



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

Order F05-14

**MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL**

Celia Francis, Adjudicator  
April 14, 2005

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**Summary:** West Vancouver Police Association requested access to report of Ministry's review of West Vancouver Police Department. Ministry disclosed report in severed form, withholding portions under s. 22. Ministry ordered to disclose most of withheld information.

**Key Words:** personal privacy – unreasonable invasion – employment history – personal recommendations or evaluations – public scrutiny – inaccurate or unreliable personal information – unfair damage to reputation.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(a), (g) & (h), 22(3)(d) & (g).

**Authorities Considered:** B.C.: Order 01-53, [2001] B.C.I.P.C.D. No. 56.

## 1.0 INTRODUCTION

[1] This inquiry arises out of a request to the Ministry of Public Safety and Solicitor General ("Ministry") by the West Vancouver Police Association ("WVPA") for a copy of a report on a Ministry review of the West Vancouver Police Department ("WVPD"). Under cover of a letter of May 25, 2004, the Ministry's information and privacy office disclosed the report, withholding a few portions under s. 22 of the *Freedom of Information and Protection of Privacy Act* ("Act").

[2] It seems the WVPA, a union representing WVPD members, received two copies of the severed report. The WVPA attached to its initial submission a copy of a second letter of May 25, 2004, this one from the Director of the Ministry's Police Services Division to the WVPA, which reads as follows:

Please be advised that the *West Vancouver Police Department Review Report* is finalized.

As you are aware, this report was prepared at the request of the West Vancouver Police Board. The purposes of the report were to ensure that the citizens of West Vancouver were receiving adequate and effective police services; to examine the working relationships between stakeholders that govern or deliver police services in the District of West Vancouver; and to identify outstanding issues and make recommendations for improvement.

The *West Vancouver Police Department Review Report* was originally intended to be a public document. However, due to concerns by some stakeholders in the process, Police Services Division has agreed to release the report only if requested under the provisions of the *Freedom of Information and Protection of Privacy Act (FOI Act)*.

A “severed” version of the report in accordance with the provisions of the *Freedom of Information and Protection of Privacy Act (FOI Act)* is enclosed for your information. It is this version of the report that will be to [sic] any persons who request a copy of the report under the *FOI Act*. Both unsevered and severed versions of the *West Vancouver Police Department Review Report* are being forwarded to the West Vancouver Police Board and to Chief Constable Grant Churchill under separate cover.

[3] The WVPA requested a review of the Ministry’s decision and, as a result of mediation, received the name of a consultant referred to in the report. Mediation was otherwise unsuccessful and a written inquiry was held under Part 5 of the Act. 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. This Office invited and received representations from the WVPA, the Ministry and the WVPD “executive” (the WVPD’s Chief constable and inspectors).

## 2.0 ISSUE

[4] The issue before me in this case is whether s. 22 requires the Ministry to withhold personal information. Under s. 57(2), the applicant WVPA has the burden of proof regarding third-party personal information.

## 3.0 DISCUSSION

[5] **3.1 The Record in Dispute** – The West Vancouver Police Board (“WVPB”) asked the Police Services Division of the Ministry to conduct a review of the WVPD, which it did in 2003. According to the Ministry, the review was brought about by a number of events, including the loss of a number of sworn members of the WVPD over the preceding two years (para. 4.02, Ministry’s initial submission). Three previous reviews of the WVPD had taken place between April 2001 and February 2002 in response to these and other outstanding issues.

[6] According to the Ministry's report on the 2003 review (the record in dispute in this inquiry), at p. 1:

This review focused on the current working relationships between the major stakeholders that govern or deliver police services in the District of West Vancouver. The stakeholders include the WVPB, the West Vancouver Police Association (WVPA) and the sworn and civilian members of the department. The overall mandate of the review was to ensure that the citizens of West Vancouver are receiving adequate and effective police services.

[7] The review had a "selected focus on the working relationships between the stakeholders that govern or deliver police services" in West Vancouver. Accordingly, the report describes the participants' views on issues related to leadership, communication, organizational structure and recruitment and retention.

