OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order 04-01

CITY OF VANCOUVER

David Loukidelis, Information and Privacy Commissioner
January 12, 2004

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Summary: An access request was made for copies of the 1999 disclosure statements that two municipal election candidates were required to file under the *Vancouver Charter*. Section 65 of the *Vancouver Charter* requires the City to make such statements available for public inspection. It also requires the City to obtain from anyone inspecting a statement a signed statement of restricted purpose and use. This requirement conflicts or is inconsistent with public access under the *Freedom of Information and Protection of Privacy Act* for unrestricted purposes and uses. Under s. 8.1 of the *Vancouver Charter*, s. 65 of the *Vancouver Charter* overrides the Act to the extent of any conflict or inconsistency. In the absence of a right of access under the Act, the applicant has no right to copies under ss. 5(2) and 9(2)(a) of the Act.

Key Words: conflict or inconsistency.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 4, 5(2), 8(1)(b), 9(2), 79; *Vancouver Charter*, ss. 8.1, 62, 62.1, 65.

Cases Considered: *Multiple Access Ltd.* v. *McCutcheon*, [1982] 2 S.C.R. 161; *M & D Farm Ltd.* v. *Manitoba Agricultural Credit Corp.*, [1999] 2 S.C.R. 961; *114957 Canada Ltée (Spraytech, Société d'arrosage)* v. *Hudson (Town)*, [2001] 2 S.C.R. 241; *Law Society of British Columbia* v. *Mangat*, [2001] 3 S.C.R. 113; *Friends of the Oldman River Society* v. *Canada (Minister of Transport)*, [1992] 1 S.C.R. 3; *British Columbia Lottery Corp.* v. *City of Vancouver* (1999), 169 D.L.R. (4th) 141 (B.C.C.A.).

1.0 INTRODUCTION

[1] The applicant, a journalist acting in conjunction with the BC Freedom of Information and Privacy Association ("FIPA"), has requested, under the *Freedom of Information and Protection of Privacy Act* ("Act"), copies of records that disclose the

identity of contributors to the 1999 campaigns of Philip Owen and David Cadman for election as mayor of the City of Vancouver ("City"). The access request to the City said the following:

> Please send me photocopies of the records of who contributed to the 1999 electoral campaigns of NPA mayoral candidate Philip Owen and COPE mayoral candidate David Cadman, and the amounts.
>
> I know city hall has provided me "access" to view the documents, but since photocopies are not permitted, I believe this does not qualify as true access in the spirit of the BC FOIPP Act.
> …
>
> I also do not believe city hall has the right to make anyone sign a waiver before allowing them to even view the records, as it now does. The FOIPP Act mentions nothing about signing such waivers.

[2] The City responded by saying that the only responsive records were campaign finance disclosure statements filed under ss. 62 and 62.1 of the *Vancouver Charter* and that s. 65 of the *Vancouver Charter* provides for inspection of disclosure statements, but not for the making of copies. The City maintained that, since s. 8.1 of the *Vancouver Charter* provides that s. 65 of the *Vancouver Charter* prevails over the Act, the right to request a copy of a record under the Act did not apply. The City's response went on to say the following:

> Section 65 provides the exclusive means of access to disclosure statements: "public inspection in the City Hall during its regular office hours". The section imposes additional restrictions upon access (requirement to sign a statement before inspection) and retention (requirement to dispose of records after the prescribed period). To ensure that the above restrictions are fulfilled, the City cannot allow for the making of copies.
>
> The means of access prescribed under section 65 is completely consistent with the purpose of the FIPPA [*sic*], which is to make public bodies more accountable by giving public bodies access to records. Public inspection meets this purpose while, at the same time, maintaining some control over the use and dissemination of the information in the records. It is important to remember that the disclosure statements contain the names of individuals who made campaign contributions. Section 65 balances these individuals' privacy rights against the public's right of access to information about campaign contributions. Allowing alternative means of disclosing the information (eg. providing copies on demand) would upset this balance.
>
> We are unable, therefore, to provide you with copies of the requested records. This does not constitute a denial of access, as you are free to inspect the records in person pursuant to section 65(1) of the *Vancouver Charter*.

