

**In the Matter of a Request for Review between  
Pat Morton  
and  
the City of Quesnel (“public body”)  
A Written Inquiry under the  
Freedom of Information and Protection of Privacy Act  
Section 2(1), Section 3(1)(i), Section 4(1)(2), Section 22, Section  
25(1)(a),(b), Section 26(ii), Section 27 (1-3), Section  
35(1)(a)(a.1)(b),(c)(i)(ii)(iii),(d)(2)(a)(b)(c)**

**Issues:**

Public phone bills are not considered personal information under this Act

The City is required under this Act to divulge to the applicant the publicly paid cell phone bills of the Mayor

The City is required under this Act to divulge to the applicant only the “billed calls” listed for the Mayor’s publicly paid cell phone no redacted numbers or alternatively, but not ideally, the Mayor’s publicly paid cell phone with only partial redaction of the Mayors personal calls

Under Section 2 of this Act in order to make this public body more accountable to the taxpayer each month the Mayor should be required to provide to City staff a log of personal calls on publicly paid phones that will be billed to the City

Under Section 2 of this Act in order to make this public body more accountable to the taxpayer the City should be required to provide monthly an accurate accounting of the Mayor’s tolled personal phone calls, on publicly paid phones in order that the Mayor can properly and rightfully reimburse the city

**The Act**

**2 (1) The purposes of this Act are to make *public bodies more accountable* to the public and to protect personal privacy by**

**(a) *giving the public a right of access to records.***

**3 (1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:**

(i) a record of an elected official of a local public body that is not in the custody or control of the local public body.

4 (1) A person who makes a request **under section 5 has a right of access to any record in the custody or under the control of a public body**, including a record containing personal information about the applicant.

(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.**

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25 (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

(b) the disclosure of which is, for any other reason, **clearly in the public interest**

Purpose for which personal information may be collected

26 A public body may collect personal information only if

(ii) **a reasonable person** would consider that collection appropriate in the circumstances,

27 (1) A public body must collect personal information **directly from the individual** the information is about unless

(i) **to collect the information directly from that individual**, or

(2) A public body must **ensure that an individual from whom it collects personal information is told**

(a) the purpose for collecting it,

(b) the legal authority for collecting it, and

(3) **Subsection (2) does not apply if**

(i) result in the collection of inaccurate information, or

(ii) defeat the purpose or prejudice the use for which the information is collected,

(c) **the information**

(i) is not required, under subsection (1), to be collected directly from the individual the information is about, and

(ii) is **not collected directly from the individual the information is about**, or

35 (1) A **public body may disclose** personal information in its custody or under its control for a research purpose, including statistical research, only if

(a) **the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form or the research purpose has been approved by the commissioner,**

(a.1) subject to subsection (2), the information is disclosed on condition that it not be used for the purpose of contacting a person to participate in the research,

(b) any data linking is not harmful to the individuals that information is about and the benefits to be derived from the data linking are clearly in the public interest,

(c) the head of the public body concerned has approved conditions relating to the following:

(i) security and confidentiality;

(ii) the removal or destruction of individual identifiers at the earliest reasonable time;

(iii) the prohibition of any subsequent use or disclosure of that information in individually identifiable form without the express authorization of that public body, and

(d) the person to whom that information is disclosed has signed an agreement to comply with the approved conditions, this Act and any of the public body's policies and procedures relating to the confidentiality of personal information.

(2) Subsection (1) (a.1) does not apply in respect of research in relation to health issues if the commissioner approves

(a) the research purpose,

(b) the use of disclosed information for the purpose of contacting a person to participate in the research, and

(c) the manner in which contact is to be made, including the information to be made available to persons contacted.

## Submissions:

### Section 22

For privacy to be an issue regarding publicly paid phone bills there has been a personal choice to provide the information. There has been an implied consent as a caller could choose to block their number from being displayed. Public phone bills with all numbers recorded should be open for public inspection and not considered personal information. A reasonable person would not expect that a call, to or from a public phone, that the number would not be recorded and open for public inspection.