[8] The review team consisted of a retired member of another police department and staff of the Police Services Division. The team conducted interviews at which the interviewees were told that "their responses would be anonymous, but not confidential", that is, that "they would not be identified by name or rank in the report, but that the findings of the investigation would be aggregated and included in the final report". Those who completed questionnaires were told much the same things (paras. 4.03-4.06, Ministry's initial submission).

[9] The Ministry said, at para. 4.06 of its initial submission, that the interviewers read the following statement at the beginning of each interview:

Everything we talk about here today is anonymous, but not confidential. That means you will not be identified by name in the report. However, what you say may be used in the report in aggregate manner. For example, we might write in the report that "overall sworn members/members of senior management team are concerned about...." or "one sworn member/senior manager was of the opinion that...".

[10] The 40-page report sets out the review team's methodology, findings and analysis, recommendations and the "data collection instruments" (interview questions and questionnaires). The Ministry disclosed most of the report, withholding approximately 42 lines under s. 22(3).

[11] **3.2 Personal Privacy** – The Information and Privacy Commissioner has considered the application of s. 22 in numerous orders, for example, Order 01-53, [2001] B.C.I.P.C.D. No. 56. I have applied here, without repeating it, the approach taken in those orders. The relevant provisions read as follows:

**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, ...
  - (g) the personal information is likely to be inaccurate or unreliable, and
  - (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.
- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if ...
  - (d) the personal information relates to employment, occupational or educational history, ...
  - (g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party, ... .

[12] The WVPA argues that the Ministry's review focused on the working relationships of the major stakeholders that govern or deliver police services in West Vancouver. As one of those stakeholders, the WVPA believes that it is entitled to full disclosure of the report (paras. 8-14, initial submission). The Ministry and the WVPD executive believe that s. 22 applies to the withheld information.

***Is it personal information?***

[13] Two withheld items relate to identifiable individuals. In the remaining cases, no one is referred to individually. That is, the withheld information consists mainly of the views of sworn members of the WVPD and, in some cases, the review team, about the police "executive" or "leadership of the department" with regard to leadership and communication issues within the WVPD. The views and related information are expressed in general terms and in aggregate form, as they relate both to those expressing the views and to those about whom the views are expressed. The term "executive" refers to the WVPD's chief constable and inspectors, a handful of individuals. The term "leadership of the department" appears for the most part to be used interchangeably with the "executive".

[14] At the time of the request, the Act defined "personal information" as follows:

**"personal information"** means recorded information about an identifiable individual

[15] This definition has since been amended to exclude "contact information", a change that has no bearing on this discussion.

[16] The first issue is whether aggregate or group references to the “executive” or “leadership” of the WVPD are “recorded information about an identifiable individual” and thus “personal information” under the Act. The terms “executive” and “leadership” refer to this organizational entity in the context of its role as responsible for running and overseeing the WVPD. However, it is clear from the material before me that the WVPA is aware of the identities of the police “executive” (and, by extension, the “leadership”) or could easily determine them, as could the general public. I therefore conclude that the withheld aggregate information which refers to the executive and the leadership could readily be linked to identifiable individuals and is “personal information” as defined in the Act.

***Presumed unreasonable invasion of personal privacy***

[17] The members of the executive say that the withheld information falls under ss. 22(3)(d) and (g) because it relates to their employment history and is evaluations of how they performed their jobs. They also provide *in camera* commentary on the individual withheld items and their views on why disclosure of these items would be an unreasonable invasion of their privacy (paras. 2 & 4, initial submission; *in camera* submission & letter). The Ministry says that the withheld information is personal information that falls under s. 22(3)(d) and provides some *in camera* discussion and evidence in support of this position (paras. 4.17-4.21, initial submission; para. 8, D’Argis affidavit).