[3] FIPA requested a review, under Part 5 of the Act, of the City's refusal to provide copies of the requested records. This Office's attempts to mediate a settlement of the dispute extended over a lengthy period of time, but ultimately the request for review proceeded to a Part 5 inquiry.

2.0 ISSUE

[4] Section 79 of the Act provides that, if a provision of the Act is inconsistent or in conflict with a provision of another Act, the provision of the Act prevails unless the other Act expressly provides that it, or a provision of it, applies despite the Act.

[5] Section 8.1 of the *Vancouver Charter* provides that Parts I and II of the *Vancouver Charter* prevail over inconsistent or conflicting provisions of the Act. Section 65 of the *Vancouver Charter*, which is in Part I, requires disclosure statements filed with the City under s. 62 of the *Vancouver Charter* to be made available, subject to an undertaking of restricted use, for public inspection at City Hall.

[6] The issue is whether s. 9(2)(a) of the Act, which requires the City to provide a copy of a record or part requested under the Act, applies to FIPA's access request for copies of disclosure statements filed with the City under the *Vancouver Charter*.

3.0 DISCUSSION

[7] **3.1 Relevant Statutory Provisions** – The Act is a comprehensive statute that is both substantive and procedural in nature. It establishes access rights and processes that apply to records in the custody or control of a "public body" as defined by the Act. The following provisions of the Act are relevant to this inquiry:

> 5(1) To obtain access to a record, the applicant must make a written request that
>
> (a) provides sufficient detail to enable an experienced employee of the public body, with a reasonable effort, to identify the records sought,
>
> (b) provides written proof of the authority of the applicant to make the request, if the applicant is acting on behalf of another person in accordance with the regulations, and
>
> (c) is submitted to the public body that the applicant believes has custody or control of the record.
>
> (2) The applicant may ask for a copy of the record or ask to examine the record.
>
> …

8(1) In a response under section 7, the head of the public body must tell the applicant

(a) whether or not the applicant is entitled to access to the record or to part of the record;

(b) if the applicant is entitled to access, where, when and how access will be given, and

(c) if access to the record or part of the record is refused,

(i) the reasons for the refusal and the provision of this Act on which the refusal is based,

(ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and

(iii) that the applicant may ask for a review under section 53 or 63.

…

9(1) If an applicant is told under section 8(1) that access will be given, the head of the public body concerned must comply with subsection (2) or (3) of this section.

(2) If the applicant has asked for a copy of the record under section 5(2) and the record can be reasonably reproduced,

(a) a copy of the record or part of the record must be provided with the response, or
(b) the applicant must be given reasons for the delay in providing the record.

(3) If the applicant has asked to examine the record under section 5(2) or if the record cannot reasonably be reproduced, the applicant must

(a) be permitted to examine the record or part of the record, or
(b) be given access in accordance with the regulations.

…

79 If a provision of this Act is inconsistent or in conflict with a provision of another Act, the provisions of this Act prevails unless the other Act expressly provides that it, or a provision of it, applies despite this Act.

[8] The City is a "public body" under the Act. Under the *Vancouver Charter*, the City is also a corporation and a municipality. The *Vancouver Charter*, which has 28 parts and hundreds of sections, gives the City a wide range of powers. Part I of the

Vancouver Charter, which deals with "Electors and Elections" and is over one hundred sections long, contains the provisions in issue here.

[9] Section 62 of the *Vancouver Charter* requires each candidate in a municipal election in the City, and each electoral organization, to file with the City clerk a disclosure statement containing specified information. Section 62.1 requires a candidate or electoral organization to file, within 30 days, a supplementary report if the original disclosure statement did not completely and accurately disclose the required information or if any of the information in the original disclosure statement has changed.

