

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 127-1996
September 24, 1996**

INQUIRY RE: An applicant's request for a review of various decisions made by the City of Vancouver

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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 (the Office) on June 13, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose from an applicant's requests for access to certain records held by the City of Vancouver (the City).

2. Documentation of the inquiry process

The request for review under section 52 of the Act involves three issues: (1) whether the City's efforts to locate a particular file of records requested constituted an adequate search as required by the duty to assist under section 6; (2) whether some of the information in the records requested was properly withheld under section 22; and (3) whether the City violated the applicant's privacy by disclosing some personal information to others. The third issue involves a complaint, which has been addressed in this inquiry because it relates to the applicant's request for access, as contemplated in section 52(1).

The applicant asked the City on September 5, 1995 for "all documents and records relating to Phase II of the Carnegie Centre and Oppenheimer Park Project completed in 1992." On September 8, 1995, he requested various records involving the Vancouver Foundation in which his name is mentioned and records involving the Vancouver Foundation's donations for literacy work at the Carnegie Adult Learning Centre (CALC). The City initially responded on October 4, 1995, after which the two parties exchanged correspondence until this Office opened a file for the applicant's request for review on November 9, 1995. The City withheld some records under section 22 but indicated that other records had been provided, except for those in a file which is missing.

The applicant has asked the Commissioner to “consider and enunciate the principles and practices which ought to apply to searches for records and decide whether the efforts of the City of Vancouver were sufficient to meet its statutory obligations” in respect of “the numerous requests for information that I have submitted to the City of Vancouver over the period September 1995 to February 1996.”

The applicant also complained that the City of Vancouver had disclosed his personal information to the Vancouver School Board (VSB) without his permission. He later expanded this complaint to include the Vancouver Foundation, Carnegie Centre Staff, Carnegie Learning Centre, Carnegie Library Reading Room, Carnegie Community Centre Association Board, and to the Vancouver Police Department. The City addressed the applicant’s complaint, as well as other outstanding issues, on February 5, 1996, and the applicant subsequently confirmed, when he wrote the Office on April 19, 1996 in respect of several issues, his complaint against the City of Vancouver: “...for violating my privacy and reputation. I believe that [a VSB employee] damaged my privacy and reputation when [he] improperly gave out my personal information to the media as well as to various organizations and individuals in 1995.”

3. Issues under review at the inquiry and the burden of proof

The issues under review in this inquiry are the applicant’s allegations of a violation of his personal privacy and the adequacy of the City’s responses to his requests for access.

The relevant sections of the Act are as follows:

How to make a request

- 5(1) To obtain access to a record, an applicant must make a written request to the public body that the applicant believes has custody or control of the record.
- (2) The applicant may ask for a copy of the record or ask to examine the record.

Duty to assist applicants

- 6(1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

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.

- (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,
-

Right to request correction of personal information

- 29(1) An applicant who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or under its control to correct the information.

Disclosure of personal information

33. A public body may disclose personal information only
- ...
 - (c) for the purpose for which it was obtained or compiled or for a use consistent with that purpose (see section 34),
 - ...
 - (f) to an officer or employee of the public body or to a minister, if the information is necessary for the performance of the duties of, or for the protection of the health or safety of, the officer, employee or minister,
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Section 57 of the Act establishes the burden of proof at an inquiry into a decision to refuse access. Where the information sought is personal information of a third party, it is up to the applicant to prove that disclosure would not be an unreasonable invasion of the third party's personal privacy.

The Act is silent on the burden of proof with respect to issues such as the adequacy of a search or complaints about alleged violations of privacy. Since the public body is in a better position to address the issue of the adequacy of a search, I have determined in a number of cases that the burden of proof should be placed on the public body. With respect to the complaint of a privacy violation, I have concluded that, due to the nature of the issues, the burden should be shared by the parties in this case.

4. The City of Vancouver's case

The City identifies the issues to be decided as follows:

1. Whether or not the public body has improperly disclosed personal information within the meaning of the *Freedom of Information and Protection of Privacy Act*, specifically, in the form of two letters dated April 18th, 1995 and June 27th, 1995;
2. Whether or not the public body has met its statutory obligations in conducting a record search in regards to a file known as the “Vancouver Foundation File;”
3. Whether the City had the right to withhold notes of a meeting.

The City agrees that it did share the two letters with the Vancouver School Board (the School Board) but argues that they do not contain personal information as defined in the Act, so it has not improperly disclosed personal information about the applicant. It also offers what it calls “compelling” reasons for sharing the two letters.

