

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 287-1998  
December 23, 1998**

**INQUIRY RE: A decision of the Association of Professional Engineers and Geoscientists of British Columbia to refuse access to information**

**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 September 22, 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 of the Association of Professional Engineers and Geoscientists of British Columbia (the Association) to the applicant's request for a list of the names of all engineers who have been contacted by the Association for practice reviews and for other information relating to these practice reviews.

**2. Documentation of the inquiry process**

On February 11, 1998 the applicant submitted a request to the Association for a list of the names of all member engineers who have been contacted by the Association for practice reviews, the dates they were contacted, the dates the reviews were conducted and completed, and the general and technical reviewers' names in each case.

On March 18, 1998 the Association responded to the applicant's access request. It informed the applicant of the number of practice reviews that had been carried out as of the end of 1997, as well as the number of those involving members who are structural engineers. The Association also described the process for contacting members and carrying out practice reviews, as well as the process following a practice review. Under section 22(4)(e) of the Act, the Association provided the applicant with a list of both the General Reviewers who have conducted practice reviews as well as a list of the Technical Reviewers who have conducted practice reviews. With respect to the remaining

information to which the applicant sought access, the Executive Director and Registrar for the Association responded this way:

I am unable to provide access to the records that contain the names of all engineers contacted for Practice Reviews, including the dates of their first contact, Practice Reviews conducted and Practice Reviews completed, and the names of the general/technical reviewers who completed the member's Practice Review. These records must be withheld under Sections 21 and 22(2)(f) [and] (h) of the Act. This information is considered to be the business interests and personal information of the member and is protected by the "Protection of Privacy" side of the Act. In addition, the Practice Review is a confidential process pursuant to the Section 46 of the (APEGBC) Engineers and Geoscientists Act which take precedence (under Section 78) over the right to access information provided in the Act. (Submission of the Association, p. 4)

On April 21, 1998 the applicant requested a review of that decision by my Office. The ninety-day review period ended on July 20, 1998, but the parties agreed, on July 15, to a thirty-nine-day extension ending on August 28, 1998. On July 18, 1998 the applicant requested that the matter be set for inquiry before me. The Notice of Inquiry was sent to the parties on July 28, 1998. On August 10, 1998, with the consent of the parties, the inquiry was rescheduled to September 22, 1998.

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

In this inquiry, I reviewed the correctness of the Association's application of sections 21 and 22(2)(f) and (h) of the Act to the records requested by the applicant. The relevant sections of the Act read as follows:

#### ***Disclosure harmful to business interests of a third party***

21(1) The head of a public body must refuse to disclose to an applicant information

- (a) that would reveal
  - (i) trade secrets of a third party, or
  - (ii) commercial, financial, labour relations, scientific or technical information of a third party,
- (b) that is supplied, implicitly or explicitly, in confidence, and
- ...
- (c) the disclosure of which could reasonably be expected to

- (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
  - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
  - (iii) result in undue financial loss or gain to any person or organization, or
  - (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.
- (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.
- (3) Subsections (1) and (2) do not apply if
- (a) the third party consents to the disclosure, or
  - (b) the information is in a record that is in the custody or control of the British Columbia Archives and Records Service or the archives of a public body and that has been in existence for 50 or more years.

***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,
  - ...
  - (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

Under section 57 of the Act, the burden of proof is on the applicant to prove that the disclosure of the information in the records in dispute would not be an unreasonable invasion of third party personal privacy for the purposes of section 22 of the Act. To the

extent that the public body relies on section 21 of the Act to justify withholding the records in dispute, the burden of proof is on the Association to prove that the applicant has no right of access to the records under section 21 of the Act.

#### **4. The information in dispute**

The information to which the applicant seeks access in this inquiry consists of “a list of the names of all member engineers who have been contacted by the Association for practice reviews, the dates they were contacted, the dates the reviews were conducted and completed, and the general and technical reviewers’ names in each case.” This information can be gathered by the Association from a review of its practice review records. The applicant has not sought access to those records but, rather, seeks access only to the limited information described above.

#### **5. The applicant’s case**

The applicant, who is an engineer, wants access to the information in dispute for reasons of public safety and fairness of application of the practice review process of the Association.

#### **6. The Association of Professional Engineers and Geoscientists of British Columbia’s case**

The Association has relied on sections 21 and 22 of the Act to refuse to disclose information and records to the applicant:

... The Association determined that releasing the names of members who have been the subject of a practice review, and specifying the reviewers involved in each practice review, with relevant dates, would violate section 21 of the *Freedom of Information and Protection of Privacy Act* (the “Act”) by divulging commercial, financial and technical information about a third party the disclosure of which could be harmful both to the third party and the Association. In addition, the nature of practice reviews and the implications which may arise from the fact such reviews are required, renders the names of members subject to such reviews as being personal information, the disclosure of which the Association believes would be an unreasonable invasion of a third party’s personal privacy, contrary to section 22 of the Act. (Submission of the Association, p. 1)

I have elaborated below on its submissions on the application of specific sections of the Act.

## **7. The responses of the third parties**

My Office chose to notify 475 third parties in connection with this inquiry, who were subject to practice reviews, and invited them to make submissions. A total of 150 replied to the Office. Of these, 27 third parties consented to the release of their names, and 4 made other submissions but did not consent or object. Some of the 27 third parties also consented to the release of the dates.

In terms of percentages of the responses received, 18 percent consented and 79 percent objected to the release of their names on a list of the members reviewed.

The most commonly expressed opinions of the third parties who consented to the release of their names was that they do not believe that the business or personal interests of any engineer contacted will be harmed by the release of the requested information, and that the release of this information would serve to allay concerns about the fairness of the selection process for practice reviews. However, a number of them also added that it is their understanding that the results of reviews are confidential, and that they would not agree to the release of review results to other parties – only their names.

The majority of the third parties who objected and gave reasons stated that it is their understanding that the conduct of practice reviews by the Association is a private and confidential matter between that body and the member. Many expressed the opinion that this confidentiality covers not only the details of their reviews, but extends to whether or not they have been reviewed at all, and that the release of names of individuals who have been reviewed could adversely affect their ability to carry on business, either on their own or as the employees of others.

Some of the objecting third parties expanded on this point by stating that, even though most reviews are conducted on the basis of a random selection process, some reviews are initiated because of complaints about the member concerned, and that the record requested by the applicant may not distinguish between the two kinds of reviews. The concern is that if the list is disclosed, the Association and individual members would have no control over how this information may eventually be used or further distributed. Members who have been reviewed may be unfairly seen by the public as being professionally or technically deficient, with serious financial implications for those members.

## **8. Discussion**

The applicant has raised issues of public safety and fairness with respect to the work of the Association. With respect, I fail to understand how his concerns are truly his concerns. The Association has generously released to the applicant a full description of its process of practice reviews involving structural engineers, including the number of practice reviews, the number of those who were reviewed who are structural engineers,

the names of general and technical reviewers, and a description of how practice reviews are normally conducted.

It is the task of professional associations in this province to monitor the activities of their members under statutory authority conferred by the Legislature, in this case the *Engineers and Geoscientists Act*, R.S.B.C. 1996, c. 116. Since the applicant has concerns about public safety and the fairness of the practice review process in this regard, with respect to the Association's auditing of engineers, his contribution, in my view, is primarily limited to raising questions with the Association, as he has now done. See Order No. 221-1998, April 16, 1998, which reviews the disciplinary processes of the College of Physicians and Surgeons. The applicant has no right to the detailed records of such audits of engineers' practices. If the applicant in this inquiry remains skeptical about the ability of the Association to fulfill its mandate, his recourse is to the Legislature and any relevant Ministry, such as the Ministry of Attorney General. He has no right under the Act to unfettered access of the records of the Association so that he can himself audit its work. Based on correspondence that the applicant submitted to me, he is obviously well aware of his capacity to interact with the Association about the structural adequacy of buildings that he observes around the province. That does not escalate into a right to inspect the practice review records of the Association.

I am of the view that the Association has responded appropriately to date to the inquiries and requests for information of the applicant.

***Section 21: Disclosure harmful to business interests of a third party***

The applicant submits that this section is not relevant to the records in dispute in this inquiry.

The Association submits that it conducts practice reviews of its individual members on the basis of section 10 of the *Engineers and Geoscientists Act*, R.S.B.C. 1996, c. 116, which is its way of protecting the public interest. Section 44 requires members to comply with the practice review program by providing any relevant information, record, document, or thing. Section 46 provides statutory protection for the confidentiality of information acquired about members, thus establishing that the information for practice reviews is supplied explicitly in confidence. The Association also submits that disclosure of its members' information about a practice review could result in undue financial loss to, and/or harm to, the competitive position of that person, thus meeting the third part of the test.

In light of my decision on the application of section 22 of the Act, it is unnecessary for me to determine whether the information sought by the applicant is required to be withheld under section 21 of the Act. I would also note that the applicant is not seeking access to the contents of the practice review records. As an aside, were the disclosure of these records at issue in this inquiry, I would be inclined towards a

conclusion that the Association is required to withhold those records under section 21 of the Act.

***Section 22: Disclosure harmful to personal privacy***

The Association “views the names of members subject to practice reviews, and the dates of those reviews, to be personal information the disclosure of which would constitute an unreasonable invasion of personal privacy in accordance with the assessment process set out in section 22 of the Act.”

***Section 22(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, ....***

The applicant submits that this subsection has no application to the records in dispute, since none of the information he is requesting was supplied by the individual engineers: “It was either a result of the process or came from information that the Association already had.”

Based on the submissions of the Association and section 46 of the *Engineers and Geoscientists Act*, I find that information about and from members subject to practice reviews is supplied in confidence to the Association. Section 22(2)(f) of the Act is therefore a relevant circumstance for the Association to consider.

***Section 22(2)(h): the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.***

The applicant submits that the “mere disclosure that someone has had a practice review should not unfairly damage their reputation. As engineers for review are being selected both on the basis of complaints and randomly, there is no way for someone to know that reason for the review. If the process is carried out correctly, every structural engineer will undergo a practice review, with no damage resulting to one’s reputation.”

The Association submits, and I agree, that disclosure of names and review dates “could unfairly damage the reputation of the members who have been the subject of practice reviews, even where such members have been found by the Practice Review Committee to be in compliance.”

I am satisfied that section 22(2)(h) is also a relevant circumstance for purposes of the application of section 22 of the Act in this inquiry.

Having considered and weighed all of the relevant circumstances, I have concluded that the applicant has not discharged his burden of demonstrating that the disclosure of the records in dispute would not constitute an unreasonable invasion of third

party personal privacy under section 22 of the Act. I therefore find that, with one exception, the Association is required to refuse to disclose the information in the records in dispute. The exception relates to the twenty-seven third parties who consented to the disclosure of their names. Section 22(4)(a) of the Act provides:

- (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
  - (a) the third party has, in writing, consented to or requested the disclosure,
  - ....

Pursuant to section 22(4)(a) of the Act, I find that the Association is not required to refuse to disclose the names of those twenty-seven third parties. I also find that the Association is not required to refuse to disclose the dates of contact, conduct of review, and completion of review of the seven engineers who consented to the release of this information

## **9. Order**

I find that the Association of Professional Engineers and Geoscientists of British Columbia is not required to refuse to disclose the names of the twenty-seven third parties who consented to such disclosure under section 22(4)(a) of the Act. Under section 58(2)(a) of the Act, I therefore require the Association to disclose the twenty-seven names.

I also find that, with, respect to seven of the twenty-seven third parties referred to in the preceding paragraph, the Association is not required to refuse to disclose the dates these third parties were contacted for a practice review, or the dates their practice reviews were conducted and completed. Under section 58(2)(a) of the Act, I therefore require the Association to disclose this information.

I find that the Association of Professional Engineers and Geoscientists of British Columbia is required under section 22 of the Act to refuse to disclose all of the information in the records in dispute, except the names of the twenty-seven consenting third parties, and the dates with respect to the seven consenting third parties. Under section 58(2)(c) of the Act, I therefore require the Association to refuse access to all of the information in the records in dispute except for the information that twenty-seven third parties consented to have disclosed.

---

David H. Flaherty  
Commissioner

December 23, 1998