[10] A disclosure statement must state the total amount of campaign contributions, the amount of election expenses and other campaign-related information. The name and other particulars relating to any "person or unincorporated organization" who made a campaign contribution of $100 or more must also be included. In the case of individuals who donate $100 or more, s. 62(4)(b) provides that the addresses of individuals need not be supplied. In other words, only a corporation, society or unincorporated organization must include its address in a statement.

[11] Section 65 of the *Vancouver Charter* provides for the public inspection of disclosure statements and the accompanying declarations. Section 65 and s. 8.1, which addresses inconsistency or conflict between the Act and Parts I and II of the *Vancouver Charter*, read as follows:

> 8.1 To the extent of any inconsistency or conflict with the *Freedom of Information and Protection of Privacy Act*, Parts I and II of this Act apply despite that Act.
>
> …
>
> 65(1) The disclosure statements and signed declarations under section 62 and the supplementary reports and signed declarations under section 62.1 must be available for public inspection in the City Hall during its regular office hours from the time of filing until 7 years after general voting day for the election to which they relate.
>
> (2) Before inspecting a document referred to in subsection (1), a person other than a city officer or employee acting in the course of duties must sign a statement that the person will not inspect the document or use the information in it except for the purposes of this Part.

[12] The effect of s. 79 of the Act is that, if a provision of the Act is inconsistent or in conflict with a provision of the *Vancouver Charter*, the Act's provision prevails unless the *Vancouver Charter* provides that it, or a provision of it, applies despite the Act.

[13] Provisions that override the Act as contemplated in s. 79 come in a variety of forms. For example, the override created by s. 74 of the *Child, Family and Community Service Act* provides that the Act "does not apply to a record made under" the *Child, Family and Community Service Act* except as provided in Part 5 of that Act. Another

example is s. 40 of the *Human Rights Code*, which provides that the Act does not apply to information received by any person in the course of attempting to reach a settlement of a complaint under the *Human Rights Code*, unless the personal information has existed for at least 100 years or, in the case of other information, the information has existed for at least 50 years.

[14] Section 8.1 of the *Vancouver Charter* is such an override provision. It differs from these other examples, however, because, rather than overriding all access rights and procedures under the Act, it operates only to the extent of any inconsistency or conflict between the Act and Part I or II of the *Vancouver Charter*. This mirrors the very language of s. 79 of the Act, which also refers to "inconsistency of conflict" between the Act and another Act.

[15] As a result, the Act's access rights and procedures apply to the City and to disclosure statements filed with the City under the *Vancouver Charter* and are overridden only to the extent of inconsistency or conflict with Part I or II of the *Vancouver Charter*. As noted above, the *Vancouver Charter* provisions that require disclosure statements to be filed and subject to public inspection are in Part I of that Act.

[16] **3.2 Conflict or Inconsistency** – Again, FIPA sought access under the Act to the disclosure statements that two candidates filed with the City under the *Vancouver Charter*. Section 5(2) of the Act says that an applicant may ask for a copy of a requested record or to examine it. Section 8(1)(b) requires that, if an applicant is entitled to access, the public body's response to the access request must say where, when and how access will be given. Section 9(2)(a) requires that, if an applicant has asked for a copy under s. 5(2) and the record can be reasonably reproduced, then a copy of the record—or the part to which the applicant has a right of access—must be provided with the public body's response.

[17] FIPA asked the City for copies of the disclosure statements to which it requested access under the Act. The City responded to FIPA's access request under the Act by saying that it was not denying access to the disclosure statements, but would not provide copies because the exclusive means of access was public inspection at City Hall during regular office hours, under s. 65 of the *Vancouver Charter*.

[18] The City does not suggest that the disclosure statements requested by FIPA cannot be reasonably reproduced within the meaning of s. 9(2) of the Act. It argues there is conflict or inconsistency between the obligation to produce copies in s. 9(2)(a) of the Act and the scheme of access under s. 65 of the *Vancouver Charter*. It does not object to providing access under the Act as long as that does not involve providing copies.

