

City of Quesnel
Initial Written Submission
Written Inquiry under the *Freedom of Information and Protection of Privacy Act*
OIPC File No.: F12-48842

Submitted: November 8th, 2012
Karilyn Bolton
Director of Finance/Head of FOIPPA

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SUMMARY

An applicant requested from the City of Quesnel copies of the Mayor's cell phone bills for three years. The City reviewed the requested records and determined that they contained personal information, individual phone numbers that could not be released under Section 22 (personal privacy). The phone numbers include both calls made for business reasons and some personal calls, many made with the expectation of confidentiality. The City did provide two months of cell phone bills to the applicant with the telephone numbers redacted and indicated the rest of the bills could be provided in this manner. The applicant appealed to the Office of the Information and Privacy Commissioner requesting that the documents be provided with only personal phone calls redacted. The City maintains that any phone calls from individuals to the Mayor, in both her capacity as an elected official and on a personal level, are personal information and should not be disclosed as per Section 22(1). The City also maintains that reviewing the records to distinguish information that should be treated as confidential from other information would be excessively time consuming and place an undue burden on municipal resources.

Quesnel

IN THE MATTER OF AN INQUIRY
under the *Freedom of Information and Protection of Privacy Act*

Between:

Pat Morton

Applicant

And:

City of Quesnel

Respondent

General Submissions of the City of Quesnel

This submission and supporting evidence may be shared with the Applicant

Introduction

1. In regard to a request made under the *Freedom of Information and Protection of Privacy Act* ("Act") for records of invoices covering a three-year period charged to the cell phone account of the Mayor for the City of Quesnel ("City"), showing telephone numbers of persons who have used that cell phone to contact the Mayor, or who have been called by the Mayor on that cell phone during that period, the City considers disclosure as being an unreasonable invasion of the personal privacy of those persons and as such, prohibited under the Act.

2. A review and investigation of each telephone number and its corresponding communication to distinguish information that should be treated as confidential from other information is viewed as excessively time consuming, so that severance of the telephone records would, in the City's view, impose an undue burden on municipal resources and significantly interfere with other duties of the Mayor.

3. The City is willing to provide all cell phone records to the applicant with the phone numbers redacted and believes that its obligations under the Act would be fulfilled by releasing this non-personal information. The applicant has indicated this is not a satisfactory option. A summary of the cell phone costs for the three years has also been provided to the applicant and two months of phone bills were provided with the cost of personal calls shown, the stated purpose of the Applicant's request.

Background

4. The City received a request by email on February 5, 2012, from Ms. Pat Morton ("the Applicant"), as shown on Attachment "A", stating:

"Under the Freedom of Information Act please provide Mayor Mary Sjostrom's phone bills for 2009, 2010 and for September, October and November of 2011. If this was requested previously by someone else I would be happy to just view their copies to save staff time and expense."

5. On February 8, 2012, the City received a revision to the original request from the Applicant, as shown on Attachment "A", stating:

"Under FOI can you please provide all Mayor Mary Sjostrom's phone records for 2011 not just September, October and November."

6. After a search through City records, 228 pages of telephone invoices covering the three-year period were retrieved that were responsive. These records were reviewed for possible restrictions on disclosure under the Act.
7. The records contained the telephone numbers of various persons.

8. To preserve the confidentiality of these records pending the outcome of this Inquiry, these records are being provided in their original form to the Information and Privacy Commissioner or her delegate in a separate submission.
9. As the records were generated from the cell phone of Mayor Sjostrom, she was consulted to help determine whether the records contained personal information of individual third parties.
10. Mayor Sjostrom reviewed records covering two months of phone calls in order to identify which calls may have been related to City business and which were, or may have been, unrelated, or would otherwise might have been confidential as to the nature of the conversation or the fact that a call had been made.
11. Mayor Sjostrom confirmed that the telephone numbers were related to calls by or to other individuals for various reasons, many of which were made in confidence, whether in relation to her role as Mayor or to private or personal matters.
12. The City concluded that telephone numbers appearing on the records were “personal information” with the definition established in Schedule 1 of the Act.
13. The City considered section 22 of the Act as to whether disclosing the phone numbers would be an unreasonable invasion of the personal privacy of third parties and as such, prohibited under subsection 22 (1).
14. The City considered that as the information included personal telephone numbers of individual third parties, paragraph 22 (3) (j) of the Act gave rise to a presumption that it would be unreasonable to disclose that information.