These views are supported by an affidavit from the Director of the Carnegie Community Centre, where the applicant was employed in 1994-95. It is operated by the Vancouver School Board, but administration and security are provided by the City. The affidavit contains a detailed description of the applicant’s assigned duties and ensuing developments, including his dismissal, which I see no reason to canvass in detail in this Order, although they do provide additional context for requests for review involving this applicant. (See also Order No. 110-1996, June 5, 1996)

The City also offered affidavit evidence to the effect that it has searched for the Vancouver Foundation file and it cannot be found. The Director of the Carnegie Learning Centre further affirms that he also has not been able to locate this file “despite considerable efforts. The last person to have custody of the Vancouver Foundation file was [the applicant]. It has not been seen in the Carnegie Centre since he was terminated.” (Affidavit of Donald MacPherson, paragraph 13. The applicant denies this allegation. Reply Submission of the Applicant, paragraph 6)

The City essentially concludes its argument as follows:

...the applicant’s requests have been responded to thoroughly and expeditiously. There has been no refusal of access to records which are in the public body’s possession and the City has acted in good faith in responding to this applicant. (Reply Submission of the City)

5. The applicant’s case

The applicant made a 26-page submission, plus 44 pages of appendices, plus 19 pages of appendices on an *in camera* basis. It is his view that the review concerns the invasion of his privacy and the application of sections 5, 6, 22, 29, and 33 of the Act. The applicant provided me with a full narration of his employment relationship with the City and of his efforts to obtain information from the City subsequent to his termination for what he believes was stumbling onto a “scandal.” (Submission of the Applicant, paragraph 7.2) I have presented below, as I deemed it appropriate to do so, his specific arguments on sections of the Act.

In addition to the specific charges against the City presented in brief below, the applicant wishes me to require the City to apologize publicly to him for violating his privacy and reputation and disclosing his personal information. (Submission of the Applicant, paragraph 13.1)

6. Discussion

I have carefully reviewed all of the submissions received from the applicant and the City. Among other matters raised by the applicant were charges of invasion of his privacy and defamation of his character in his involvements with the City, the School Board, and the Carnegie Learning Centre since his termination. He refers especially to newspaper reports. (Submission of the Applicant, paragraph 12) I note simply that under the Act I am not authorized to determine such global charges of matters of general invasion of privacy and damage to reputation; that is largely the domain of the civil courts. Further, I note the statement of the applicant that the issues surrounding his “unjust dismissal” are going to arbitration. (Reply Submission of the Applicant, paragraph 9)

Section 6: Duty to assist applicants / adequate search

The applicant is of the view that the City has failed to document adequately its efforts to locate a missing file about literacy grants. He states that the City could have requested it from the Vancouver Foundation or replicated it from its computer disks. (Submission of the Applicant, paragraph 8) One response from the City is that it does not have electronic copies of the records that the applicant requested. (Reply Submission of the City, p. 3) The City indicated that electronic versions are deleted once hard copies are made, and that the file which would have contained the hard copies is missing.

The City submitted evidence that several thorough searches were made for the “Vancouver Foundation file” in all filing cabinets in the Carnegie Centre.

On the basis of the evidence submitted by the City, I find that it has made a good faith effort to respond to the applicant’s request. It has searched for the file but has been unable to find it.

Section 22: Disclosure harmful to personal privacy of third parties

The City has refused to release to the applicant the notes of a meeting between three individuals on May 12, 1995 on the basis of sections 22(3)(d) and (g) concerning employment history of a third party. The applicant believes that the City has misapplied this section to the detriment of his rights. (Submission of the Applicant, paragraph 9)

The City did not address this issue directly in its submission, but I note from appendices presented by the applicant that the City’s position is that “the notes of the meeting deal entirely with how staff deal with workplace issues.” (Submission of the Applicant, appendix 16) On the

basis of my own review of these records in dispute, I find that they have been appropriately withheld under section 22.

Section 29: Right to request correction of personal information

The applicant did wish to make corrections in a letter written by the Carnegie Learning Centre to the Vancouver Foundation, which the applicant obtained under the Act. (Submission of the Applicant, paragraph 10) He now concludes that it is too late for the City to correct or annotate the offending letter, so there is no issue for me to determine in this regard. The applicant has also given his version of events to the City in the course of his extensive correspondence with it on his access to record requests. (Submission of the Applicant, Appendix 7, pp. 3-5.)

Section 33: Disclosure of personal information

It is the applicant's view that an employee of the Carnegie Learning Centre disclosed his personal information over a period of nine months to various public and private bodies in an inappropriate manner and contrary to this section: "What the Public Body did is a gross violation of both the Act and the Applicant's privacy." (Submission of the Applicant, paragraph 11, specifically 11.9)

Given what I have learned from the submissions of the applicant, the City, and from the numerous documents submitted to me about the nature of the relationship between the Carnegie Learning Centre and the applicant, it makes perfect sense to me that personal information about the applicant was being exchanged among the various parties, not least because the applicant had filed a grievance against his former employer. The City argued that no "personal information" was disclosed and, even if it was, there were compelling reasons to do so in the circumstances. I disagree with the City, because such a disclosure was, in my view, justified under both sections 33(c) and (f) of the Act. I also do not find this unlawful under the Act, given the respective involvements of the City and the School Board in the operations of the Carnegie Community Centre and the Carnegie Learning Centre.

7. Order

I find that the City of Vancouver:

- (1) conducted an adequate search for the records requested by the applicant and has made a reasonable effort to assist the applicant within the meaning of section 6(1) of the Act;
- (2) is required to refuse access to the information contained in some of the records requested by the applicant under section 22 of the Act; and
- (3) did not contravene the Act by disclosing some documents to others in the course of its disputes with the applicant.

Under section 58(2)(c), I require the head of the City of Vancouver to refuse access to some of the records requested by the applicant as identified in these reasons.

David H. Flaherty
Commissioner

September 24, 1996