

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 248-1998
July 14, 1998**

INQUIRY RE: A decision by the Ministry of Finance and Corporate Relations to refuse access to records regarding the forfeiture of rural properties for tax arrears

**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 April 30, 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 for information about the forfeiture of rural properties for tax arrears and the names and current addresses of the property owners.

2. Documentation of the inquiry process

On November 27, 1997 the Ministry of Finance and Corporate Relations (the Ministry) received a request for information regarding the forfeiture of rural properties for tax arrears since December 1, 1993 and the names and current addresses of the property owners. The applicant also requested information about the rural properties to be forfeited on December 1, 1997 and December 1, 1998. As certificates had been issued on the properties forfeited as of December 1, 1997, these were included in the request for certificates. The applicant requested only properties owned by absentee non-Canadian residents.

On December 29, 1997 the Ministry refused access to these records under sections 21(2) and 22(1) of the Act. On January 30, 1998 the applicant requested my office review the Ministry's decision to refuse access to the records. The ninety-day period ended on April 30, 1998. On April 6, 1998 the applicant requested that the matter be set for inquiry before me.

3. Issue under review and the burden of proof

The issue in this inquiry is the Ministry's application of sections 21(2) and 22(1) of the Act to the records in dispute. The relevant sections of the Act are as follows:

Purposes of this Act

- 2(2) This Act does not replace other procedures for access to information or limit in any way access to information that is not personal information and is available to the public.

Information rights

- 4(1) A person who makes a request under section 5 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

Disclosure harmful to business interests of a third party

- 21(2) The head of a public body must refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

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
 - ...
- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
- ...
 - (e) the personal information was obtained on a tax return or gathered for the purpose of collecting a tax,
 - (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,
 - (j) the personal information consists of the third party's name, address, or telephone number and is to be used for mailing lists or solicitations by telephone or other means.
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Schedule 1 Definitions

In this Act:

“personal information” means recorded information about an identifiable individual, including

- (a) the individual’s name, address or telephone number,
...
- (g) information about the individual’s educational, financial, criminal or employment history,
....

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 21(2), it is up to the public body, in this case the Ministry, 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 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.

4. The records in dispute

The records in dispute are the Certificates of Forfeiture of Real Property since December 1, 1993. A certificate identifies a property forfeited to the province for nonpayment of tax. These certificates include the name and last known address of the property owner, the legal description of the property, and the “property folio number”. This information was withheld from the applicant.

In addition, the applicant requested information about the rural properties to be forfeited on December 1, 1998. The records responding to this part of the request are the “Management Report by Forfeiture” from the Land Tax Information System, which identifies the rural properties in which tax is owing by “property folio number,” along with the name and last known mailing address of the owners of the properties. This information was also withheld.

5. The applicant’s case

The applicant has confirmed that, “the main reason that I need the Ministry to provide me with the owners names and addresses is to sort out those owners who are foreign ...” so that he can contact the owners and offer them help in redeeming their properties. (Submission of the Applicant, paragraphs 10 and 12)

The applicant is aware that the information he is seeking is available from other sources that he considers to be public records. He insists that he is simply asking for the same

information but based solely on the fact that the properties have been forfeited because of unpaid property taxes. The applicant does not accept that the information he requested was gathered for the purpose of determining tax liability or collecting a tax, nor that disclosure would be an unreasonable invasion of personal privacy.

I have carefully considered the applicant's submissions in relation to specific sections of the Act relevant to this inquiry.

6. The Ministry of Finance and Corporate Relations' case

Concerning the applicant's request for rural properties to be forfeited on December 1, 1998, the Ministry has confirmed that "(it) can not say whether or not the properties identified as being in arrears under the Land Tax Information System will actually be forfeited on December 1, 1998...." since the property owner has until the end of November 1998 to pay the outstanding taxes. (Submission of the Ministry, pages 6 and 7)

The Ministry submits that it has properly withheld the information in dispute on the basis of sections 21(2) and 22(1) and (3)(e) and (f) of the Act. In its reply submission, the Ministry also relied on section 22(3)(j) in response to the applicant's admission in his submission that he intended to use the property owners' names and addresses for the purpose of solicitation by mail. (Reply Submission of the Ministry, page 3). I have carefully considered the Ministry's arguments on the application of specific exceptions to the information in dispute.

7. Discussion

Order No. 217-1998 and Investigation Report P98-011

The Ministry submits that the issues raised in this case have been dealt with for the most part in the two above documents from my Office. I have not relied on Investigation Report P98-011 in making this decision. I agree, however, with the Ministry's conclusion that "the overriding and fundamental principle" to be derived from Order No. 217-1998, March 6, 1998, in particular, is "that information which is gathered for the purpose of determining tax liability or collecting a tax, and which may be listed on a public roll for the primary purpose of assisting the public in assessing taxation equity, should not be searched, manipulated and reconfigured to achieve secondary purposes which are unrelated to the purpose for which the information was gathered and intended to be used." (Submission of the Ministry, paragraph 5.01)

The Ministry's submission, which has also been copied to the applicant, includes extensive quotations from Order No. 217-1998, with respect to the application of sections 21(2) and 22(1) of the Act to the records in dispute. (Submission of the Ministry, paragraphs 5.02 to 5.03) The Ministry submits that it has acted consistently in refusing to disclose the records in dispute to the applicant in this particular inquiry. I agree.

Because I have thoroughly discussed the application of sections 21(2) and 22(1), (2)(a) and (3)(e) and (f) of the Act in Order No. 217-1998, there is no need for me to go through the same process here. I find that the information in dispute was gathered for the purpose of

determining tax liability or collecting a tax, and the applicant has failed to discharge his burden under section 22 of the Act.

I wish to address, however, the application of section 22(3)(j) of the Act that was raised by the Ministry in its reply submission.

Section 22(3): A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if ... (j) the personal information consists of the third party's name, address, or telephone number and is to be used for mailing lists or solicitations by telephone or other means.

The applicant has stated that “[m]y intent is to find those owners who have allowed their taxes to lapse due to ignorance of our language, our laws, or our land values. ... A letter offering them help in redeeming property which they have abandoned for whatever reason is not an unreasonable invasion of their privacy.” (Submission of the Applicant, paragraphs 11 and 12)

The Ministry submits that the applicant's intention to use the requested information for solicitation purposes further supports its argument that disclosure of the requested information would be an unreasonable invasion of the third parties' personal privacy. (Reply Submission of the Ministry, page 3)

I agree with the Ministry's assessment, although I do recognize that this exception was not used by the Ministry in making its original decision. In my view, the use of information to contact property owners would be an unreasonable invasion of the third parties' personal privacy under section 22(3)(j).

8. Order

I find that the Ministry of Finance and Corporate Relations is required under sections 21(2) and 22(1) of the Act to withhold information from the records requested by the applicant. Under section 58(2)(c) of the Act, I require the Ministry to refuse access to the information that has been withheld.

David H. Flaherty
Commissioner

July 14, 1998