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**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 224-1998  
April 20, 1998**

**INQUIRY RE: A request for a record of the Public Service Employee Relations  
Commission**

**Fourth Floor  
1675 Douglas Street  
Victoria, B.C. V8V 1X4  
Telephone: 250-387-5629  
Facsimile: 250-387-1696  
Web Site: <http://www.oipcbc.org>**

## **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 December 16, 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 by the applicant of a decision by the Public Service Employee Relations Commission (PSERC) to withhold information concerning the applicant's wife that is contained in a memorandum.

## **2. Documentation of the inquiry process**

On May 2, 1997 the applicant submitted a request under the Act to PSERC for "all records and notes, in whatever form, including electronic mail, concerning the applicant's wife, her employment with the Government of B.C. and its termination and any other matter arising therefrom, held by (the public body)."

On May 29, 1997 PSERC responded that it was refusing access to all records covered by the applicant's request because information in the records could be withheld under sections 14 or 15(1)(a) or (c) of the Act.

On June 26, 1997 the applicant submitted a request for review of PSERC's response to his access request. With the consent of the parties, the deadline for the inquiry process was extended to November 21, 1997.

During the mediation process, no records were disclosed to the applicant; however, PSERC confirmed that it was no longer applying section 15(1)(c) of the Act to the records it had withheld.

On October 31, 1997 a Notice of Inquiry was issued and sent to the applicant and PSERC. On November 12, 1997 at the request of PSERC, I extended the deadline for the inquiry to December 2, 1997.

On November 21, 1997 PSERC reversed its decision to withhold all records and disclosed to the applicant all but two records covered by the access request. The applicant accepted that third-party personal information in one record was properly withheld but he did not accept the severing of information containing advice or recommendations in the other record under section 13 of the Act.

To allow the parties more time to prepare their initial submissions concerning the application of an exception to disclosure (section 13 of the Act) not previously used by PSERC for one record, my Office sought the consent of the parties for an extension of the inquiry deadline. PSERC consented to the extension but the applicant would not give his consent. I then decided, in fairness to the parties, to extend the inquiry deadline to December 16, 1997.

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

The issue under review in this inquiry is PSERC's application of section 13 of the Act to a February 28, 1997 memorandum regarding the applicant's wife.

The relevant section of the Act is:

#### ***Policy advice, recommendations or draft regulations***

- 13(1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(1), where access to information in the record has been refused under section 13, it is up to PSERC to prove that the applicant has no right of access to the record or part of the record.

### **4. Procedural objections**

In four letters the applicant has advanced various objections to my proceeding with this inquiry, before certain of his concerns were addressed to his satisfaction. He has also suggested that I am biased in making these procedural decisions based on his reading of my decision in an earlier Order involving the applicant and his wife. I have considered his views carefully in deciding to let this particular inquiry move forward. I note that section 56(1) states that if a matter is not settled, "...the commissioner must conduct an inquiry...."

### **5. The record in dispute**

The single record under review in this inquiry is the February 28, 1997 memorandum identified above. It is a memorandum from a Senior Labour Relations Officer at PSERC to the Manager of the Human Resources Division of a particular region of the Ministry of Health. There are nine lines in the record; six of them have been severed.

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

The applicant did not make an initial or reply submission in this inquiry.

### **7. PSERC's case**

PSERC has relied on section 13(1) of the Act to refuse disclosure of a portion of the memorandum in dispute and points out that there is an arbitration hearing involving the applicant's wife which is currently adjourned because of her ill health. PSERC has now disclosed 250 pages of information to the applicant in an unsevered manner.

I have presented below PSERC's specific submission on the application of section 13(1) to the record in dispute.

## **8. Discussion**

This particular applicant was also featured in Order No. 184-1997, August 15, 1997 where the original threads of the story may be found. I will not repeat the background material here. However, since the applicant has raised several issues about Order No. 184-1997, I will simply say that the appropriate forum for these issues is the Supreme Court of British Columbia in an application for judicial review.

### ***Section 13(1): Policy advice, recommendations or draft regulations***

PSERC submits that the severed portion of the record in dispute constitutes "policy advice and or recommendations to a public body, namely, the Ministry of Health." It has legislated responsibility for personnel management in the public service (*Public Service Act*, section 5(3)(b)) and prepared the memorandum in this connection. (See Order No. 193-1997, October 7, 1997) The severed sentences comprise advice and recommendations. This clearly falls within the "zone of confidentiality" that public bodies are entitled to in carrying out their responsibilities. (See Order No. 159-1997, April 17, 1997; Order No. 177-1997, July 22, 1997 and Order No. 184-1997)

In Order No. 159-1997, at page 9, I stated: "I accept the basic fact that ICBC has the right to operate in a zone of confidentiality as it develops its information, choices, recommendations, and actuarial data..." I applied this reasoning to the human resources and labour relations context in Order No. 177-1997.

## **9. Order**

I find that the Public Service Employee Relations Commission was authorized to refuse access to information in the record in dispute under section 13 of the Act.

Under section 58(2)(b), I confirm the decision of the head of the Public Service Employee Relations Commission to refuse access to information in the record in dispute which has been severed under section 13 of the Act.

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David H. Flaherty  
Commissioner

April 20, 1998