15. The City considered whether any circumstances would justify disclosing the telephone numbers, despite the presumption of paragraph 22 (3) (j) of the Act. Among other factors, the City considered that individuals speaking with the Mayor on her cell phone would expect their telephone numbers, and the fact of their calls, to be treated as confidential. On this basis, paragraph 22 (2) (f) of the Act was considered relevant, and weighing heavily against disclosure.
16. The City considered other factors listed in subsection 22 (2) of the Act and concluded that they were either not relevant or did not displace the presumption of privacy attaching to the telephone numbers.
17. The City considered it relevant that individuals could be identified by their corresponding telephone numbers as they appear on the records, and that potentially, further information about those individuals could then be obtained by the Applicant or anyone whom she decided to share the information with. These possibilities were considered to weigh heavily against disclosure.
18. The City considered that disclosing the telephone numbers on the records could result in the information becoming exposed to further disclosure, access, unwarranted use and potentially unlimited exposure and potentially, used for improper purposes.
19. The City determined that disclosure of the severed information is prohibited under section 22 (1).
20. The City also considered section 19 in its original decision to not disclose the information, but withdrew its reliance on this section on September 18, 2012.
21. The City considered that the time involved for review, investigation, recall and notation of each of the telephone numbers on the records as to whether they related to personal

information of third parties or should be otherwise be severed as being of a sensitive and confidential nature would unreasonably interfere with other duties of the staff and in particular with the duties of the Mayor's office.

22. The City provided the applicant with a copies of the records covering a two month period, which included the dates of telephone calls, the length of conversations, and any extra charges that applied, on the understanding, after discussion with the Applicant, that the purpose of the request for access was not to identify individual third parties and obtain further personal information in that regard but to derive financial and other non-personal information from the records. The telephone numbers were redacted on these copies as per Section 22(1).

23. The financial information sought, as to the cost of personal phone calls, was provided on for two months of cell phone bills given to the applicant with the telephone numbers redacted. The applicant was also given an overall summary of the cost of the cell phone for the three years, as shown on Attachment "B".

Precedent

24. In refusing access to part of the requested records, the City relies on the following orders of the Commissioner:

Order 63-1995 *City of Vancouver*

A political party requested records of fax, telephone and cell phones used by the City of Vancouver. Commissioner Flaherty found that disclosure of such records would unreasonably invade the personal privacy of third parties, and the city was not required to undertake an exercise in severing personal from non-personal records.

Order 64-1995 *City of Vancouver*

Newspaper requested records of all telephone and fax calls made from the Mayor's office over a two year period to four specific telephone numbers provided by the applicant. In circumstances similar to facts for this Inquiry, Commissioner Flaherty found that there was reasonable expectation of confidentiality as to this information and as such, the city had no obligation under the Act to disclose telephone numbers called by a particular staff member or office.

Order 04-17: *Ministry of Management Services* [2004] BCIPCD No. 17 (Commissioner Loukidelis) An applicant requested access to records for all of the Premier's personal and official phone lines for a certain period. Commissioner Loukidelis adopted the approach taken by Commissioner Flaherty and his own earlier Order 03-16, holding that section 22 (1) required the Ministry to refuse to disclose the disputed information and that the Ministry was not required to sever the records under section 4 (2).

