

# **ALBERTA**

## **INFORMATION AND PRIVACY COMMISSIONER**

### **ORDER 98-018**

January 6, 1999

#### **ALBERTA ENVIRONMENTAL PROTECTION**

Review Number 1456

##### **I. BACKGROUND**

[para 1.] On April 9, 1998, the Applicant applied under the *Freedom of Information and Protection of Privacy Act* (the "Act") to Alberta Environmental Protection (the "Public Body") for access to the names of Alberta residents who received a licence to hunt grizzly bears in Alberta during the 1998 hunting season. The Applicant also asked for records relating to the procedures that government officials follow in granting those licences.

[para 2.] On June 5, 1998, the Public Body provided the Applicant with access to the procedures for granting the grizzly bear licences. The Public Body also provided access to the names of three individuals who held grizzly bear licences and who consented to having their names disclosed. The Public Body refused access to the names of 148 other individuals who refused to consent to disclosure of their names or who did not respond to the Public Body's inquiry about disclosure. The Public Body said that, under section 16 of the Act, disclosure of the names would be an unreasonable invasion of the personal privacy of those 148 third parties.

[para 3.] By letter dated July 10, 1998, and received July 13, 1998, the Applicant asked that I review the Public Body's decision. Mediation was authorized but was not successful.

[para 4.] The matter was set down for an oral inquiry, held on December 2, 1998. I received the Public Body's submission on November 23, 1998, and the Applicant's submission on November 25, 1998. I also received a submission from only one of the third parties, on November 26, 1998.

[para 5.] At the conclusion of the inquiry, I asked the Public Body and the Applicant to provide me with further information, and to provide certain information to each other. I received that information from the Public Body only, on December 4, 1998.

## **II. RECORD AT ISSUE**

[para 6.] The record at issue is the list of 151 names of Alberta residents who received a licence to hunt grizzly bears in Alberta during the 1998 hunting season. As the Public Body obtained consent to disclose and did disclose three of those names, 148 names remain to be considered.

[para 7.] In this Order, I will refer to the list of the remaining 148 names as the "Record".

## **III. ISSUE**

[para 8.] There is one issue in this inquiry:

Would disclosure of the third parties' names be an unreasonable invasion of the third parties' personal privacy, as provided by section 16 of the Act?

## **IV. DISCUSSION OF THE ISSUE**

### **1. Public Body's argument**

[para 9.] The Public Body says it considered section 16(2)(g)(ii) (disclosure of the name itself would reveal personal information about the third party) and section 16(3)(a) (public scrutiny) in deciding that disclosure of the third parties' names would be an unreasonable invasion of the third parties' personal privacy.

### **2. Applicant's argument**

[para 10.] The Applicant says that disclosure of the third parties' names would not be an unreasonable invasion of the third parties'

personal privacy, as provided by section 16(4)(g) of the Act (disclosure reveals details of a licence, permit or other similar discretionary benefit).

### **3. Would disclosure of the third parties' names be an unreasonable invasion of the third parties' personal privacy?**

#### **a. Discussion of section 16(4)(g)**

[para 11.] I intend to consider first whether section 16(4)(g) applies, as section 16(4)(g) is a legislative determination that disclosure of certain personal information is not an unreasonable invasion of a third party's personal privacy. If section 16(4)(g) applies, disclosure of the third parties' names would not be an unreasonable invasion of the third parties' personal privacy. If that were the case, I would not need to consider any further arguments.

[para 12.] Section 16(4)(g) reads:

*16(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if*

*(g) the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a public body.*

[para 13.] For section 16(4)(g) to apply, there must first be "personal information". Under section 1(1)(n)(i) of the Act, an individual's name is personal information. Therefore, the third parties' names are personal information.

[para 14.] In Order 98-014, I discussed the interpretation of section 16(4)(g). I said that, for section 16(4)(g) to apply so that disclosure of a third party's personal information is not an unreasonable invasion of a third party's personal privacy, a number of criteria must be met:

- (i) There must be a "licence, permit or other similar discretionary benefit";
- (ii) A "public body" must grant the licence, permit or other similar discretionary benefit; and
- (iii) The disclosure of the personal information must "reveal details of" the licence, permit or other similar discretionary benefit.

***(i) Is there a “licence, permit or other similar discretionary benefit”?***

[para 15.] This inquiry concerns the “resident grizzly bear special licence” (“grizzly bear licence”), which is set out in the *Wildlife Regulation*, Alta. Reg. 143/97, section 19, Schedule 8, Part 1. The grizzly bear licence is prescribed as a “recreational” licence and is issued under the authority of section 16(1) of the *Wildlife Act*, S.A. 1984, c. W-9.1.

