

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 162-1997  
May 9, 1997**

**INQUIRY RE: A decision by the City of Prince George to deny access to records concerning parking rights**

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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 March 19, 1997 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision by the City of Prince George to withhold four records under section 14 of the Act. In addition, Babine Investments Ltd. (the applicant) believes that the City should have applied section 25 to disclose the records withheld under section 14.

**2. Documentation of the inquiry process**

On September 16, 1996 the applicant submitted a request for all records from 1980 to the present in the custody or control of the City of Prince George dealing with planning, rezoning, redevelopment/development, bylaw enforcement, and parking enforcement for a number of commercial properties in the City.

On December 9, 1996 the City responded to the request by disclosing approximately 835 pages of records and withholding and/or severing four records under section 14 (Legal Advice). A further request by the applicant on December 10, 1996 was for records that he believed were missing from the records disclosed. In addition, counsel for the applicant raised the use of section 25 with respect to the four documents withheld under section 14.

On December 11, 1996 the applicant wrote to my Office requesting a review of the City's response to his request for records. The applicant requested my Office to review the decision of the City to withhold records under section 14 and to determine

whether it had conducted an adequate search for records identified by the applicant in his December 10th correspondence.

The City responded to the applicant on December 13th by providing clarification/identification of documents listed in the applicant's December 10th correspondence, some of which were included in the initial disclosure. The City also advised that it did not agree that there was a public interest in disclosure of the documents withheld under section 14. With respect to the adequate search, additional documents were disclosed and documents not located were identified. On December 20, 1996 the City disclosed to the applicant one additional document related to the properties that had been located in the records of an outside law firm.

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

The issue in this review is whether the City has properly withheld records under sections 14 and 25 of the Act, which read as follows:

14 The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

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.

(2) Subsection (1) applies despite any other provision of this Act.

Section 57 of the Act establishes the burden of proof on the parties in an inquiry. Under section 57(1), where access to information in the record has been refused, it is up to the public body, in this case the City of Prince George, to prove that the applicant has no right of access to the records. Section 57 of the Act is silent with respect to a request for review on the failure of a public body to apply section 25 of the Act to disclose records in the public interest. I am of the view that the burden of proof is on the applicant with respect to section 25.

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

The records in dispute are four separate documents of one page each, except for the fourth document, from a law firm, which is nine pages long.

### **5. Babine Investments Ltd.'s case**

The applicant's detailed arguments on the appropriate application of sections 14 and 25 are discussed below.

## **6. The City of Prince George's case**

The City has already disclosed 834 pages of records to the applicant. It has withheld certain information in four of these records under section 14 of the Act.

The City's view is that only the application of section 25 to its section 14 severances is at issue in this inquiry. I have presented below its more detailed arguments.

## **7. Discussion**

The subject for this inquiry is a parking lot in Prince George comprised of a former laneway which the City closed one year prior to the passing of Restrictive Covenant X13090 and By-Law No. 4305. The laneway was behind a building now owned by Babine Investments Ltd. The closure left the new owner without rear access through its existing doors. The applicant and the City are clearly engaged in a debate over the meaning and timing of the Restrictive Covenant and the By-Law, which the applicant interprets as permitting parking for its tenants. Ultimately, I regard these particular matters as outside my jurisdiction under the Act and appropriate for the courts to settle.

### ***Section 14: Solicitor-client privilege***

The information severed by the City concerns confidential communications between it and its solicitor for the purpose of obtaining legal advice. On the basis of my own review of these records, I can confirm that they have this particular character, and that the City was within its authority under the Act to choose to withhold the records.

The applicant's objection is that the City did not provide it with any reasons why it refused to exercise its discretion to release the four items of information in dispute: "The applicant contends that the City of Prince George refused to exercise its discretion." The applicant invited me to order the City to exercise its discretion or reconsider its decision not to do so. I see no reason to do so in the circumstances of this inquiry.

### ***Section 25: Information must be disclosed if in the public interest***

The applicant's position is that the records in dispute must be disclosed on the basis of this section. It submits that the public interest arises because the withheld information deals with a Restrictive Covenant that should provide parking for its tenants, which include Muffin Break Canada Inc. and Earl's Restaurant Prince George Ltd. In the applicant's view, municipalities that close a laneway and pass a restrictive covenant "should be held accountable for their actions and/or failures to act. The applicant submits

that it is clearly in the public interest that such matters are subject to public scrutiny due to the intrusive role played by municipalities in land use.”

As part of its public interest argument, the applicant submitted two newspaper articles dealing with the matter and argues that the “general public should be made aware of reasons why a public body refuses to take actions to rectify a situation which they have control over as a direct result of the City’s past actions/inactions and involvement.”

The City is of the view that section 25 has no application to the records in dispute. In its submission, the applicant’s communications with it are “aimed at furthering the applicant’s *special* and *private interests*.” Its reply submission added that “[n]o parallel can, or should, be drawn between private business interests and the public interest in the matter at hand.”

I find that the applicant has misunderstood the meaning of “public interest” in the context of this particular inquiry. The records in dispute concern a private matter affecting the interests of Babine Investments Ltd., its tenants, and adjacent residents and property owners. The interests of the parties seeking disclosure do not rise to the level of public interest as defined by section 25 of the Act. Moreover, I defer to the similar determination of the City of Prince George on this matter. In my view, the facts in this inquiry do not meet the test of urgency and vital communication implied by the language of section 25. The fact that some members of the public might be interested in an issue does not necessarily make it a matter “clearly in the public interest.”

## **8. Order**

I find that the City of Prince George has properly applied section 14 of the Act and is authorized to refuse access to the records in dispute. Under section 58(2)(b) of the Act, I confirm the decision of the City of Prince George to refuse access to the records.

I also find that the City of Prince George has acted properly in refusing to apply section 25 of the Act pursuant to the applicant’s request. I make no order in this respect other than to note that the applicant has not satisfied me that the application of section 25 to the records in issue is warranted under the Act.

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David H. Flaherty  
Commissioner

May 9, 1997