[18] The WVPA questions whether the withheld information is personal information at all although it agrees that, where the withheld information relates to identifiable individuals, it is personal information. However, where the information relates to a group of individuals such as the WVPB or the “executive”, or views about the functions of a group of individuals, the WVPA does not believe the withheld information should receive the same level of protection as personal information about an identifiable individual. The withheld information relates to “working relationships between the stakeholders” and does not relate to a formal performance review process, the WVPA argues, and therefore does not fall under ss. 22(3)(d) and (g) of the Act (paras. 4-12, reply submission).

[19] The WVPA also complains that the WVPD and its Chief Constable both received complete copies of the report, which it received only in severed form. (The WVPA appears to mean the “WVPB”, *i.e.*, the Board, when it refers to the “WVPD”.) There had apparently been no concern about any invasion of the WVPA members’ privacy in this disclosure, the WVPA says (paras. 1-4, initial submission). The Ministry responds that it had authority under what was then s. 33(c) (and is now s. 33.2(a)) of the Act to disclose the report in full to the WVPB and the WVPD. The WVPA has not recognized the privacy interests that arose during this inquiry, in the Ministry’s view (paras. 1-2, reply).

[20] At the time, s. 33(c) of the Act authorized public bodies to disclose personal information for the purpose for which it was collected or for a purpose consistent with that original purpose. However, the issue of whether the Ministry correctly concluded that s. 33 permitted it to disclose complete copies of the report to the WVPB and Chief

Constable but not to the WVPA is not before me and is not relevant to my analysis of whether the WVPA is entitled to more information under Part 2 of the Act. In any case, I note that the WVPB is, under the *Police Act*, the governing body of the WVPD. Provision of a copy of the report to the governing body is not, in my view, persuasive on the issue of whether the WVPA, an organization at arm's length to the WVPD's management and control, should receive third-party personal information.

[21] Turning to an examination of the withheld information, the severed passage on p. 9 concerns the process for the appointment of the current chief constable. It is his employment history and therefore falls under s. 22(3)(d). Apart from one minor item (which concerns the departure of a WVPB member), most of the remaining withheld portions of the report are the views and perceptions of WVPD members as to the executive's (or leadership's) actions in the workplace, principally those members' perceptions of the executive's attitudes to, or behaviour regarding, the members. This type of information falls under s. 22(3)(d) of the Act, as does the item about the WVPB member. The remaining withheld portions are the review team's views and evaluative comments about the ways in which the executive performed their duties. These items fall under ss. 22(3)(d) and (g). Disclosure of the withheld portions is therefore presumed to be an unreasonable invasion of third-party privacy.

***Inaccurate or unreliable information and unfair damage to reputation***

[22] The executive reject the WVPA's argument that, as a "stakeholder"—whatever that means here or generally—the WVPA is entitled to the withheld information. They point to a passage in the report that notes that, "due to the nature of this review, much of the information collected involves personal opinions, perceptions and anecdotal evidence". The executive say that the information should not be regarded as fact and is therefore likely to be inaccurate and unreliable. Where the information relates to "evaluations of a personal employment nature", *i.e.*, how they performed their jobs, they say, the prospect of unfair damage to their reputations arises (paras. 3-4, initial submission; para. 5, reply submission). They provide further comment on ss. 22(2)(g) and (h) on an *in camera* basis although they do not elaborate on how the information might be inaccurate or unreliable nor on how the harm they envision could occur as a result of disclosure.

[23] The WVPA casts doubt on the argument that some of the information is likely to be inaccurate or unreliable for the purposes of s. 22(2)(g). It does not believe this is an accurate characterization of this information but says that, in any case, the information can be corrected if incorrect. There should therefore also be no concern regarding s. 22(2)(h), it argues (paras. 22-25, reply).