[para 16.] Therefore, a grizzly bear licence is a “licence” for the purposes of section 16(4)(g).

[para 17.] The word “licence” appears within the context of the words “other similar discretionary benefit”. Therefore, during the inquiry, I asked the parties whether a “licence” under section 16(4)(g) also had to be a “discretionary benefit”. The parties did not seem to be in agreement on this issue.

[para 18.] In my view, the words “other similar [my emphasis] discretionary benefit” imply that “licence” and “permit” must also have the characteristics of being a “discretionary benefit”.

[para 19.] In Order 98-014, I said that the word “discretionary” refers to a choice given to a decision-maker as to whether, or how, to exercise a power. For section 16(4)(g) to apply, the decision-maker must have the choice as to whether, or how, to grant the “benefit”. To decide whether the decision-maker has a “discretionary” power to grant the “benefit”, it is necessary to review the legislation.

[para 20.] Section 16(1) of the *Wildlife Act* provides:

*16(1) Except as prescribed, the Minister may [my emphasis] issue a licence or permit to an applicant and may [my emphasis]*

*(a) determine the number of licences or permits to be issued, and*

*(b) where the number of licences or permits is to be limited, establish the manner in which they are to be allocated.*

[para 21.] Section 22(1) of the *Wildlife Act* is also relevant. That section provides:

22(1) The Minister may [my emphasis], if he considers that it is in the public interest to do so [my emphasis],

(a) cancel or suspend a licence or permit,

(b) suspend a person's right to obtain or hold a licence or permit,

(c) reinstate a cancelled licence or permit, or

(d) remove a suspension of or restore a suspended right to obtain or hold a licence or permit.

[para 22.] The underlined words in section 16(1) and section 22(1) of the *Wildlife Act* are words commonly used to indicate discretion: see James L.H. Sprague, *"In My Opinion": Discretion in a Nutshell* (July 1997) Vol. 3, No. 2 Administrative Agency Practice 43. The Public Body also gave evidence that, in the actual process of allocating grizzly bear licences, the Minister or his delegate is able to adjust a hunter's priority to obtain a grizzly bear licence. However, the Public Body says that the Minister has never yet done so.

[para 23.] Based on the legislation, I find that the Minister's power to grant a licence or permit is "discretionary", that is, the Minister may decide whether or not to grant the licence or permit. This discretionary power is reinforced by the Minister's discretion to suspend a person's right to obtain or hold a licence or permit, or to cancel, suspend or reinstate a licence or permit. Furthermore, although the Public Body's evidence is that the actual process for limiting and allocating grizzly bear licences is not discretionary, the Minister's power to limit and allocate is nevertheless discretionary.

[para 24.] In Order 98-014, I said that a "benefit" means, among other things, a favourable or helpful factor or circumstance, or an advantage. As the Crown owns all wildlife in the province (section 10(1) of the *Wildlife Act*), and as a grizzly bear licence allows only certain persons to take a grizzly bear, I find that a grizzly bear licence granted under section 16(1) of the *Wildlife Act* is a "benefit".

[para 25.] Therefore, a grizzly bear licence granted under section 16(1) of the *Wildlife Act* is a "discretionary benefit". I emphasize that my decision is based on section 16(1) of the *Wildlife Act*, and should be read as restricted to those licences granted under section 16(1).

***(ii) Did a “public body” grant the licence, permit or other similar discretionary benefit to the third parties?***

[para 26.] The Minister, through the Minister’s delegate, granted the licence to the Third Party.

***(iii) Does the disclosure of the personal information “reveal details of” the licence, permit or other similar discretionary benefit?***

[para 27.] The disclosure of the third parties’ names would reveal one detail of the discretionary benefit (the grizzly bear licence), namely, exactly who was granted the discretionary benefit.

**b. My conclusion under section 16(4)(g)**

[para 28.] As all the criteria under section 16(4)(g) have been met, I find that disclosure of the third parties’ names would not be an unreasonable invasion of the third parties’ personal privacy.

[para 29.] Having made that decision, I do not find it necessary to consider any further arguments of the Applicant or the Public Body.

**V. ORDER**

[para 30.] I find that disclosure of the third parties’ names would not be an unreasonable invasion of the third parties’ personal privacy, as provided by section 16(4)(g) of the Act. Therefore, I do not uphold the head’s decision to refuse the Applicant access to the Record, namely, the list of the remaining 148 names of Alberta residents who received a licence to hunt grizzly bears in Alberta during the 1998 hunting season. I order that the Public Body give the Applicant access to the Record.

[para 31.] I further order that the Public Body notify me in writing, within 30 days of being given a copy of this Order, that the Public Body has complied with this Order.

Robert C. Clark  
Information and Privacy Commissioner