deal with a by-law enforcement matter, but a building permit, thus distinguishing this subject matter from my Order No. 39-1995, April 24, 1995 dealing with the City of Langley. The Town states that its handling of this complaint was typical of similar occurrences. Such letters of complaint, or responses to complaints, are not normally available to others at a public counter.

In terms of my previous orders favouring disclosure of certain types of complaint letters to public bodies, the crucial distinction in the present inquiry is that the letter in dispute is not a complaint but a response to a complaint, which was essentially mandatory in character. The third party's interests might have been adversely affected had she not responded as she did.

Given my finding in previous orders, it would be preferable for the complaint-handling policies of the Town of View Royal to be in writing and in detailed compliance with the provisions of the Freedom of Information and Protection of Privacy Act, including the standard process for the confidentiality of responses to complaints. Public bodies should also ensure that the public are aware of these policies when individuals submit complaints or are invited to respond to complaints.

The record in dispute

There are five paragraphs in the response letter from the third party to the Town of View Royal. The first, second, and last paragraphs deal with the Town's approval of the deck plan and proposes a way to deal with perceived problems in a constructive way. Unfortunately for her present interests, the third party proceeded to add two long paragraphs to the letter outlining her views of the politics of strata 773, as she calls it. A substantial portion of these paragraphs concerns the activities of the two applicants and how the third party and her neighbours have experienced them and, more recently, responded to them by taking over the strata council.

Had one of the applicants never seen this response letter, he might never have known to ask for the portions that concern him and his wife, as he has now done. However, section 4 of the Act gives them the right of access to this material, because it is personal information about them.

Section 22 and the definition of personal information

I accept the applicants' point that they are entitled to the personal information about themselves in the letter in dispute under the definition of "personal information" in Schedule 1 of the Act.

I find that the applicants have met the burden of proof in this case, since the information of interest to them in the record pertains to them. I also find that the disclosure of those portions would not be an unreasonable invasion of the privacy of the third party, as the information is not about her.

9. Order

Under section 58(2)(a) of the Act, I find that the Town of View Royal is not required to refuse access to the part of the record relating to the applicants. Thus the applicants have a right of access to the information about themselves in the record in dispute. I have prepared a copy of the record, in severed form, that should be released to the applicants.

Under section 58(2)(c) of the Act, I find that the Town of View Royal is required to refuse access to the remainder of the record under section 22(1) of the Act.

June 9, 1995

David H. Flaherty
Commissioner