



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

Order F05-33

CITY OF BURNABY

Mary Carlson, Adjudicator
October 7, 2005

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Summary: Applicant requested various records relating to the SPCA, including a report on the care of animals, which the City withheld under s. 22. Personal information can reasonably be severed from the report and withheld. Remaining information found not to be personal information under s. 22. City ordered to disclose record with personal information severed.

Key Words: unreasonable invasion—personal information—submitted in confidence—personal privacy—employment history—public scrutiny—unfair exposure to harm—character references—personnel evaluations—unfair damage to reputation.

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

1.0 INTRODUCTION

[1] On March 4, 2004, an applicant made a request under the *Freedom of Information and Protection of Privacy Act* (“Act”) to the City of Burnaby (“City”) for records of correspondence between the City of Burnaby and the Society for the Prevention of Cruelty to Animals (“SPCA”) for the years 2001-2004, including records regarding a change of management within the Burnaby SPCA.

[2] In processing the request, the City consulted with a third party who provided one of the records to a City Councillor, who in turn provided it to the Chief Licensing Officer. This record was a 30-page report titled “What will it take?”, which was about the alleged mistreatment of 22 animals (“Report”). During this consultation period, the third party advised the City that the Report had been supplied in confidence.

[3] The City responded to the applicant's access request by disclosing a number of records and by withholding information and records under ss. 12(3)(b), 13(1), 21(1) and 22(3) of the Act. The applicant requested a review of the City's decision to deny access to four specific documents. In the request, the applicant clarified that she was no longer seeking access to "names, addresses nor telephone numbers."

[4] The matter was referred to mediation under s. 55 of the Act. The material before me indicates that, during mediation, the City released summaries of three of the four documents and provided a summary of the fourth document, "What will it take?". With respect to the fourth document, the City stated it was withholding it under ss. 22(1), 22(2)(h), 22(3)(d), (g) and (h) of the Act.

[5] The applicant, not satisfied with receiving a summary of the Report, requested that the matter proceed to an inquiry. After the notice of inquiry was sent out by this Office, the City amended its original decision and stated that it was withholding the Report in dispute under ss. 22(1), 22(2)(f) and (h), 22(3)(d), (g) and (h) of the Act. Notice of inquiry was also sent to the third party who had written the Report.

2.0 ISSUE

[6] The issue before me in this inquiry is whether the public body is required by s. 22 to refuse to disclose personal information to the applicant. Under s. 57 of the Act, the applicant has the burden of proof on this matter.

3.0 DISCUSSION

[7] **3.1 Background**—The Report in dispute is 31 pages long. In it, the author documents in writing, and with photographs, 22 specific incidents alleging unsatisfactory treatment and care of animals at the Burnaby Animal Shelter operated by the SPCA.

[8] The City has refused to disclose the Report on the grounds that disclosure would constitute an unreasonable invasion of the privacy of the author and other third parties referred to in the record.

[9] During mediation, the City provided a summary of the 22 events described in the document. The summary identifies the date, animal type and brief description of the alleged incident. The summary is not under review in this inquiry. It was created during the mediation phase as a possible vehicle for resolving this matter.

[10] **3.2 Disclosure harmful to personal privacy**—The City has withheld the Report under various subsections of s. 22, the relevant sections of which 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 information 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.
- (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 educational history evaluations, character references or personnel evaluations about the third party
- (h) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation.

Personal information is no longer sought by applicant

[11] In her submission, the applicant clarifies that she is no longer seeking any personal information from the records in dispute. She states, "we are trying to obtain information about how the animals were treated, not who wrote the letters nor who may have been responsible for the allegations of cruelty and neglect" (applicant's submission at page 1).

[12] Since the personal information is now out-of-scope of this request, the question becomes, if the personal information about the third parties referred to in the record is redacted from the document in dispute, can the City still rely on s. 22 to withhold the entire document?

Is the remaining information "personal information"?

[13] The City, in its initial submission, states that the "record is the personal information of the third party and therefore must be withheld under s. 22(1). I disagree.

[14] Given that most of the City's submission was submitted *in camera*, as was the submission of the third party, I am unable to describe in any meaningful detail their arguments for withholding the information.

[15] With respect to the Report itself, I can say that, other than the sporadic and incidental references to various and mostly unnamed staff members and volunteers (to which the applicant no longer seeks access) the remaining information in the record relates exclusively to the animals in care. It describes when they arrived at the animal shelter, the health problems they were presenting, the treatment they did or did not receive and decisions made about their care. Photographs accompany the narratives.

[16] The name of the third party who created the Report is not recorded anywhere.

