

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 317-1999
July 26, 1999**

INQUIRY RE: An applicant's request to the City of Richmond for annotation of certain records held by the City

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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 June 30, 1999 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of an applicant's request for review of a decision by the City of Richmond (the City) in which it refused to apply Section 29 of the Act to correct two records in the manner proposed by the applicant.

2. Documentation of the inquiry process

On September 14, 1998 legal counsel for the applicant wrote to the City explaining the applicant's request and laying out the historical background relating to the records for which correction was sought.

On September 17, 1998 the Solicitor for the City replied on behalf of the Information and Privacy head of the public body, the City Clerk. The reply of September 17 interpreted Section 29 of the Act as not applicable to the disputed records, and the applicant's request was refused.

On October 19, 1998 counsel for the applicant contacted the Office to request a review of the City's decision to refuse to apply Section 29 to the disputed records.

In order to facilitate the mediation process conducted by my Office, and to accommodate the personal schedules of certain parties to this review, the applicant and the City consented to three separate extensions of time beyond the original statutory

deadline of January 28, 1999. The last agreed extension set the deadline for completion of the inquiry process at June 30, 1999.

3. Issue under review and the burden of proof

The issue at this inquiry is whether the City is required under section 29 of the Act to make the specific corrections requested by the applicant. Section 29 provides as follows:

Right to request correction of personal information

29(1) An applicant who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or under its control to correct the information.

(2) If no correction is made in response to a request under subsection (1), the head of the public body must annotate the information with the correction that was requested but not made.

....

Section 57 of the Act, which establishes the burden of proof on parties in an inquiry, is silent with respect to a request for review about the correction of personal information under section 29 of the Act. I decided in Order No. 124-1996, September 12, 1996, that the burden of proof is on the public body, in this case the City, in such circumstances.

4. Procedural objections

Counsel for the applicant objected to the City's reference in its submission to the positions taken by both the City and the applicant during the mediation process.

Public bodies are discouraged from including records or positions generated during mediation, to allow, at an inquiry such as this, for a fresh (that is, unbiased) pair of eyes to review the issue.

In this case, however, material concerning the mediation did not influence my decision in this matter, and I therefore did not need to deal with this objection.

5. The records in dispute

The two records in dispute are the November 16, 1978 minutes of a City of Richmond planning committee meeting, and a Notice of Public Hearing regarding Zoning Amendment By-Law No. 4077, dated May 17, 1982. Each record consists of one page.

6. The applicant's case

The applicant, the principal owner of Bota Gardens Ltd., has had a series of involvements over the years with the City's planning authorities. He initially asked the City to make two relatively simple corrections in records that mention him by name. He is now asking only for annotation of the personal information in a specific format that he has proposed.

The applicant was the previous owner of the property that became Fantasy Gardens, which generated considerable publicity and controversy. He believes that some of the unfavourable notice that he has received in newspaper articles and books was founded upon the two records under review in this inquiry.

The applicant's argument is that he never owned the lands personally; however, a newspaper pointed to a City record from 1978, which made a reference to the applicant as the proponent of the project.

[The applicant] remains concerned that future development of the site could result in additional personally based publicity, unless the requested annotation is made to this records. [The applicant] was never an owner of the Lands.

The applicant believes that the errors in the records in question continue to damage his reputation in the agricultural community of Richmond.

Counsel for the applicant submits that the request in this inquiry is in compliance with the principles that I set out in Order No. 124-1996. See also Order No. 192-1997, October 6, 1997.

7. The City of Richmond's case

The City makes the point that it is dealing with a persistent and frequent applicant (which is not an issue in this inquiry). Its position, in a nutshell, is that the information in dispute is not the *personal information* of the applicant, and thus does not have to be corrected. I have discussed this matter further below. (emphasis mine)

8. Discussion

The Meaning of Personal Information

The name of the applicant appears in the 1978 record. The City seeks to deny that his name is his personal information. The reality is that if a person's name is used in a record under the Act in connection with a course of action, then it is his or her personal information. The issue is not worth more discussion than that. I will discuss solutions further below.

The Requested Annotations

In essence, the applicant's requests for annotation are extremely simple and straightforward. He wishes it recorded that he appeared before the Planning Committee of the Municipality of Richmond on November 16, 1978 on behalf of Bota Gardens and, as its authorized representative, not in his personal capacity. He also wants an annotation of a Public Hearing Notice for May 17, 1982 that included his personal address as the corporate address of Bota Gardens and that claimed that the company and the applicant were applying for rezoning of the property. He states that neither he nor his company in fact did so.

I disagree with the City, in the first instance, that the 1978 information is not personal information. But I do agree that its planned annotation of this record, in red ink and dated, essentially meets the first request of the applicant, because it states that the applicant appeared as a representative of his company. However, I would amend the intended annotation to state specifically that: "[The applicant] states that he appeared as a representative of Bota Gardens Ltd. and not in his personal capacity." That, in my view, meets the requirements of section 29 of the Act without initiating an effort to reconsider adoption of minutes.

With respect to the second request for annotation, the City has a point that it used the address set out on letterhead by the applicant, which was his home address. Again, it has wisely proposed an annotation that meets the first part of the applicant's request, that is, that his corporate address, not his personal address, should have appeared on the 1982 notice.

The City resists any changes in the 1982 notice that actually lists the applicant in this inquiry as the "applicant" for rezoning. However, I find that the City should add to its proposed annotation a simple statement to the effect that the applicant denies that he or his company was the applicant for rezoning in 1982, although I agree with the City that such a correction should have been proposed at the time of the original episode.

9. Order

I find that the City of Richmond did not act in accordance with the requirements of section 29 of the Act with respect to the records in dispute.

Under section 58(3)(d), I order the City of Richmond to amend its proposed annotation to the November 16, 1978 Planning Committee minutes by adding the following wording: “[The applicant] states that he appeared as a representative of Bota Gardens Ltd., and not in his personal capacity.” Under section 58(3)(d), I order the City of Richmond to amend its proposed annotation to the May 17, 1982 Notice of Public Hearing by adding a statement to the effect that the applicant denies that he or his company was the applicant for rezoning in 1982.

David H. Flaherty
Commissioner

July 26, 1999