A publicly paid cell phone bill is not a collection of personal information. It does not indicate who made the call as anyone could have made the call from that number. It does not indicate the actual number that called or was called as that number can be changed and another one shown on the caller ID and on the cell phone bill. The cell phone bill does not prove the calls made were actually from the number recorded nor does it state who the individual was that was called. The purpose of the cell phone bill is to indicate the time used and for billing purposes. In this situation it is the Mayor's responsibility to provide to the applicant and to city staff the personal use of her publicly paid phone calls regardless of the number shown on the phone bill. I am only concerned with the actual phone calls billed. The Mayor should provide the personal numbers she calls to city staff as it would then be very easy with very little time spent sorting the information and providing the information. As an example I am providing my cell phone spreadsheet at Tab 6. I am very concerned about privacy rights and have written letters and received rulings on protecting the privacy of individuals so I understand how privacy is to be protected. I also understand that consent can be implied, as in the case of phone numbers.

**(a) The disclosure is desirable for the purpose of subjecting the activities of a public body to public scrutiny.**

The cell phone bills provided by the City under the FOI request had all phone numbers redacted making it impossible to determine the value of the personal calls made on the publicly paid cell phone. The Mayor provided an "x" indicating her personal calls and "xx" indicating her public calls. As there is no

charge for Local Airtime I am not concerned with her local calls. The Mayor had refused to reimburse the taxpayers for her personal calls yet in August of 2012 a payment of \$42.20 was received for her personal cell phone calls from January 2012 to June 2012. As the Mayor has refused to provide all reimbursements for her personal phone calls there needs to be an independent audit provided, one that I am prepared to provide, which cannot be done if the total phone number is redacted. There is no city policy regarding taxpayer's requirement to pay for elected officials personal calls and if there was such a policy the amount of the personal calls is required by Canada Revenue Agency to be included as income under "taxable benefits" and there have been no "taxable benefits" reported on the Mayor's T4 slips.

**(c) the personal information is relevant to a fair determination of the applicant's rights,**

The perceived personal information listed on a cell phone bill is stated to be the caller's phone number which can be withheld if the caller is concerned with privacy by changing their cell phone settings to block caller ID. The issue is only to the amount of "air time" the taxpayers are paying for the personal use of the Mayor's publicly paid cell phone and she should be keeping track of all personal calls made on any phones paid for by the taxpayers. If the Mayor is concerned about the privacy of her calls she should use her personal cell phone or her home phone. To provide the phone number to me does not contravene the Privacy Act as I am sure any reasonable person would not consider their phone number listed on a city paid phone bill to be confidential. The City provides letters written by taxpayers on their website without redacting any personal information, including name, address, phone number, email address, and without redacting signatures which contradicts their reasons for keeping the mayor's cell phone records private and redacting councillors and staffs signatures from city produced correspondence provided in the Agenda and on their website. The City is providing far more personal information to third parties without approval of the author of the letters. When dealing with a public body the public understands their contact information becomes public and is often shared on the internet. Implied consent! If the Mayor and the City are concerned with protecting the privacy of individual phone numbers from being recorded on a publicly paid cell phone bill the mayor should pay

for her own cell phone thereby eliminating the right for anyone to access the account. There is absolutely no way to determine who made the call from a number listed on the cell phone record. The collection of the cell phone number serves no purpose other than to determine the usage of the service. No one even knows if the cell phone number recorded is actually the originator of that call.

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

A reasonable person would not consider their phone number when calling a government agency to be confidential. The context of the call may be private but not the phone number.

**(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.**

Having a phone number recorded on a public phone bill cannot hurt any person's reputation as there is no indication on who made the call or who answered a call. There is no evidence whatsoever that disclosure of the requested information would be harmful to an individual, nor would it jeopardize public safety. Mayor Mary Sjostrom has over 500 friends on her facebook page and I believe it would very easy to locate personal information for most of those people. If there was a concern for safety of people connected to her publicly paid cell phone calls then it should follow that she should be equally concerned about the safety of her friends on facebook.

**3(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.**

The phone numbers requested are only for the purpose of determining the balance owing the taxpayers for personal calls paid for over and above the monthly plan, to and from the city paid cell phone used by the Mayor. They will not be used for mailing lists, solicitations, or for any other purpose.