25. Ontario's Information and Privacy Commissioner recently considered a request for access made to the City of Vaughan for cell phone invoices for the former mayor and a former employee of the mayor's office. There, the Commissioner agreed with that City that

[46]...“telephone calls to the mayor's office can be made for a wide variety of reasons, including general city business and very personal concerns or complaints:

[47]...individuals communicating with city employees or elected representatives would have a reasonable expectation that their personal information would remain confidential (at least unless and until such time as a matter they raise goes before council or its committees). Accordingly I find the factor in section 14 (2)(h)* to be relevant in the circumstances. ...In the absence of evidence to the

contrary, I find that disclosure of the personal information would constitute an unjustified invasion of privacy and is, therefore, exempt under section 14 (1).

(IPC Order MO-2771 / July 30, 2012).

Section 22 (2)(f) of our Act is comparable to section 14 (2)(h) of the Ontario statute.

26. The Information and Privacy Commissioner for Ontario considered a similar request for access made to the Grand River Conservation Authority and indicated that a public body is not required to distinguish and separate personal calls from business calls:

[7]...I agree with the GRCA that it is impossible to differentiate which of the telephone calls of affected person #1 were made to or from personal numbers and which calls were made to or from business numbers. As noted above, it is clearly within the mandate of the GRCA to deal with private citizens. In the absence of evidence to the contrary, I find that disclosure of the telephone numbers may reveal information of a personal nature about the individuals who called or were called by affected person #1.

(IPC Order MO-2243/October 31, 2007)

Further Submissions

27. In addition to decisions made by adjudicators on the subject of this Inquiry, the City also submits the following in support of its position as to the disclosure of telephone numbers of third parties on invoices to the City:

- It is within the City's mandate and within the role of the Mayor to receive calls and to speak with residents and other individuals on a variety of issues. A person who lives, works or has business in or with the City should be able to speak with the

Mayor without fear that their personal information will, by way of a cell phone record, be subject to access by any person and for any use.

- Disclosing telephone calls to the Mayor would indicate which individuals were dealing with the Mayor at specific times on specific days.
- Telephone contact normally involves an expectation of privacy as to the communication, including the fact that a person communicated with the City on a particular day at a certain time. Individuals calling or receiving calls from the Mayor may not be aware that they are being called from a business phone and that their personal information may be released to the public.
- With services now readily available on Internet for finding a person by way of their telephone number, it is possible to identify both names of individuals and residential addresses assigned to some telephone numbers. Thus, revealing a personal telephone number could expose an individual to having more personal information collected, accessed and used without their knowledge or consent.

28. Under section 57 (3) (a) of the Act, for the purposes of this Inquiry, it is up to the Applicant to prove that disclosure of personal information of a third party would not be an unreasonable invasion of that party's personal privacy.

29. The purpose of the Act is not only to provide access to information held by public bodies, but also to protect the privacy of individuals whose personal information may be in the custody or under the control of the City.

30. Former Commissioner Flaherty noted that the right of privacy is just as much in the public interest as rights of access to information: *Order 27-1994 Ministry of Health and Ministry Responsible for Seniors*. Former Commissioner Loukidelis embraced the

approach taken by LaForest J. of the Supreme Court of Canada in *Dagg v. Canada (Minister of Finance)* 1997 2 S.C.R. 403, in stating, at pages 429 – 430, that

“...situations abound where the reasonable expectations of the individual that the information shall remain confidential to the persons to whom, and restricted to the purposes for which it is divulged, must be protected.”

Commissioner Loukidelis, in *Order 00-47, Malaspina University College Records*, wrote of the above precedent, at page 13:

“He [LaForest J.] also emphasized, at para. 61, that the “overarching purpose of access to information legislation..is to facilitate democracy. It is equally clear that statutory privacy rights are of central importance in our society. As LaForest J. noted in *Dagg*, at para. 64, ‘protection of privacy is a fundamental value in modern, democratic states’. *Dagg* and several other Supreme Court of Canada decisions also demonstrate that privacy has constitutional dimensions under the Canadian Charter of Rights and Freedoms.”

