

# **ALBERTA**

## **INFORMATION AND PRIVACY COMMISSIONER**

### **ORDER 98-014**

December 10, 1998

## **ALBERTA ENVIRONMENTAL PROTECTION**

Review Number 1440

### **I. BACKGROUND**

[para 1.] On March 27, 1998, the Applicant (the affected party in this inquiry) applied to Alberta Environmental Protection (the "Public Body") for access to "grazing lease contract GRL 36305" held by an individual (the "Third Party"), whom the Applicant named in the application. After the Public Body asked for representations from the Third Party, the Public Body decided to give the Applicant access to the grazing lease. By letter dated May 26, 1998, the Third Party asked me to review the Public Body's decision.

[para 2.] Mediation was authorized but was not successful. The matter was set down for a written inquiry. On July 15, 1998, I received a July 9, 1998 letter that I took to be the Third Party's submission. On July 20, 1998, I received the Public Body's submission. I received a reply submission from the Public Body only, on July 27, 1998.

### **II. RECORD AT ISSUE**

[para 3.] The record at issue is the Third Party's grazing lease, number GRL 36305 (the "grazing lease"). According to the Public Body, "GRL 36305" is a number unique to the lease, and not an identifier of the Third Party.

### III. ISSUE

[para 4.] There is one issue in this inquiry:

Would disclosure of the Third Party's personal information be an unreasonable invasion of the Third Party's personal privacy, as provided by section 16 of the *Freedom of Information and Protection of Privacy Act* (the "Act")?

### IV. DISCUSSION OF THE ISSUE

#### 1. Public Body's argument

[para 5.] The Public Body acknowledges that the grazing lease contains the Third Party's personal information, consisting of the Third Party's name and place of residence (address). The Public Body submits that, aside from the name and address, the terms of the grazing lease are not personal information because the terms are not "about" the Third Party. The Public Body says that this grazing lease was granted under the *Public Lands Act* in the "green" (unsettled) area of the province. All the terms are identical for every such grazing lease, except for the name and address of the third party, and the legal description of the land covered by the grazing lease.

[para 6.] The Public Body maintains that disclosure of the personal information contained in the grazing lease would not be an unreasonable invasion of the Third Party's personal privacy because section 16(4)(g) of the Act applies to that grazing lease.

[para 7.] 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 8.] The Public Body argues that the grazing lease is a "discretionary benefit" under section 16(4)(g) because the grant of the

grazing lease is solely in the discretion of the Minister under Part 4 of the *Public Lands Act*, R.S.A. 1980, c. P-30. This particular grazing lease was granted by the Minister of Environmental Protection (the “Minister”), although I understand that grazing leases in the “white” (settled) areas of the province may be granted under the *Public Lands Act* by the Minister of Agriculture, Food and Rural Development.

[para 9.] The Public Body acknowledges that, although the grazing lease is not a licence or permit, it is a “similar discretionary benefit” because (i) there is no legal right to receive a lease; hence, its granting is discretionary, not mandatory; (ii) it conveys certain rights and obligations onto the third party; and (iii) similar to a licence or permit, a lease allows the third party to do something that otherwise the third party would not be permitted to do, namely, to use a public resource for financial gain.

[para 10.] The Public Body says that the Applicant asked for all the details of the discretionary benefit by asking for the entire grazing lease.

[para 11.] According to the Public Body, under section 16(4)(g), the legislature has set in place rules for balancing the competing principles of the right to personal privacy and accessibility to government records. If the record falls within a category covered by section 16(4)(g), the release of the details of that record will not constitute an unreasonable invasion of a third party’s personal privacy.

[para 12.] The Public Body submits that the rationale for disclosure of personal information under section 16(4)(g) is to permit transparency of the government system and to permit the public to know how public assets are being used. The Public Body says that the goals of transparency and accountability are achieved by knowing how “discretionary benefits” are granted, to whom and for how long.