[17] This Report is essentially a lengthy complaint about the treatment of animals at the Burnaby animal shelter. Once any personal information is removed from the record, the remaining information is not the personal information of any individual.

[18] To put this in another context, if a report on the poor quality of food in a hospital had been written by a patient and submitted to the hospital board, the information about the food contained in the report, minus any reference to identifiable staff or other identifiable individuals, would not constitute the “personal information” of the patient or the food staff.

[19] Based on the material before me, I find that, with references to all identifiable third parties redacted, the remaining information does not constitute the personal information of any third party. I also find, based on the material before me, that there is no way of identifying third parties in the remaining information.

[20] Having said that, in the event that the identity of persons referred to in the Report or to the person who wrote the Report could be inferred from the remaining information. I find for reasons discussed below that, s. 22 does not apply.

[21] **3.3 Unreasonable Invasion**—I will now discuss whether disclosure of this information would unreasonably invade third-party personal privacy.

Does the information relate to employment, occupational or educational history?

[22] The City argues that disclosure of the record would reveal the “employment, occupational or educational history” of various third parties. I agree if the document were not severed, the small amount of personal information in the document might fall under this section, but only to the extent that it would reveal that a particular person was working at the SPCA.

Does the information constitute personal recommendations or evaluations, character references or personnel evaluations about the third party?

[23] The City claims that the withheld information constitutes “personal recommendations or evaluations, character references or personnel evaluations” about the third parties referred to in the record. I disagree.

[24] This record is, again, essentially a long letter of complaint and pertains to animals in care. References to any third parties in this record appear as factual references. I do not accept that any of the third-party information contained in the record constitutes some form of personal recommendation or personnel evaluations as interpreted in previous decisions by this Office. This section is not meant to protect passing references to third parties in the context of a larger complaint.

Does the information reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character references or personnel evaluation?

[25] Although the City has also relied on s. 22(3)(h), it has not provided any submission respecting its application. My opinion is, in any case, with respect to this section, similar to those stated above.

[26] **3.4 Relevant Circumstances**—I will now consider the relevant circumstances, as required by s. 22(2).

Is this personal information supplied in confidence?

[27] Both the City and the third party take the position that the Report comprises personal information “supplied in confidence.” The Records and Information Administrator for the City deposed (at paragraph 4 of her affidavit) that “the Third Party created the disputed record and provided it to a City Councillor in confidence. The City Councillor then provided it to our Chief License Inspector, to be addressed in confidence. As such, the City argues that the personal information has been supplied in confidence and should be withheld from the applicant.”

[28] The *in camera* submission of the third party who wrote the Report does not, however, support the contention that the information was supplied in confidence. Without disclosing the details of the third party’s *in camera* submission, the evidence before me indicates that the existence, content and distribution of this record was not a confidential matter and, in fact, the third party had disclosed those details to a number of people associated with the SPCA and had disclosed to them other information pertinent to the origins and content of the Report. I also note that nowhere in the document is it indicated that the Report was confidential or to be treated in confidence.

[29] I find that s. 22(2)(f) does not favour withholding any personal information that may be found in the Report.

Would disclosure of information unfairly damage the reputation of any person referred to in the record?

[30] The City claims, without fully explaining, that disclosure of the record “may unfairly damage the reputation of any person referred to in the record.” While I agree that the substance of the complaints may reflect on the SPCA as an organization, I do not agree that s. 22(2)(h) applies.

[31] First, the applicant does not want third-party personal information, and since that personal information can reasonably be severed from the record, no specific individual is now “referred to” in the Report. The evidence before me leads me to conclude that the identities of any third parties, including the person who wrote the report, cannot be inferred from what remains in the Report.

[32] Even if this record were disclosed in its entirety, and even if the information contained therein were accurate and true, I conclude, on the evidence before me, that any damage to the reputation of an individual referred to in the Report would not be unfair for the purpose of s. 22(2)(h). I do not see how criticisms of the operations of the program in this instance translate into “unfair” damage to the reputation of third parties attached to that program.

Should this information be released in the public interest?

[33] The applicant has stated “[w]e believe it is in the public interest for the contents of [the report] to be divulged.” The applicant elaborates no further.

[34] Since I have determined the record should be released in severed form as requested by the applicant, I need not deal with this point.

4.0 CONCLUSION

[35] I confirm that the applicant’s request for personal information has been abandoned. Because I have found that the remainder of the Report is not personal information, the City is not required to withhold the remainder of the document under s. 22. As the City has not withheld information under any of the Act’s other exceptions, I require the City to disclose the record as highlighted or circled on the set of severed records delivered with its copy of this Order.

October 7, 2005

ORIGINAL SIGNED BY

Mary Carlson
Adjudicator