[24] The WVPA concludes as follows in its reply submission:

26. Instead, the Police Association suggests that the real issue for the Third Parties is their unhappiness with the information contained in the review, not the accuracy of the information. As we understand the methodology of the review, the impugned information should contain reports of the perceptions of the stakeholders

about working with the other stakeholders in the process to police West Vancouver. In other words, the information at issue is the very purpose of the report: to consider the working relationship between the stakeholders. To sever the views of one of the stakeholders about its working relationship with one or more of the other stakeholders defeats the very object of the report. Views, by definition, are not incorrect; ill-conceived perhaps, but not incorrect. It is understanding and addressing these views, whatever they may be, that gave rise to the report. Should some views be ill-conceived, it is understanding and addressing them that will allow the underlying grievance to be addressed. As such, the Police Association submits the severed information cannot be withheld as inaccurate or unreliable under section 22(2)(g) of FOIPA and it gives rise to no greater consideration of section 22(2)(h) of FOIPA.

[25] The parties acknowledge that most of the withheld information in the report consists of views and perceptions of the executive's actions in the workplace. Such information is by its nature subjective and I am inclined to agree with the WVPA's suggestion that it is difficult to say whether it can be characterized as accurate or inaccurate. I do not in any case think a reader of the report would take the members' perceptions of the executive's actions in the workplace as anything other than what they purport to be—perceptions or opinions, whether well-founded or ill-founded.

[26] The executive have not explained how the information is likely to be inaccurate or unreliable nor how its disclosure would unfairly damage the reputation of any person. These things are also not clear from the information itself, which is in any case similar in tone and nature to much of the information the Ministry has already disclosed, as I discuss below. The executive do not suggest that the interviewers recorded the members' views inaccurately and it is not otherwise clear to me how the executive could pass judgement on the accuracy of the views and opinions of others. The executive may disagree or be unhappy with the members' views and perceptions about them as a group but this does not make them inaccurate or unreliable. Nor does it mean their disclosure could cause "unfair" damage as in s. 22(2)(g). The executive's arguments in this area are speculative and, in my carefully considered view, paint an exaggerated and overly dramatic picture of the potentially negative consequences of disclosure of this information. I find that ss. 22(2)(g) and (h) do not apply here.

***Section 22(2)(a) and other relevant circumstances***

[27] The WVPA says, in para. 15 of its reply submission, that the "tools" for the review were developed in consultation with the various stakeholders who then participated in the review. The third parties consented to the collection, use and disclosure of their personal information for the purposes of the review, knowing the information would be disclosed in aggregate form, the WVPA continues. Disclosure of the information to the WVPA is therefore not an unreasonable invasion of third-party privacy, it says, and "the third parties cannot now seek to withdraw their consent to the process, under the guise of objections under section 22 of FOIPA, because they may be unhappy with the result of the process".

[28] The WVPA also points out that the WVPB requested the review. A report created pursuant to the obligations of the Director of Police Services to superintend policing and law enforcement functions in British Columbia serves the public interest, it argues, and disclosure of the report would allow British Columbians to scrutinize the stakeholders in the policing and enforcement role. Thus, in the WVPA's view, s. 22(2)(a) of the Act applies to this situation (paras. 16-18, reply).

[29] The executive do not dispute the WVPA's description of the review process. The executive do not believe, however, that there is a public interest in disclosing their personal and personnel information in this situation (paras. 5-6, initial submission). They also believe that the WVPA will use the information to advance its position in labour relations matters and to embarrass them, which, they argue, is not the purpose of the Act. (They do not say what they mean by "labour relations matters". Nor do they provide any support for their allegations regarding the applicant's possible uses of the withheld information. I also note that the WVPA does not, of course, need the withheld information to use its members' views of the WVPD executive in any "labour relations matters" that may exist. The WVPA can seek to use the views that its members have expressed to the report's authors, of which the members are obviously aware, in any undefined "labour relations matters".)

[30] The factor in s. 22(2)(a) refers to the desirability of subjecting the public body's activities to public scrutiny. This suggests that the information in question should relate broadly to the activities of the public body and that there should be a wider public interest in the disclosure of such information.

[31] In this case, the Ministry disclosed most of the report, including the methodology, most of the findings and analysis, all of the recommendations and the rationale for those recommendations. In my view, however, it is desirable for accountability reasons to provide a more complete picture of the executive's actions. The executive are the organizational unit responsible for running the WVPD and are accountable to the WVPB, the WVPD's employees and the people of West Vancouver for how they carry out their duties. The selective withholding of information that the executive believe may impinge negatively on the public perceptions of them could be viewed as misleading. It certainly does not promote accountability and transparency.