[19] The City apparently does not see any conflict or inconsistency between access under s. 65 of the *Vancouver Charter* and access under the Act, if access under the Act is permitted by means of examination without copying. This is a point to which I return below as, in my view, the Act does not create stand-alone rights to examine or receive copies of records. The rights in the Act to examine or receive copies of requested records attach to the entitlement to access under the Act. In the absence of a right of access under

the Act to a record or part of a record, there are no rights to examine or receive copies. I have concluded that FIPA has no right of access under the Act to the disclosure statements and therefore no right under the Act to request or receive copies.

[20] The interpretation and application of s. 8.1 of the *Vancouver Charter* requires an understanding of the meaning of "conflict or inconsistency" between two laws.

[21] The constitutional doctrine of federal paramountcy applies to the assessment of inconsistency, or conflict, between federal legislation, on the one hand, and provincial or local government legislation on the other. The relevant cases are *Multiple Access Ltd.* v. *McCutcheon*, [1982] 2 S.C.R. 161, *M & D Farm Ltd.* v. *Manitoba Agricultural Credit Corp.*, [1999] 2 S.C.R. 961, *114957 Canada Ltée (Spraytech, Société d'arrosage)* v. *Hudson (Town)*, [2001] 2 S.C.R. 241 and *Law Society of British Columbia* v. *Mangat*, [2001] 3 S.C.R. 113. The test applied in these cases is whether there is actual conflict in the operation of a provincial or local government law and a federal law such that the operation of the provincial or local government law displaces the legislative purpose of the federal law. If it is possible to comply with the provincial or local government law without frustrating the purpose of the federal law, then there is no conflict that triggers the constitutional paramountcy of the federal law. If dual compliance is not compatible with the federal legislative purpose, then the federal law takes precedence and the provincial or local government law is inoperative to the extent of the inconsistency between the laws.

[22] In *Spraytech*, the Supreme Court of Canada upheld a local government by-law that restricted the use of pesticides within town boundaries. Le Bel J., at para. 46, summarized the reasons why the by-law did not conflict with provincial and federal pesticide control legislation:

> As L'Heureux-Dubé J. points out, the applicable test to determine whether an operational conflict arises is set out in *Multiple Access Ltd.* v. *McCutcheon*, [1982] 2 S.C.R. 161, at pp. 187 and 189. There must be an actual conflict, in the sense that compliance with one set of rules would be a breach of another. This principle was recently reexamined in and restated by Binnie J. in *M. & D. Farm Ltd.* v. *Manitoba Agricultural Credit Corp.*, [1999] 2 S.C.R. 961, at paras. 39-42. The basic test remains the impossibility of dual compliance. From this perspective, the alleged conflict with federal legislation simply does not exist. The federal Act and its regulations merely authorize the importation, manufacturing, sale and distribution of the products in Canada. They do not purport to state where, when and how pesticides could or should be used. They do not grant a blanket authority to pesticides' manufacturers or distributors to spread them on every spot of greenery within Canada. This matter is left to other legislative and regulatory schemes. Nor does a conflict exist with the provincial *Pesticides Act*, and I agree with L'Heureux-Dubé J.'s analysis on this particular point. The operational conflict argument thus fails.

[23] The issue of inconsistency or conflict also arises between provincial statutes and subordinate legislation such as regulations, rules or orders. Writing for the majority of

the Supreme Court of Canada in *Friends of the Oldman River Society* v. *Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, La Forest J. said the following, at para. 42:

> The basic principles of law are not in doubt. Just as subordinate legislation cannot conflict with its parent legislation (*Belanger* v. *The King* (1916), 54 S.C.R. 265), so too it cannot conflict with other Acts of Parliament (*Re George Edwin Gray* (1918), 57 S.C.R. 150). Ordinarily, then, an Act of Parliament must prevail over inconsistent and conflicting subordinate legislation. However, as a matter of construction a court will, where possible, prefer an interpretation that permits reconciliation of the two. "Inconsistency" in this context refers to a situation where two legislative enactments cannot stand together; see *Daniels* v. *White*, [1968] S.C.R. 517. The rule in that case was stated in respect of two inconsistent statutes where one was deemed to repeal the other by virtue of the inconsistency. However, the underlying rationale is the same as where subordinate legislation is said to be inconsistent with another Act of Parliament — there is a presumption that the legislature did not intend to make or empower the making of contradictory enactments. There is also some doctrinal similarity to the principle of paramountcy in constitutional division of powers cases where inconsistency has also been defined in terms of contradiction — *i.e.*, "compliance with one law involves breach of the other"; see *Smith* v. *The Queen*, [1960] S.C.R. 776, at p. 800.

[24] The leading case in British Columbia on inconsistency or conflict between provincial or municipal laws is *British Columbia Lottery Corp.* v. *City of Vancouver* (1999), 169 D.L.R. (4th) 141 (B.C.C.A.). That case involved a regulation made by the BC Lottery Corporation under the *Lottery Corporation Act* and a casino by-law enacted by the City of Vancouver under the *Vancouver Charter*. The lottery regulation permitted businesses to enter into agreements with the Lottery Corporation for the operation of video lottery and slot machines on their business premises. The casino by-law prohibited the operation of video lottery or slot machines within the City. The Lottery Corporation later amended the lottery regulation to add a provision that purported to expressly override the City's by-law and official development plan.

[25] The Court of Appeal held that there was no authority, in the *Lottery Corporation Act* or any other statute, for the lottery regulation to override City by-laws made under the *Vancouver Charter*. That is not the situation in this inquiry, where competing provincial statutes are involved—and not a provincial statute and subordinate legislation such as regulations and by-laws—with s. 79 of the Act expressly providing that, where there is inconsistency or conflict between the Act and another provincial Act, the other Act will take precedence if it contains a provision that expressly overrides the Act.

[26] More to the point is the Court of Appeal's conclusion that the lottery regulation, which enabled video lottery and slot machines, and the casino by-law, which prohibited them, did not conflict. The Court said the following at paras. 17-21:

> The question, then, is: When an aspect of the subordinate power gives, to one body, permission to do an act that may be thought to be contrary to the enactment of another body, acting under its subordinate power, which is to prevail?

> We were referred to the original group of leading cases: *O'Grady v. Sparling*, [1960] S.C.R. 804, 25 D.L.R. (2d) 145; *A.G. (Ontario) v. Mississauga* (1981), 15 M.P.L.R. 212, 125 D.L.R. (3d) 385; and *Meadowcreek Farms v. Surrey* (1978), 7 M.P.L.R. 178, 89 D.L.R. (3d) 47. Those cases must be read in the light of the decision of the Supreme Court of Canada in *Multiple Access v. McCutcheon*, [1982] 2 S.C.R. 161, 138 D.L.R. (3d) 1, which sets out what is now referred to as the modern law on competing enactments, and competing occupation of aspects of the same legislative field.
>
> It is no longer key to this kind of problem to look at one comprehensive scheme, and then to look at the other comprehensive scheme, and to decide which scheme entirely occupies the field to the exclusion of the other. Instead, the correct course is to look at the precise provisions and the way they operate in the precise case, and ask: Can they co-exist in this particular case in their operation? If so, they should be allowed to co-exist, and each should do its own parallel regulation of one aspect of the same activity, or two different aspects of the same activity.
>
> A true and outright conflict can only be said to arise when one enactment compels what another forbids. That is not the kind of conflict we have in this case. Here, the Vancouver enactment forbids in Vancouver an activity which the lottery enactment authorizes or permits, but does not compel. The two enactments, neither of which is made by a body which is, in legal terms, dominant over the other, and which are made by bodies which are coordinate in legal terms, should, to the greatest extent, be permitted to operate in accordance with their own terms, side by side.
>
> The Vancouver by-law is an outright prohibition. The lottery regulation simply provides for a kind of permission in the particular area. The Vancouver by-law is both more specific and more direct. If it operates in accordance with its terms, it only limits part of the scope of the lottery regulation.