31. The expectation of privacy of telephone calls and conversation is traditional and normal in our society, whether or not the contact is with an elected official, or for business, personal or professional advice, [including legal advice], law enforcement, personal assistance, health or family reasons, in respect of third persons, or for numerous other private reasons. Confidentiality as to their identity, and time and length of contact of a call to their Mayor, encourages citizens and residents to contact their elected representatives and as such is important to the democratic functions of government.

Respectfully submitted on behalf of the City of Quesnel by Karilyn Bolton, Information and Privacy Officer and head for the purposes of the Act on November 8th, 2012.

Attachment A - Request of Applicant and Related Communication between
Applicant and City

Kari Bolton

From: Pat Morton <patmorton@shaw.ca>
Sent: Sunday, February 05, 2012 7:16 PM
To: John Stecyk
Subject: FOI

John Stecyk
City Manager

Under the Freedom of Information Act please provide Mayor Mary Sjostrom's phone bills for 2009, 2010 and for September, October and November of 2011.
If this was requested previously by someone else I would be happy to just view their copies to save staff time and expense.

Thanks!

Pat Morton
1386 Moffat Ave
Quesnel BC
V2J 3A7
Phone 250 991 2985

Kari Bolton

From: Pat Morton <patmorton@shaw.ca>
Sent: Wednesday, February 08, 2012 10:22 PM
To: John Stecyk
Subject: FOI

John

Under FOI can you please provide all Mayor Mary Sjostrom's phone records for 2011 not just September, October and November.

Thanks!

Pat Morton



CITY OF
QUESNEL

410 KINCHANT STREET
QUESNEL B.C. V2J 7J5
PHONE 250-992-2111
FAX 250-992-2206

February 9, 2012

Pat Morton
1386 Moffat Avenue
Quesnel, B. C. V2J 3A7

Dear Ms. Morton:

FOI Act request – February 5 – 8, 2012

Receipt is acknowledged of your e-mailed requests for copies of the City-paid cell-phone detailed invoices for the years 2009, 2010, and 2011 covering the phone used by Mary Sjostrom in her position as Mayor of the City of Quesnel. These have been copied and forwarded to Mayor Sjostrom for her review in case there is any personal information she wishes to sever or redact from the detailed lists pursuant to Section 21 of the noted Act.

Under the Freedom of Information and Protection of Privacy Act (the "Act"), we have thirty days to respond to such request and, accordingly, hope to respond prior to March 5, 2012.

We also advise that two hours of staff time was taken to retrieve these records along with 200 pages being copied. Any future additions to this request will result in an estimate of costs payable by you, being forwarded.

Yours truly,

MAUREEN MURRAY, Acting Deputy Clerk
On behalf of JOHN STECYK,
HEAD OF CITY PURSUANT TO THE ACT



CITY OF QUESNEL

410 KINCHANT STREET
QUESNEL, B.C. V2J 7J5
PHONE 250-992-2111
FAX 250-992-2206

March 5, 2012

DELIVERED

Pat Morton
1386 Moffat Avenue
Quesnel, B. C. V2J 3A7

Dear Madam:

FOI Act request – Mayor's cell-phone bills

Further to the City's letter to you dated February 9, 2012 on the above matter, I now enclose two months of the Mayor's cell-phone detailed accounts for:

- Period January 26, 2011 to February 25, 2011 totalling \$113.29, and
- Period March 26, 2011 to April 25, 2011 totalling \$141.62.

The detailed information on each billing first had to be obtained from Telus and then the Mayor spent a number of hours marking the various personal calls and the calls from private numbers or numbers that the caller/receiver could possibly request be redacted from any public lists.

These two months' bills (14 pages) were requested for review by the Mayor as a sampling of a more expensive and less expensive monthly invoice, and to get an idea of how many calls were considered of a confidential nature or with a personal number (by an xx) that should require third party notice before any release. The actual cost to the City for the noted (by an x) personal calls was \$4.65 on one and \$9.15 on the other, plus any taxes.