[32] Moreover, as noted above, the executive (or leadership) are referred to as a group and not individually. The report was deliberately structured in this way to minimize the possibility of linking specific comments to particular individuals. The fact that the views are about the executive as a collective—the organizational group ultimately responsible for the management of the WVPD—heightens the need for accountability and transparency, while at the same time diluting individual privacy interests.

[33] It also is helpful to reiterate here the purpose of the review which was, as noted at p. 1 of the report, "to identify outstanding issues and make recommendations for improvement." The report also states that the "review focused on the current working relationships between the major stakeholders that govern or deliver police services" in



West Vancouver, with the overall mandate being to ensure that the people of West Vancouver are receiving adequate and effective police services (p. 1 of report).

[34] The review team interviewed 64 individuals, including a cross-section of sworn and civilian WVPD members, the executive, past and present WVPB members, past WVPD employees and staff of the District of West Vancouver. Page 5 of the report states:

Interviewees were guaranteed that their responses would be anonymous, but not confidential. In other words, even though interview participants are not identified by name within this report, their responses are aggregated for the purposes of discussion.

[35] I take it from the statements quoted immediately above and earlier in this decision that it was intended that the responses would be shared among the stakeholders and that they would work together in an attempt to resolve longstanding issues of concern to the sworn and civilian members of the WVPD, whether perceived or real. It is difficult to understand how a meaningful discussion of these things can take place when one of the stakeholders does not have access to the same information as the other stakeholders. Such actions are also not conducive to promoting trust and confidence in the executive's willingness to resolve these issues.

[36] I was also struck by the similarity of many of the withheld items to the disclosed information. For example, the second withheld item on p. 18 is almost identical to information disclosed a few lines earlier and to information disclosed at the bottom of p. 30. (It is even debatable as to whether the second withheld item on p. 18 is personal information, as it is not clearly attributable to an identifiable individual.) As another example, the first withheld sentence on p. 21 is much the same as information disclosed at the top of p. 19.

[37] Moreover, from the general tenor and contents of the released portions of the report, including the rationale for the recommendations and the recommendations themselves (which the Ministry disclosed in full), it is possible to infer the tone and nature of the withheld information. The Ministry evidently concluded—and I agree—that disclosure of most of the report (much of it the members' perceptions of, and feelings about, the executive) would not unreasonably invade third-party privacy. It is thus difficult to see how disclosure of the remaining information would result in an unreasonable invasion of third-party privacy. It is also difficult to see how disclosure of a few phrases which describe the WVPA's own actions would result in an unreasonable invasion of third-party privacy.

[38] I consider that all of these factors and circumstances taken together favour disclosure of the information related to views and comments about the executive. Disclosure of this information would not unreasonably invade third-party privacy, noting that s. 22(1) prohibits disclosure of personal information only where the resulting invasion of "personal privacy" would be "unreasonable".

[39] There are two exceptions to my findings on this issue. These are the first three sentences withheld on p. 9 of the report and a phrase on p. 10 of the report, which is related to the departure of a WVPB member from the Board. None of the considerations and relevant circumstances I have just discussed with relation to information about the executive favours disclosure of this information. Nor do any other relevant circumstances favour its disclosure.

#### **4.0 CONCLUSION**

[40] For the reasons given above, under s. 58 of the Act, I find that, with the exception of the first three withheld sentences on p. 9 and the phrase withheld on p. 10 of the record in dispute, s. 22 does not require the Ministry to withhold information in the record. Except for these items, which I have highlighted on the copies of pp. 9-10 provided to the Ministry with its copy of this order, I require the Ministry to disclose the information it withheld under s. 22 to the applicant.

April 14, 2005

#### **ORIGINAL SIGNED BY**

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Celia Francis  
Adjudicator