[27] The City says that s. 65 of the *Vancouver Charter* is inconsistent or in conflict with s. 9(2)(a) of the Act because s. 65 prevents the City from providing copies of disclosure statements. It maintains that this interpretation of s. 65 is supported by the fact that other public inspection provisions in the *Vancouver Charter*—such as ss. 35(3), 168 and 196A(3)—explicitly require the City to provide copies on request. Section 65 does not explicitly require the City to provide copies.

[28] The City draws the following line between the extraction and recording of information from disclosure statements that it says s. 65 permits and the copying of statements it contends s. 65 prevents (initial submission, para. 28):

> Although the "public inspection" provisions do not authorize the release of entire copies of documents, this is not to say that they entirely exclude the making of extracts or copies. Members of the public are permitted by many public bodies to make notes on paper or a laptop computer. They are, however, prevented from carrying out such activities as photographing, photocopying on a portable copier, or scanning on a handheld scanner. This respects the intent of the legislation by allowing those inspecting the documents to record the information of greatest

> interest to them while maintaining reasonable limits on the bulk recording of information.

[29] In my view, s. 65 of the *Vancouver Charter* imposes a duty on the City to make disclosure statements available for visual inspection by members of the public at City Hall. Section 65 does not prevent, or authorize the City to prevent, members of the public who visually inspect disclosure statements from recording information in them. An individual who reads a disclosure statement will, by doing so, extract information from the disclosure statements and retain some of the statement's contents in his or her memory. The individual may also, at the time of inspection or later, make notes by hand or by other means (for example, by using a laptop computer). Section 65 of the *Vancouver Charter* contemplates, in my view, this kind of information extraction by the act of reading statements and the possibility that, once it is so extracted, information will be recorded in some form.

[30] Section 65 does not require the City to provide copies of disclosure statements and it does not require the City to make disclosure statements available for reproduction by any method or make them available for commercial or other mass disclosure and use outside of City Hall. I agree that, if it chose, the City could prevent a member of the public from, for example, bringing in and using a photocopy machine, scanner or camera to copy disclosure statements.

[31] I do not agree, however, that s. 65 prevents the City from providing copies or permitting copies to be made. I do not agree that other inspection provisions in the *Vancouver Charter* that expressly require the City to provide copies on request are an indication of any kind that s. 65 itself prohibits the City from providing copies of disclosure statements. The absence of a requirement to provide copies in s. 65 means that members of the public have no right to receive copies, and the City has no duty to provide them, but it does not create a prohibition against copies being provided by the City. The City's duty is to make disclosure statements available for public inspection, subject to the signed statement required by s. 65(2). The City may choose not to provide copies or to prevent members of the public from bringing in and using a photocopy machine, scanner or camera, but s. 65 does not impose any duties on the City in this respect.

[32] It follows that s. 9(2) of the Act does not require the City to do something—provide copies of statements—that s. 65 of the *Vancouver Charter* prohibits or prevents it from doing. I therefore conclude that the requirement to provide copies in s. 9(2) of the Act is not in conflict or inconsistent with s. 65 of the *Vancouver Charter*.

[33] As indicated above, the unrestricted nature of the right of access under the Act is, as compared to the restricted nature of access under s. 65 of the *Vancouver Charter*, another matter. Under s. 65(2) of the *Vancouver Charter*, the City must, before permitting inspection under s. 65(1) by persons other than City officers or staff acting in the course of their duties, secure a signed statement that the person will not inspect the document or use information in it other than for the purposes of Part I of the *Vancouver Charter*. Access under the Act is not restricted in this way. If members of the public are

entitled under the Act to have access to disclosure statements filed with the City under the *Vancouver Charter*, the Act does not restrict or impose conditions on the purpose for which the disclosure statements, or information in them, may be used.

