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**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 244-1998
July 3, 1998**

INQUIRY RE: A decision by the Ministry of Attorney General to withhold records from an applicant

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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 27, 1998 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 the response given by the Ministry of Attorney General to an applicant's request for records relating to the Crown's prosecution of him under the *Water Act*.

2. Documentation of the inquiry process

On September 3, 1997 the applicant submitted a request to the Ministry for records. On October 30, 1997 the Ministry responded by informing the applicant that it was withholding the records under sections 15(1)(g), 19(1)(a) and 22 of the Act.

On November 27, 1997 the applicant asked my Office to review the Ministry's decision. He indicated that he wished to receive records containing information provided by four named individuals.

The original ninety-day deadline for this review was extended by consent of the parties from March 4, 1998 to March 27, 1998.

3. Issues under review and the burden of proof

The issue before me is whether the Ministry properly applied sections 15(1)(g), 19(1)(a), and 22 of the Act to the withheld records.

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 sections 15 and 19, it is up to the public body to prove that the applicant has no right of access to the record or part of the record.

Under section 57(2), if the record or part of the record that the applicant is refused access to under section 22 contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

The relevant sections of the Act are:

Disclosure harmful to law enforcement

15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

- (g) reveal any information relating to or used in the exercise of prosecutorial discretion,

....

Disclosure harmful to individual or public safety

19(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

- (a) threaten anyone else's safety or mental or physical health, or
- (b) interfere with public safety.

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
 - (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,

....

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,

....

4. The records in dispute

The applicant wishes to receive records containing information relating to his prosecution under the *Water Act*, which was provided to the Ministry by his neighbours.

5. The applicant's case

The applicant's submission consists of thirty-five documents concerning a wide variety of issues. (See Reply Submission of the Ministry, p. 1) The applicant has made no effort to explain how these materials assist him in meeting his burden of proof in this inquiry.

Although the applicant's reply submission is a two-page letter, it is also incomprehensible to me for the purpose of applying the Act to the records in dispute.

6. The Ministry of Attorney General's case

The Ministry has provided me with a narrative of various encounters that the applicant has had with criminal and civil authorities and his neighbours in the community where he lives. (Submission of the Ministry, paragraphs 1.03 to 1.07) I see no need to summarize it here.

I have discussed below the Ministry's arguments on the application of specific sections of the Act.

7. Discussion

Section 15(1)(g): Exercise of Prosecutorial Discretion

The definition of the exercise of prosecutorial discretion can be found in Schedule 1 of the Act. I agree with the Ministry that it covers the day-to-day activities of Crown Counsel. It further submits that the records in dispute relate to, or were used in the exercise of prosecutorial discretion. (Submission of the Ministry, paragraphs 5.01 to 5.04) I agree.

Section 19(1)(a): Disclosure harmful to individual or public safety

I have interpreted this section in a number of Orders. (See Order No. 28-1994, November 8, 1994, p. 8; Order No. 60-1995, October 31, 1995; Order No. 80-1996, January 23, 1996, p. 6) The Ministry submits that the records it has refused to disclose “are records the disclosure of which could reasonably be expected to threaten third party safety, or mental health. The third party(s) in this case have very legitimate grounds for fearing a hostile response from the Applicant.” (Submission of the Ministry, paragraph 5.14)

On the basis of the *in camera* submission of the Ministry on the application of this section, I find that section 19(1)(a) has been appropriately applied to the records in dispute.

Section 22: Disclosure harmful to personal privacy of third parties

The Ministry has relied in particular on sections 22(2)(e), 22(2)(f), and 22(3)(b) to refuse to disclose the records in dispute. Based on my review of the submissions of the Ministry, including various affidavits, I fully agree that these records have been appropriately withheld on the basis of these sections of the Act. (Submission of the Ministry, paragraphs 5.19 to 5.24) Disclosure of the personal information of other parties would amount to an unreasonable invasion of their personal privacy. In addition, the applicant has not met his burden of proof under this section.

There are six pages of records from three separate documents. I have reviewed them carefully. I have also reviewed an *in camera* table from the Ministry that explains what the records are and why they have been withheld in their entirety. I am fully satisfied that the Act has been properly applied in the circumstances of the present inquiry.

8. Order

I find that the Ministry of Attorney General was authorized under sections 15 and 19 of the Act to refuse access to the records in dispute. Under section 58(2)(b) of the Act, I confirm the decision of the Ministry of Attorney General to refuse access to all records withheld on the basis of section 15 and 19 of the Act.

I also find that the Ministry of Attorney General was required to refuse access to the records withheld under section 22(1) of the Act. Under section 58(2)(c), I require the Ministry of Attorney General to refuse access to the records withheld on the basis of section 22 of the Act.

David H. Flaherty
Commissioner

July 3, 1998