## **Tab 1: Guidelines for Developing a Privacy Policy Under PIPA**

### **Part 1: Your policy should explain to those individuals whose personal information you**

## **collect...**

There is no personal information collected when a cell phone call is made as there is no request for personal information.

I have never heard any government agent explain to a party calling a public organization their phone number is being collected...it is expected. By making the call there is implied consent.

The majority of the public are not concerned with their phone numbers being listed on anyone's phone bill. The majority of the public do not consider a phone number to be private unless they have requested the company providing their service that their number be held as private. Land lines can use such things as \*67 to block their calls. In the case of cell phone users they can block their numbers from showing on caller ID and on the recipient's phone bill by making such a selection on their cell phones.

(Iphones select settings, phone, Show My Caller ID, off)

**Part 2: What is personal information?** *Personal information means information about an identifiable individual, such as someone's name, home address, social insurance number, sex, income or family status."*

## **Part 7: How you obtain consent to collect, use, and disclose personal information**

It may help to explain that individuals are considered to have given implied consent when your purpose for collecting, using or disclosing personal information would be considered obvious and the individual voluntarily provides personal information for that purpose.

A reasonable person would consider publicly paid cell phone bills open for public scrutiny. A phone number on a cell phone bill cannot be considered private in today's world of technology where personal information is so freely provided.

## **Tab 2: Special Committee to Review the Freedom of Information and Protection of Privacy Act 2010**

The FOIPPA has not been updated to take into account the recommendations of the Special Committee to Review the Freedom of Information and Protection of Privacy Act in 2010 wherein they deal with

current technology. In today's world there are opportunities for those concerned with privacy regarding their personal phone showing on cell phone bills. They can "block" their numbers from being revealed, and they can have an unlisted number. In either of these situations the phone number does not appear on call display and is not recorded on the cell phone bill. The number that shows on the phone bill is the recipient's cell phone number. For the city to refuse to provide the phone bills of the city paid cell phone of the Mayor is unreasonable.

## **Movement towards Open Government**

**For governments, cloud computing offers new opportunities for proactive disclosure, or the automatic release of certain types of records. Proactive disclosure provides efficient and cost-saving ways for government agencies to share general information. It also serves to further government transparency and ensure accountability to citizens, which are both essential tenets of democracy.**

### **Recommendation 1**

**Add a new section 2(3) to acknowledge that information technology plays an important role in achieving the dual purposes of the Act, by facilitating the routine disclosure of general information as well as enhancing safeguards for privacy protection.**

### **Recommendation 2:**

**Add a new section 2(4) to require that for an infringement of the right to privacy to be lawful, it must be proportional to the public interest that is achieved.**

### **Recommendation 4:**

**Expand the definition of "public body" in Schedule 1 to include any corporation that is created or owned by a public body, including an educational body.**

### **Recommendation 7:**

Add a new section at the beginning of Part 2 of the Act requiring public bodies - at least at the provincial government level - to adopt schemes approved by the Information and Privacy Commissioner for the routine proactive disclosure of electronic records, and to have them operational within a reasonable period of time.

### **Recommendation 8:**

Amend section 13(2) to require the head of a public body to release on a routine and timely basis the information listed in paragraphs (a) to (n) to the public.

### **Recommendation 9:**

Amend section 9(2) of the Act to require that public bodies provide electronic copies of records to applicants, where the records can reasonably be reproduced in electronic form.

### **Recommendation 11:**

Amend sections 5 and 9 to allow applicants a right of access to original records if reasonable.

### **Recommendation 17:**

Amend section 22(3)(h), as follows: “The disclosure could reasonably be expected to reveal the substance of a personal recommendation, or evaluation, character reference, or personnel evaluation, that was supplied in confidence by a third party, or, to reveal the identity of the third party who supplied the reference in confidence”. A corresponding amendment would be required to repeal section 22(5).

**The Special Committee reviewed the relevant sections of this court decision, including para. 102**

**which suggests that to qualify as a topic of “public interest”, “it is enough that some segment of the**

community would have a genuine interest in receiving information on the subject.” We think there is a case for adding this type of criterion to the existing list.