[34] In my view, requiring the City under the Act to provide public access to disclosure statements without restriction as to the purpose of access or use of the information they contain conflicts or is inconsistent with requiring the City, under s. 65(2) of the *Vancouver Charter*, to permit public inspection of disclosure statements only after receiving a signed statement of restricted purpose and use. As I see it, Part 2 of the Act requires the City to do something—provide unrestricted access—that s. 65(2) of the *Vancouver Charter* requires it not to do. Access under the Act—whether by examination or by providing copies—would displace the legislative purpose of s. 65(2) of the *Vancouver Charter*.

[35] The right of access conferred by the Act usually takes precedence over other statutory provisions because of s. 79 of the Act. Section 8.1 of the *Vancouver Charter*, however, expressly overrides the Act to the extent of conflict or inconsistency between the Act and Part I or Part II of the *Vancouver Charter*.

[36] As I said earlier, a public body can be required to provide a copy under s. 9(2) of the Act only if there is an entitlement to access under the Act. The Act does not create a stand-alone right to copies of records. The override created by s. 8.1 of the *Vancouver Charter* means the City is not required to provide access under the Act to the disclosure statements requested by FIPA. It follows that there is also no requirement under s. 9(2) of the Act for the City to provide copies of statements in response to a request under the Act.

[37] **3.3 Role of the *Interpretation Act*** – In response to the City's position, FIPA has argued that there is no conflict or inconsistency between the Act and the *Vancouver Charter* on the basis that s. 65 of the *Vancouver Charter* prevents the City from providing copies. FIPA says the City is, in fact, required to provide copies under s. 27(7) of the *Interpretation Act*, which reads as follows:

> (7) If in an enactment power is given to a person to inspect or to require the production of records, the power includes the power to make copies or extracts of the records.

[38] FIPA says s. 27(7), read together with s. 65 of the *Vancouver Charter*, creates an obligation for the City to provide copies of inspected disclosure statements. The City made two responding arguments. It said that s. 27(7) of the *Interpretation Act* applies to a statutory power of a public official to inspect or compel the production of records and does not apply to a statutory provision for public inspection of records, such as s. 65 of the *Vancouver Charter*. In the alternative, the City said, s. 2(1) of the *Interpretation Act* provides that the *Interpretation Act* applies to every enactment unless a contrary intention appears in the *Interpretation Act* or the other enactment. The City contended that the fact that some public inspection provisions in the *Vancouver Charter* expressly require the

City to provide copies on request, but s. 65 does not, indicates the necessary intention in the *Vancouver Charter* that s. 27(7) of the *Interpretation Act* does not apply.

[39] As discussed above, there is conflict or inconsistency between public, unrestricted, access under the Act and public, restricted, inspection under s. 65 of the *Vancouver Charter*. Because of the operation of s. 8.1 of the *Vancouver Charter*, FIPA has no right of access under the Act to disclosure statements filed with the City under the *Vancouver Charter*. FIPA therefore has no right to request or receive copies under the Act. This is an inquiry under the Act. In these circumstances, I decline to decide issues concerning the *Vancouver Charter* and the *Interpretation Act* that are not necessary for the resolution of this inquiry or the administration of the Act.

4.0 CONCLUSION

[40] For the above reasons, I find that the right of public inspection conferred by s. 65 of the *Vancouver Charter* overrides the right of public access in s. 4 of the Act. In the absence of a right of access under the Act, I find that FIPA has no right under ss. 5(2) and 9(2)(a) of the Act to request and obtain copies of disclosure statements filed with the City under the *Vancouver Charter*. I therefore decline to require the City to comply with s. 9(2) of the Act by providing copies to FIPA of the disclosure statements that it requested under the Act.

January 12, 2004

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia