



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

Order 04-11

**MINISTRY OF SUSTAINABLE RESOURCE MANAGEMENT**

James Burrows, Adjudicator  
April 19, 2004

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**Summary:** The applicant made a request for a fee waiver under s. 75(5), on the basis that release of the records was in the public interest. Although the requested records were about the environment, they did not relate to a matter of current public interest. The applicant provided no evidence that met the test for establishing a public interest waiver as defined by the Commissioner. Decision of public body to deny request for fee waiver confirmed.

**Key Words:** environment – public interest – fee waiver.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, s. 75(5).

**Authorities Considered: B.C.:** Order 332-1999, [1999] B.C.I.P.C.D. No. 45; Order 01-35, [2001] B.C.I.P.C.D. No.36; Order 02-28, [2002] B.C.I.P.C.D. No. 28.

## 1.0 INTRODUCTION

[1] On February 11, 2003, the applicant made a request, under the *Freedom of Information and Protection of Privacy Act* (“Act”), for the following records from the Ministry of Sustainable Resource Management (“Ministry”):

draft and final versions of all Environmental Assessment Office terms of reference, policies and procedures, correspondence, and/or any other applicable referent record or directive advising or authorizing the 3 February [and 13 February] 1997 Public Advisory Committee statement[s] bearing on the Jumbo Alpine Project Review process...

draft and final versions of all Environmental Assessment Office directives, correspondence, or records bearing on – or otherwise tending to clarify

Environmental Assessment Office policy and procedures – with respect to developments noted in [a named lawyer's] query of 20 February 1996 in regard to the Jumbo Alpine Project Review process...

[2] On March 12, 2003, the Ministry responded to the applicant by advising that there would be a fee of \$285.00 to conduct a search for the requested records. On April 17, 2003, the Ministry declined the applicant's request for a fee waiver. On April 30, 2003, the applicant requested a review of the Ministry's decision.

[3] On June 11, 2003, the Ministry revised its fee estimate to \$385.25 to include the costs of photocopying and preparing the records for disclosure.

[4] I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

## **2.0 ISSUE**

[5] The issue in this inquiry concerns the Ministry's decision to deny a fee waiver under s. 75(5) of the Act.

[6] Both parties have submitted arguments bearing on this issue and I have carefully reviewed both positions.

## **3.0 DISCUSSION**

[7] The records at issue are correspondence, reports, memoranda, minutes and speaking notes of the Jumbo Creek Alpine Resort Project Public Advisory Committee and the Environmental Assessment Office of the Ministry. In his affidavit, the Director of Strategic Policy and Planning for the Ministry's Environmental Assessment Office said that the Jumbo Creek Project is a project undergoing an environmental assessment review.

[8] In his submission, the applicant has argued that the Ministry should provide the requested records without a fee, as he believes that the requested records are in the public interest. Section 75(5) allows the public body to waive fees if it concludes the request meets the criteria set out in that section.

### **Fees**

**75 (5)** If the head of a public body receives an applicant's written request to be excused from paying all or part of the fees for services, the head may excuse the applicant if, in the head's opinion,

...

(b) the record relates to a matter of public interest, including the environment or public health or safety.

[9] In Order No. 332-1999, [1999] B.C.I.P.C.D. No. 45, pp. 4-7, the Commissioner set out the two-part test for determining the validity of a public interest claim. I have followed that approach without repeating it here.

[10] The thrust of the applicant's submissions is that the Environmental Assessment Office professes to be a neutral provincial agency and therefore it "should not be putting up barriers with respect to its rules of engagement may equate to" (letter of April 23, 2003 from applicant to public body, attachment to applicant's initial submission). The applicant does not provide information as to how the requested records will serve a specific public interest and does not indicate how the information will be disseminated.

[11] In Order 01-35, the Commissioner found, given the explicit language of s. 75(5)(b), that records about the environment are intrinsically about a matter of public interest:

[29] In referring to a "matter of public interest, including the environment or public health or safety", the Legislature specified "the environment" and "public health or safety" as two non-exhaustive examples of matters that are of public interest. Nothing in s. 75(5)(b) requires an applicant to also show that a record that relates to the environment also relates to a matter of public interest. A record that relates to "the environment" by definition relates to a matter of public interest.

[12] The project in question is undergoing an environmental assessment. It is not enough for the project to be a matter of public interest. Section 75(5)(b) requires that the records themselves relate to a matter of public interest. Adjudicator Skinner followed this approach in Order 02-28, [2002] B.C.I.P.C.D. No. 28, distinguishing between records which deal with a matter of "recent public debate" as opposed to records about past issues:

[27] The materials that the applicant submitted with the letter of July 17, 2001 indicate that the matter was likely a source of intense interest to a very localized group of individuals over ten years ago. However, there is nothing to indicate that it has been a source of recent public debate. It also does not appear that dissemination of the materials requested would yield a public benefit of the type contemplated in the analysis quoted above. Nor would disclosure reveal how the public body is allocating financial or other resources.

[28] While the records sought appear to relate to the environment and public health, and therefore, on their face, appear to relate to "a matter of public interest", the fact remains that the records are historical in nature. The central thrust of the test articulated in Order No. 332-1999, exemplified by the reference to "a matter of recent public debate", is present or prospective utility. In other words, the environmental or public health issues should be matters of current or prospective, rather than historical, concern or relevance. As with s. 25, this is not to say that historical records could never meet the test; however, there would have to be a link between the historical records and a current or prospective public interest matter. I find on the evidence before me – or lack of it – that the applicant has not passed the public interest threshold for fee waiver as set out in the first half of the test in Order No. 332-1999 above.

[13] In his affidavit, the Ministry's Manager, Information, Privacy and Records, deposed that the requested records are mostly eight years old and deal with a subject for which the applicant has provided no evidence that it was or remains a public concern. While the Jumbo Alpine Glacier Resort project review is still ongoing, there is no evidence before me that the subject of the specific records actually in dispute here is a matter of recent public debate. The applicant describes the records as detailing the terms of reference and other directives which authorized a public statement by the Committee. I cannot see any basis to conclude that such administrative records have remained part of the current public debate.

[14] There is no indication as to how, if at all, the applicant would disseminate the information if he received it. Nor is there any indication that dissemination or use of the information in the records can reasonably be expected to yield a public benefit in one of the ways described in Order No. 332-1999, as quoted above. Last, there is no indication that the records disclose how the public body is allocating financial or other resources.

[15] I find that the Ministry should not be required to waive the fee under s. 75(5).

#### **4.0 CONCLUSION**

[16] For the reasons given above, under s. 58(3)(c) of the Act, I confirm the decision of the Ministry of Sustainable Resource Management, under s. 75(5) of the Act, not to excuse the applicant from paying the fee estimated by the Ministry.

April 19, 2004

#### **ORIGINAL SIGNED BY**

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James Burrows  
Adjudicator