### **Recommendation 19:**

Review section 25(1) in light of the Supreme Court of Canada decision, *Grant v. Torstar Corp.*

## **Tab 3: Guide to Good Privacy Practices**

### **What is Personal Information?**

Under the FOIPP Act, "personal information" is recorded information about an identifiable individual. This includes an individual's name, address, blood type, educational history, employment history, financial information, birth date, eye colour, gender, race, and other such information.

The FOIPP Act specifically excludes business "contact information" from the definition of personal information. This is information that enables an individual at a place of business to be contacted, and includes the individual's contact name, position name or title, business address, business phone number, business email, business fax number, and other such information.

A phone number recorded on a cell phone bill does not provide any personal information and the information is not “given” to the receiving party. The phone company provides a number associated with the call but it does not disclose who made the call. As implied consent is given in the case of cell phone numbers that have not been block the personal information that can be provided by reverse directories or by a google search is consensual.

## **Tab 4: Mary Sjostrom – Personal Expense Reimbursed to City 2008-2012**

Aug 23, 2012 \$43.20 personal cell phone calls Jan to June 2012.

As one can see by the report no reimbursements for personal use of the cell have been made for 2008-2011 and the question with is how the \$43.20 was calculated.

**Tab 5: Letters taken from the City's website showing personal information disclosed.**

When reviewing the Council Agenda the staff redacts councillor's and the staff's signatures from documents yet they provide private information from the public letters and emails which, they should consider more private than a public figures or the staff. By receiving the written letter or receiving any document not requested to keep confidential, the city must be relying on implied consent to publish the letters. I am relying on implied consent to have all the cell phone numbers provided.

Letters attached provide personal phone numbers, name, address, and sometimes email addresses.

**Tab 6: Pat Morton's personal cell phone list for Sept and October 2012.**

I have provided a "sorted" copy of my September/October 2012 cell phone bill to provide information on how I have attached a name to a number. I stated "No listing" when I could not find information on Canada 411 and entered "google" when I found the information with a google search. You can see there are incoming numbers with my cell phone number recorded...these are due to blocked calls. I expect this personal information to be kept confidential as my cell phone number is private. I would accept a statement of only "billed" calls from the City as my only purpose for requesting the cell phone bill is to determine the personal usage of the cell phone. As you can see I only had two billed calls and it is very easy to prepare this statement.

**Tab 7: SpoofCard..Help! What number will show up on the phone bill of the person on whom I call?**

This is another way for those concerned with their phone numbers being listed on a phone bill to ensure it does not appear.

## **Tab 8: Is there a Free Reverse Cell Phone Directory in Canada?**

**The Canadian Cell Phone Numbers Directory says “NO”.**

## **Tab 9: Ethics of Municipal governments:**

Presented by: Kevin Feehan, Q.C., LL.B., of Fraser Milner Casgrain

Accordingly, city officials must discharge their duties fairly and objectively maintaining a trustworthy and accountable relationship with the public. In particular, occupying the office of a city councillor gives rise to three ethical duties: the duty of due diligence, the fiduciary duty of good faith, and the duty to act fairly, free from any conflicts of interest.

### **Fiduciary Duties and Conflict of Interest:**

The actions of councillors should be “free of ‘bias’ and fair in the sense of responding appropriately to the concerns of the electorate”.<sup>9</sup> Councillors are not only directors, but they are also public trustees, and owe fiduciary duties to both their municipal corporation and their communities; specifically they owe duties of good faith, trust, confidence and candour.<sup>10</sup> A key component of being a fiduciary requires councillors to put the interests of the municipality ahead of their personal interests.<sup>11</sup> When the interests of the municipality become secondary fiduciary duties are breached, such as when a fiduciary makes a profit or receives advantages at the expense of the municipality.

### **The Privacy Act: Not an excuse to promote secrecy**

The Office of the Privacy Commissioner of Canada’s mission is to protect and promote the privacy rights of Canadians. For obvious reasons, rarely do we advocate for less privacy. That is simply not our role.

Consent is central to the concept of privacy. Granting or withholding consent to the collection, use or disclosure of their personal information provides individuals with the means to protect their privacy rights.

