

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 276-1998
November 25, 1998**

INQUIRY RE: A Refusal by the Association of Professional Engineers and Geoscientists of B.C. to disclose the names of application committee members

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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 October 7, 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 a decision by the Association of Professional Engineers and Geoscientists of B.C. (the Association) to refuse the applicant access to portions of the Application Committee's evaluation forms relating to the committee's consideration of his application for registration.

2. Documentation of the inquiry process

On April 11, 1998 the applicant wrote to the Association and, among other things, requested "the document(s) [of the people involved in the decision on his application for registration] with the comments, names and signatures." On May 6, 1998 the Association responded to the applicant's request by providing severed copies of three application committee's evaluation forms and minutes of the two registration committee meetings, where the applicant's application for registration was considered. In the case of the forms, the severed information consisted of the names of the three application committee members. The severed information in the minutes included the names of the members of the registration committee. The Association applied sections 22(1), 22(3)(h), and 22(2)(f) of the Act to the withheld information.

On May 18, 1998 the applicant requested a review by my Office of the Association's decision to withhold the names and signatures of the reviewers. The Office opened a file on this review on May 26, 1998, with the ninety-day review period due to expire on August 24, 1998. As the applicant had previously planned a six-week absence

from the country during this time, the parties agreed to extend the time-line to early October 1998.

With respect to the minutes, the applicant received the names of the registration committee members and some other information during mediation. He was not concerned about the remaining withheld information in the minutes. On September 14, 1998, however, the applicant made it plain to the Office that he still wished to have the names and signatures of the application committee members, which remained withheld on the evaluation forms. Accordingly, the Office issued a Notice of Written Inquiry to take place on October 7, 1998, to the applicant, the Association, and the three application committee members whose names and signatures appear on the application committee's evaluation forms.

3. Issue under review and the burden of proof

The issues to be reviewed concern the application by the Association of sections 22(1), 22(3)(h), and 22(2)(f) of the Act to the names and signatures of the three members of the application committee on its evaluation forms.

The relevant sections of the Act under review are as follows:

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
- ...
- (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
- ...
- (h) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation,
-

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(2), if the record or part that the applicant is refused access to 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.

4. The records in dispute

The records in dispute are three evaluation forms for the application committee, specifically, the withheld names and signatures of the three members of the application committee which considered the applicant's application for registration with the Association.

5. The applicant's case

The applicant has had his engineering experience evaluated by a committee of the Association. He has not been provided with the names and signatures of three evaluators who did the evaluation, and he wants them. He also wants their explanations for the decision that they made in his case; in fact, he wants the written explanations more than the names. (Submission of the Applicant, p. 3) The applicant believes that the evaluators have erred in their evaluation of his engineering experience.

I have discussed below the applicant's submission on the application of specific sections of the Act.

6. The Association of Professional Engineers and Geoscientists of B.C.'s case

The Association wishes to withhold the names and signatures of its evaluators from the applicant, because to do so would be an unreasonable invasion of their privacy. I have discussed below its submissions on the application of specific sections of the Act.

7. The submissions of the third parties

I received *in camera* submissions from two of the third parties in this inquiry, asking that their names not be disclosed to the applicant on the basis of section 22 of the Act.

8. Discussion

Section 22: Disclosure harmful to personal privacy

Section 22(2)(f): 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 ... (f) the personal information has been supplied in confidence,

The applicant believes that his evaluators need to be publicly responsible for their decision against him: "Fair and responsible people don't hide their identity for any

reason whatsoever when taking decisions in their professional activity.” (Submission of the Applicant, p. 5)

The Association submits that the personal information in dispute in this inquiry has been submitted in confidence, since the evaluation form is marked “Private and Confidential.” I accept that this is a relevant circumstance that the Association had to consider in reaching its decision.

Section 22(3)(h): A disclosure of personal information is presumed to be an unreasonable invasion of a third party’s personal privacy if ... (h) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation,

The Association submits that the names in dispute in this inquiry should be withheld on the basis of this subsection. I agree that disclosure of the personal information in dispute in this inquiry “could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation.”

The Association has relied heavily on my Order No. 153-1997, March 11, 1997, which also concerned this Association, for support of its decision in this inquiry. In that Order, I upheld its decision not to disclose the names of individuals from the volunteer members of the Application Committee who supplied recommendations about the application for registration of the applicant. Since exactly the same issue is before me in this inquiry, and the same subsections of the Act, I find again for the Association, and for the same reasons.

With respect to the applicant’s argument that the names of his evaluators are somehow essential for him to evaluate their evaluation of him, I find this unpersuasive, since he has had the full benefit of their substantive findings about his qualifications to be registered as a professional engineer in this province. (See the reply submission of the Association)

I find that the Association has applied section 22 appropriately to the information in dispute in this case. I also find that the applicant has not met his burden of proof.

9. Order

I find that the Association of Professional Engineers and Geoscientists of B.C. is required to refuse access under section 22 of the Act to the names and signatures on the evaluation forms in dispute. Under section 58(2)(c), I require the head of the Association of Professional Engineers and Geoscientists of B.C. to refuse access to this information.

David H. Flaherty
Commissioner

November 25, 1998