OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER

British Columbia
Canada

Order 00-14

INQUIRY REGARDING VANCOUVER POLICE BOARD *IN CAMERA* MEETING MINUTES

David Loukidelis, Information and Privacy Commissioner
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Summary: Applicant sought access to minutes of *in camera* Board meetings for first half of 1999. Board withheld entirety of responsive records under s. 12(3)(b). Board entitled to withhold only substance of deliberations. Board not entitled to withhold portions disclosing: meeting dates, times and locations, Board members and others in attendance, or subject matter of meetings. Other exceptions to right of access may apply to information disclosing subject matter, or other information in records, in appropriate cases. No evidence presented by Board to justify withholding information regarding subject matter here, but personal information must be withheld where protected by s. 22(1). Section 25 did not require disclosure of information in public interest in this case. Board ordered under s. 58(2)(b) to reconsider its exercise of discretion under s. 12(3)(b).

Key Words: *In camera* meeting – substance of deliberations – public interest – subject matter.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 4(2), 12(3)(b), 25, 58(2)(b); *Police Act*, s. 69.

Authorities Considered: B.C.: Order No. 5-1994; Order No. 48-1995; Order No. 81-1996; Order No. 114-1996; Order No. 325-1999; Order No. 326-1999; Order No. 331-1999; Order 00-08; Order 00-11. **Ontario:** Order M-802.

1.0 INTRODUCTION

The only issue in this inquiry is whether minutes of *in camera* meetings of the Vancouver Police Board ("Board") were properly withheld in response to a freelance journalist's request for access to those records.

The minutes involved are those for the *in camera* Board meetings of January 27 (two meetings), February 24 (two meetings), March 24, April 28 (two meetings), May 31 (two

meetings) and June 23, 1999. In denying the applicant's June 30, 1999 access request under the *Freedom of Information and Protection of Privacy Act* ("Act"), the decision was to refuse to disclose any part of the minutes of the Board's *in camera* meetings held between January 1, 1999 and June 30, 1999. Copies of the minutes for open Board meetings during the same period were disclosed.

The applicant sought a review, under s. 52 of the Act, of the decision to deny access to the entire *in camera* minutes. This order results from the inquiry, under s. 56 of the Act, flowing from the review process.

2.0 ISSUES

Again, the only issue here is whether the Board, a "local public body" under the Act, was authorized by s. 12(3)(b) of the Act to refuse to disclose information from *in camera* meeting minutes of the Board. Section 57(1) of the Act requires the Board to establish that s. 12(3)(b) applies to information in the records.

3.0 DISCUSSION

3.1 Substance of *In Camera* Meeting Deliberations – Section 12(3)(b) of the Act says the head of a local public body such as the Board "may refuse to disclose to an applicant information that would reveal" the

> … substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under this Act authorizes the holding of that meeting in the absence of the public.

In Order 00-11, I confirmed that a local public body may rely on s. 12(3)(b) only if it proves three things. It must show that there is statutory authority to meet in the absence of the public, that a meeting actually was held in the absence of the public and that the information would, if disclosed, reveal the substance of deliberations of the meeting.

Board's Authority to Meet In Camera

As to the Board's statutory authority to meet in the "absence of the public", its submissions were as follows:

> Both the former and the current *Police Act* authorize the holding of *in camera* meetings. Therefore, s. 12(3)(b) of the *Freedom of Information and Protection of Privacy Act* may be applied to records that would reveal the substance of deliberations of such an *in camera* meeting.
> …
>
> It is submitted that the Vancouver Police Board properly withheld from the Applicant the records in issue in this Inquiry as they refer to matters discussed at *in camera* meetings of the Board which were properly held *in camera* pursuant to s. 69(2) of both the current and the former *Police Act*.

The *Police Act*, as it existed before substantial amendments in 1998, does not govern the Board's authority to meet *in camera* in 1999. Section 69 of the current *Police Act* is relevant; it reads as follows:

> 69(1) Subject to subsection (2), every meeting and hearing of a board or a committee must be open to the public.
>
> (2) If it believes that any of the following matters will arise in a meeting or hearing held by it, a board or committee may order that the portion of the meeting during which the matter will arise be held in private:
>
> (a) a matter concerning public security, the disclosure of which could reasonably be expected to seriously impair effective policing or law enforcement;
>
> (b) a matter concerning a person's financial or personal affairs, if the person's interest in the matter outweighs the public's interest in the matter;
>
> (c) a matter concerning labour contract discussions, labour management relations, layoffs or another personnel matter;
>
> (d) a matter concerning information that a person has requested he or she be allowed to give in private to the board or committee.
>
> (3) On making an order under subsection (2), the board or committee must promptly submit to the minister a copy of the minutes of the meeting or hearing and a statement of the reasons for holding a portion of the meeting or hearing in private.

A number of issues arise out of this section. First, s. 69(1) says "every meeting" of the Board must be "open to the public". Section 69(2) only authorizes the Board to meet in private for "the portion of the meeting during which" it believes a matter described in s. 69(2) will arise. A portion of the meeting can legitimately be held *in camera* only if one of the matters described in s. 69(2) is being dealt with and the Board orders that the relevant portion of the meeting be held in private.

It is my function to determine whether a meeting met the requirements of s. 12(3)(b). Section 56(1) of the Act says the commissioner has the power to decide all questions of fact and law arising in the course of an inquiry. The s. 12(3)(b) issue just described is a question of law, or mixed fact and law, that I may decide under s. 56(1). It is not to be left to a local public body alone. This view is similar to that taken in Ontario Order M-802 (July 9, 1996). If any part of a disputed record deals with matters which do not qualify under s. 12(3)(b), then a public body cannot invoke that exception in respect of that information.

I am satisfied, in this case, that the matters dealt with by the Board in the various *in camera* meetings in question here all fell under the *in camera* authority in s. 69(2) of the *Police Act*. This finding is based on my review of the records in their entirety, and not just the subject headings respecting each matter considered by the Board. The meetings dealt with personnel or labour relations matters, in many cases, as well as public security matters. Local public bodies should, in all cases, provide evidence, in the inquiry, to establish that the relevant statute actually authorized the holding of the *in camera* meeting in respect of all matters dealt with in the disputed records. In all cases, including regarding police boards acting under s. 69 of the *Police Act*, the applicability of s. 12(3)(b) is to be scrutinized on this basis.

Did the Board Actually Meet In Camera?

In Order 00-08, I found that the public body could not rely on s. 12(3)(b) because it had not established that it was authorized by law to meet *in camera* and because it had not proved that a meeting actually was held *in camera*. This case differs. Based on the material before me, I find the Board has established that it met, on the relevant dates, *in camera*. In this regard, I note the records in issue are minutes of *in camera* meetings, which the public body identified as responsive to the applicant's request for such records. In addition, the Affidavit of Randall Smith, sworn December 8, 1999 and filed by the Board, provided evidence that *in camera* meetings took place under s. 69 of the *Police Act*. In Order 00-08, by contrast, the public body claimed the benefit of s. 12(3)(b) in relation to correspondence and memos to file, not meeting minutes. In that case, there was no evidentiary link between the disputed records and specific *in camera* meetings.

Would Disclosure Reveal the Substance of Deliberations?

What are the merits of the Board's application of s. 12(3)(b) here? On his side, the applicant argued that the public interest favoured disclosure of the minutes, although he did not explicitly rely on s. 25 of the Act (which deals with public interest disclosure of information). He argued the Board had erred by treating s. 12(3)(b) as an exemption from the Act of all records and information pertaining to *in camera* meetings. He also noted that other local public bodies provide him with lists of background material considered at *in camera* meetings. This practice enables him to ask for appropriate materials and to pursue his research as a journalist.

The Board said it was within its rights to withhold the records because they "refer to matters discussed at *in camera* meetings of the Board". The Board contended that it is entitled to withhold "*in camera* records where another statute authorizes *in camera* meetings". In its reply submission, the Board observed that there is no harm test in s. 12(3)(b): a local public body need not demonstrate harm from disclosure of information before it can invoke the section.

The discretionary s. 12(3)(b) exception is not as broad as the Board would have it. It protects only information – not "records" – the disclosure of which would reveal the "substance of deliberations" of an *in camera* Board meeting. Section 12(3)(b) does not

necessarily allow the Board to refuse to disclose records because they "refer to matters discussed" *in camera*. Nor does s. 12(3)(b) allow a local public body to "withhold *in camera* records", whatever they may be. The section does not create a class-based exception that excludes records of, or related to, *in camera* meetings. There is a clear distinction between "information" and the "records" in which information is found. The duty under s. 4(2) of the Act to sever records, and disclose information not covered by one of the Act's exceptions, applies to records which contain information protected by s. 12(3)(b).

This is evident on the face of the section and s. 4(2). Previous orders also amply confirm this. See, for example: Order No. 48-1995; Order No. 81-1996; Order No. 114-1996; Order No. 326-1999; Order No. 331-1999; and Order 00-11.

In this case, certainly, s. 12(3)(b) does not authorize the Board to refuse to disclose the meeting minutes in their entirety. The Board withheld every iota of information, right down to the names of the Board members attending each meeting, the dates and times of each meeting, the location of each meeting, and so on. Disclosure of the identities of those attending a meeting, or details as to its time and location, would not – absent evidence to the contrary in a given case – reveal the "substance" of the "deliberations" of the meeting.

Nor would disclosure of the subjects dealt with at the Board meetings here in question – regardless of whether a matter was presented to the Board for information or for discussion and action – reveal the substance of the Board's deliberations on those subjects. There may be cases where disclosure of a subject of an *in camera* meeting would, of itself, reveal the substance of deliberations of the governing body. It may be possible, for example, to combine knowledge of the subject matter with other, publicly available, information, such that disclosure of the subject matter itself amounts to disclosure of the "substance of deliberations". The Board has not supplied any evidence or argument that would permit me to decide that this is the case here.

I should note that in cases where the subject matter cannot be withheld under s. 12(3)(b), it may be that discretionary or mandatory exceptions under the Act could, or must, be applied to that same information. For example, the timing of a local government's consideration of a collective bargaining issue might – in light of other information known to an applicant and other relevant circumstances – permit the local government to refuse, under s. 17(1)(c) or (e), access to information disclosing the subject matter. Picking up a theme sounded above, however, it is not my task to decide for a public body whether information revealing the specific subjects of an *in camera* meeting could be withheld under any other discretionary exceptions. The Board has relied on s. 12(3)(b) alone and that section does not, absent evidence provided to the contrary, allow the Board to refuse to disclose the subjects discussed at the Board meetings.

It is, however, a different situation as regards any information that would reveal personal information of a third party that is protected from disclosure under s. 22(1). Some of the discussion at the various meetings related to routine personnel matters, involving

identifiable employees. In one case, an employee and the employee's lawyer sought to address the Board, but were turned away. Any information as to the subject of a meeting that would disclose personal employment-related information of an identifiable individual must be severed from the records, and withheld, unless the presumed unreasonable invasion of personal privacy under s. 22(3)(d) is rebutted in a given case. The same finding would apply to information protected by s. 21.

Apart from the scheduling, attendance and subject matter information discussed above, however, the information in the records qualifies for protection under s. 12(3)(b). The balance of the information conveys which Board members made what motions, the debate on various matters, and the Board's decisions on specific issues. The rest of the records would, if disclosed, clearly reveal the "substance of deliberations" of the *in camera* meetings. The end result is the applicant gets little information in response to his request. What little he gets is likely to be of small comfort. To the extent the Board has properly applied s. 12(3)(b), I cannot force it to disclose more. I have decided, however, that because the Board took a wrong approach to the application of this exception – by treating it as, for all intents and purposes, a class-based records exception – this is an appropriate case for me to require the Board to reconsider its decision to refuse to disclose information covered by s. 12(3)(b).

4.0 CONCLUSION

1. For the reasons given above, I find that the Vancouver Police Board is authorized by s. 12(3)(b) of the Act to refuse access to only those portions of the disputed records deleted from the severed version I have provided to the Vancouver Police Board along with its copy of the disputed records and, under s. 58(2)(a) of the Act, I require the Vancouver Police Board to give the applicant access to the remainder of those records as shown on the severed copy.

2. Under s. 58(2)(b) of the Act and subject to the conditions expressed in paragraph 3, below, I require the head of the Vancouver Police Board to reconsider its decision to refuse access to the information that I have found it is authorized by s. 12(3)(b) of the Act to withhold.

3. Under s. 58(4) of the Act, I require the head of the Board to deliver its reconsideration decision, including reasons for the decision, to the applicant and to me within 30 days from the date of this order.

May 31, 2000

David Loukidelis
Information and Privacy Commissioner
for British Columbia