

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 235-1998  
May 12, 1998**

**INQUIRY RE: A decision of BC Hydro 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 16, 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 decision of the British Columbia Hydro and Power Authority (BC Hydro) to withhold from an applicant a copy of an article that appeared in a commercial journal.

**2. Documentation of the inquiry process**

On September 26, 1997 the applicant requested a copy of an article entitled "Crown Corporation Embraces Alternative Dispute Resolution" that appeared in *The International Construction Law Review*. On October 27, 1997 BC Hydro informed the applicant that the record would not be disclosed.

The applicant requested a review of this decision on December 1, 1997.

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

The issue under review is BC Hydro's application of section 20 of the Act to the release of these documents. This section reads:

***Information that will be published or released within 60 days***

20(1) The head of a public body may refuse to disclose to an applicant information

- (a) that is available for purchase by the public, or
  - (b) that, within 60 days after the applicant's request is received, is to be published or released to the public.
- (2) The head of a public body must notify an applicant of the publication or release of information that the head has refused to disclose under subsection (1) (b).
- (3) If the information is not published or released within 60 days after the applicant's request is received, the head of the public body must reconsider the request as if it were a new request received on the last day of that period, but the information must not be refused under subsection (1) (b).

Section 57 of the Act establishes the burden of proof in this matter. Under section 57(1) of the Act, at an inquiry into a decision to refuse an applicant access to all or part of the record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part thereof.

#### **4. The record in dispute**

An article entitled "Crown Corporation Embraces Alternative Dispute Resolution" that appeared in *The International Construction Law Review*.

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

The applicant did not make any submissions in this case.

#### **6. BC Hydro's case**

I have discussed Hydro's specific submissions below.

#### **7. Procedural Objections**

The applicant requested an oral inquiry in this matter. I decided that the issue was so relatively simple that a written inquiry would be sufficient. This was also in accordance with the expressed wishes of BC Hydro.

#### **8. Discussion**

BC Hydro based its refusal to disclose the requested record on section 20(1)(a) of the Act, because the record is available for purchase by the applicant or through library

and research services. BC Hydro established by affidavit evidence that the article is available for purchase by the public.

**9. Order**

I find that BC Hydro was authorized to refuse access to the requested record under section 20 of the Act. Under section 58(2)(b) of the Act, I confirm the decision of BC Hydro to refuse access to the record.

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David H. Flaherty  
Commissioner

May 12, 1998