But we understand that there may be occasions when it is appropriate and reasonable to disclose personal information without consent – for health and safety, security, and other reasons related to the public interest. And Canada’s privacy laws have taken this into account. Unfortunately, the provisions that allow such disclosures are not well understood and, on occasion, privacy laws are perceived as standing in the way of safety and security.

This is simply not the case.

A provision in the Privacy Act allows for public interest disclosures. Subsection 8(2) of the Privacy Act sets out specific circumstances in which government institutions may disclose personal information without the individual’s consent. Paragraph 8(2)(m) of the Privacy Act permits for the disclosure of personal information where, in the opinion of the head of the institution, the public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure, or disclosure would clearly benefit the individual to whom the information relates. It is up to the head of the institution to determine whether the public interest outweighs the right to privacy. Under subsection 8(5) of the Privacy Act, the institution has a duty to notify the Privacy Commissioner that it will be disclosing personal information in the public interest. The Privacy Commissioner may express concerns, if any, with the proposed disclosure and may, if appropriate, notify the individual whose information will be disclosed. It is, however, ultimately the institution’s decision as to whether it will or will not release the information, and how much it will release. The Privacy Commissioner has no authority to prevent the disclosure.

Although at the Office of the Privacy Commissioner of Canada we feel strongly that this provision of the Privacy Act should not be used too liberally, and without thoughtful consideration of all the issues

involved, we must recognize that there are times when it may be appropriate for the head of an institution to invoke this section of the Act. As an example, this provision has been invoked where an individual who poses a threat to the community is being released from a correctional institution.

The media and federal government departments may have different views on what constitutes the "public interest," but it is the responsibility of the head of the institution, if a disclosure is being considered, to ensure that the public interest clearly outweighs the privacy concerns of the individual(s) involved. Departments have been taken to task by our Office for disclosing personal information when they should not have, so it is not surprising that they might often err on the side of caution.

There is a presumption in favour of non-disclosure unless there are compelling arguments to the contrary. The discretion bestowed on the head of the institution must, therefore, be exercised with restraint.

Section 8(2)(m) is not a "loophole" in the Privacy Act which simply allows government departments and agencies to make information public when it should remain private. The provision is applied in unique, fact-specific situations. It is not designed to deal with the disclosure of personal information on a systematic or routine basis. Rather, it is an important section in the Act which provides institutions with a tool they may need to effectively balance an individual's right to privacy with the public's need to know.

**Authorities considered: Order 04-17; and Canada (Information Commissioner) v. Canada (Transportation Accident Investigation and Safety Board), 2006 FCA 157, [2007] 1 FCR 203**

## **Conclusion:**

I include Order 04-17 as this case is about a request for the Premier's official and personal phone lines including all fax, telephone, and cellular logs, both long distance and local, and the long distance

telephone bills for that time even though the request was reduced to phone numbers. Loukidelis states he is not technically bound to follow earlier orders under the Act so I would expect the Commissioner hearing this case to look at the evidence and rule in favor of releasing the information as the only purpose of receiving the documentation is make our City more accountable for public funds. Had the Mayor acknowledged her obligation to pay for her personal calls earlier, and offered to make the reimbursements I would not have made this request. As you can see by the statement presented, Mary Sjostrom has only paid for cell phone calls for the first half of 2012. If you do not rule in favour of the information being provided then you are making it impossible for the public to question public bodies personal spending and you provide elected officials the opportunity to use taxpayer's funds for their own personal gain.

**Canada (Information Commissioner) v. Canada (Transportation Accident Investigation and Safety Board), 2006 FCA 157, [2007] 1 FCR 203**

Privacy may be defined as an individual's right to determine for himself when, how and to what extent he will release personal information about himself.

Individuals provided implied consent as they could have blocked their call if concerned about their personal information. The Mayor should understand when she calls an individual she is providing the public with that phone number and the recipient should be aware if they do not wish their number to be listed that they refuse to answer the call and call the caller back with their "blocked" number. Finally making public bodies accountable is more important than deciding a phone number is personal information when it does not invade a person's privacy.

**(1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by...**