We have redacted all the actual call numbers/locations due to the calls being considered to be of a personal or of a confidential nature that would require individual third party notices be sent, and we quote Section 22 of the Freedom of Info and Protection of Privacy Act (FOIPPA) with respect to such releases being an unreasonable invasion of a third party's personal privacy. Members of the public should believe their personal information will not be made public at a future date. We also quote Section 19 of the FOIPPA in our redacting of individual telephone numbers, as this disclosure to you might be expected to threaten someone's safety or mental or physical health.

Continued . . . /2



March 5, 2012

We also consider that there should be no reason for such detailed personal information to be required by a member of the public, as the more important information on number of calls made and their individual costs are included in the information provided. If you wish this information provided in the same format for the other 34 months requested, please confirm by e-mail and I will have staff prepare such information as soon as possible.

We confirm that you have already received the total monthly telephone bill costs for the Mayor's cell-phone from December, 2008 to December, 2011, of which the attached two months' lists are examples included in that list.

If you wish to appeal our reply to your enquiry, contact the following within thirty (30) days of receipt of this letter:

Office of the Information and Privacy Commissioner
P. O. Box 9038, Stn Prov Govt
Victoria, B. C. V8W 9A4
PHONE (250) 387-5629 or through Enquiry B.C. toll-free at 1-800-663-7867,
or e-mail to info@oipc.bc.ca

Yours truly,

JOHN STECYK,
CORPORATE ADMINISTRATOR AND
HEAD OF CITY PURSUANT TO FOIPPA

JS:mm
Encl.



CITY OF QUESNEL

410 KINCHANT STREET
QUESNEL, B.C. V2J 7J5
PHONE 250-992-2111
FAX 250-992-2206

March 12, 2012

Pat Morton
1386 Moffat Avenue
Quesnel, B. C. V2J 3A7

Dear Ms. Morton:

FOI request – cell-phone bills

Further to your letter dated March 6, 2012 addressed to a temporary City employee, I wish to confirm that you are filing an appeal with the FOI Commissioner with respect to the package of information we forwarded to you on March 5th.

We reiterate our agreement to forward further copies of the Mayor's detailed cell-phone bills to you, in the same redacted format, for the balance of the requested months. We await your confirmation that you want further lists in that format.

We also confirm that City staff were advised that there are a large number of personal telephone details within the bills submitted to you, and thus all numbers were redacted, although the times and number of personal calls were marked on the lists forwarded to you along with their individual costs. Rather than completing a lengthy number of third party notices, with the resulting delay in providing you with such information, we have forwarded you several months of marked bills.

I understand that Maureen Murray will be contacting you directly with respect to personal or non-City discussions which occurred between you.

Yours truly,

JOHN STECYK,
CORPORATE ADMINISTRATOR AND
HEAD OF CITY PURSUANT TO FOIPPA

Attachment B - Cost Summary Information Provided to the Applicant in
Response to Request

2008	December	208.22	21.43	186.79	
2009	January	86.83	9.68	77.15	
	February	98.77	10.60	88.17	
	March	101.14	10.86	90.28	
	April	171.37	18.38	152.99	
	May	148.99	15.98	133.01	
	June	183.35	19.66	163.69	
	July	125.90	13.51	112.39	
	August	83.81	9.00	74.81	
	September	119.47	12.57	106.9	
	October	96.13	10.31	85.82	
	November	122.08	12.98	109.1	
	December	96.39	10.34	86.05	
				1280.36	106.70
2010	January	102.70	11.02	91.68	
	February	125.47	13.45	112.02	
	March	96.00	10.30	85.7	
	April	114.87	12.32	102.55	
	May	130.59	14.01	116.58	
	June	104.15	11.14	93.01	
	July	94.90	10.16	84.74	
	August	132.22	14.16	118.06	
	September	83.62	8.97	74.65	
	October	135.92	14.27	121.65	
	November	92.74	9.94	82.8	
	December	81.48	8.73	72.75	
				1156.19	96.35
2011	January	107.57	11.52	96.05	
	February	113.29	12.14	101.15	
	March	83.95	9.00	74.95	
	April	141.62	15.17	126.45	
	May	98.95	10.60	88.35	
	June	90.33	9.68	80.65	
	July	108.36	11.61	96.75	
	August	104.78	11.23	93.55	
	September	79.24	8.94	70.3	
	October	84.17	9.02	75.15	
	November	92.90	9.95	82.95	
	December	101.19	10.84	90.35	
				1076.65	89.72

Attachment C - Mayor Mary Sjostrom's Affidavit

IN THE MATTER OF AN INQUIRY
under the *Freedom of Information & Protection of Privacy Act*

BETWEEN:

Pat Morton

APPLICANT

AND:

The City of Quesnel

RESPONDENT

AFFIDAVIT

I, MARY SJOSTROM of the City of Quesnel in the Province of British Columbia,
MAKE OATH AND SAY AS FOLLOWS:

1. I hold the position of Mayor for the City of Quesnel (the "City") and as such I have personal knowledge of the facts and matters described herein and I verily believe the information in this Affidavit to be true or, where my statements are based on belief, I honestly hold that belief.

2. On or about February 9, 2012, I was informed of the Freedom of Information request which is the subject of this proceeding by way of a memo from Ms. Murray, the Acting Deputy Clerk for the City. At that time, I was presented with a number of phone bills from my cell phone and asked to redact the information related to personal calls.

3. As a member of council, and especially since my election as Mayor, I have received many calls from individuals and business owners/operators. To the best of my knowledge, the people who call me expect that their phone call will be kept confidential and not revealed to the public. Examples of such calls within the previous year are as follows:

- a) Residents of a residential home for seniors calling to complain that their building manager was not providing adequate air conditioning in the building. These residents were concerned that the operators of the facility would treat them differently if they were known to be the complainant.
- b) Individuals have phoned to make allegations of unethical actions of a City Councillor. They were very concerned about being identified. If it was known that

their names and phone numbers would become public information they would very likely not have come forward, potentially to the detriment of the City.

- c) Individuals phoning to find out how to access help with immigration or other government services. Again, many of these types of requests for assistance are very sensitive in nature and confidential to the individuals involved.
 - d) Calls made between our Member of Parliament (our "MP") and my office, working on a variety of issues that require coordination and/or assistance from our MP. Our MP has told us that requests from constituents and conversations pertaining to those requests are confidential. If phone records are released, that level of confidentiality is jeopardized.
 - e) Individuals with health care concerns often call the Mayor to discuss their concerns. Concerns may include how to access the appropriate services, complaints about health care delivery in Quesnel, etc. In these cases, there would be calls with the individuals and follow-up calls with the local administrator for Northern Health.
4. It will be very time consuming and likely impossible for me to review all of the calls to distinguish between personal calls and calls related solely to my role as mayor. Quesnel is a small City with a population of approximately 10,000 people. As a long-term resident, a former business owner, and a local politician of many years I know a great many of these people on a personal level.
5. I often receive many calls which are related to my role as the Mayor from individuals who are also friends. An example of this is a local resident, who is a friend, a local business owner, a member of the Quesnel and Community Economic Development Corporation, a member of the Downtown Business Association, and a member of the Chamber of Commerce. Most of my calls from this person are related to my role as the Mayor, but we have also spoken over the telephone about private and personal matters.

Attachment D

Freedom of Information and Protection of Privacy Act

Provisions referred to by the City

4 (2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record an applicant has the right of access to the remainder of the record.

19 (1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

(a) threaten anyone else's safety or mental or physical health, or

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.

22 (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

...

(f) the personal information has been supplied in confidence.

22 (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

(j) the personal information consists of the third party's name, address, or telephone number and is to be used for mailing lists or solicitations by telephone or other means.

Schedule 1 Definitions

"personal information" means recorded information about an identifiable individual other than contact information;

"contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual; ...