## **2. My interpretation of section 16(4)(g)**

### ***(a) General***

[para 13.] Section 16(4)(g) appears to be a legislative determination that disclosure of certain personal information is not an unreasonable invasion of a third party’s personal privacy. Therefore, it seems to me that section 16(4)(g) should be interpreted narrowly to accommodate the competing goals of protecting personal privacy and permitting access to personal information for the purposes of ensuring government transparency and accountability.

[para 14.] For section 16(4)(g) to apply, so that disclosure of a third party's personal information is not an unreasonable invasion of the 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 to a third party; 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 a grazing lease, which is not a "licence" or "permit". Therefore, I must determine whether a grazing lease is a "discretionary benefit".

[para 16.] The word "discretionary" refers to a choice given to a decision-maker as to whether, or how, to exercise a power. A discretionary power is different from a duty, which requires a decision-maker to act whenever the duty arises. As provided by section 16(4)(g), the discretion is exercised in granting the "benefit". In other words, the decision-maker must have the choice as to whether, or how, to grant the "benefit". There must not be a duty to grant the "benefit".

[para 17.] Section 106(1) of the *Public Lands Act* reads:

*106(1) The Minister may [my emphasis] in accordance with this Part lease public land for a term not exceeding 20 years for the purpose of grazing livestock when, in the Minister's opinion, [my emphasis] the best use that may be made of the land is the grazing of livestock.*

[para 18.] The underlined words in section 106(1) of the *Public Lands 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 import of the underlined words is that the Minister has a choice as to whether or not to grant a grazing lease. Therefore, a grazing lease under section 106(1) of the *Public Lands Act* is "discretionary".

[para 19.] According to the Concise Oxford Dictionary, Ninth Edition, “benefit” means, among other things, a favourable or helpful factor or circumstance, or an advantage. A grazing lease on public land would fall within the definition of “benefit”.

[para 20.] Therefore, I find that a grazing lease granted under section 106(1) of the *Public Lands Act* is a “discretionary benefit”.

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

[para 21.] Section 16(4)(g) refers to a “public body” as granting the discretionary benefit. Under section 106(1) of the *Public Lands Act*, the Minister grants the grazing leases. I note that the Third Party’s grazing lease was signed by the Deputy Minister.

[para 22.] Is the Minister or the Minister’s delegate a “public body” for the purposes of section 16(4)(g)?

[para 23.] In my view, a “public body” makes a decision only figuratively as a public body. Someone within the public body must have the power to make decisions, such as the decision to grant a discretionary benefit to a third party.

[para 24.] Because the Public Body can make a decision about granting the grazing lease only through the Minister, who has been given that power under section 106(1) of the *Public Lands Act*, I conclude that the Minister or the Minister’s delegate is a “public body” for the purposes of section 16(4)(g) of the Act, and that a “public body” granted the discretionary benefit (the grazing lease) to the Third Party.

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

[para 25.] Under section 16(4)(g), the disclosure of the Third Party’s personal information (name and place of residence) would reveal the following details of the discretionary benefit (the grazing lease): (i) the name and place of residence of the person who was granted the discretionary benefit; (ii) the scope of the discretionary benefit, namely, for what public land the discretionary benefit was granted and the total number of acres involved; (iii) the duration of the discretionary benefit; and (iii) the limitations or restrictions on the discretionary benefit.

***(b) My decision under section 16(4)(g)***

[para 26.] The Public Body correctly applied section 16(4)(g) of the Act to the grazing lease, and properly concluded that disclosure of the grazing lease would not be an unreasonable invasion of the Third Party's personal privacy.

[para 27.] As a point of interest, I have been informed that the following information of the Third Party and others who hold grazing leases is available to the public by way of the Land Status Automated System client registry for public lands, which is searchable by the public on a fee-for-service basis:

- name of the corporation or individual who holds the grazing lease
- address of the grazing leaseholder
- grazing lease number used to identify the grazing lease
- expiry date of the grazing lease
- description of the grazing lease area

## **V. ORDER**

[para 28.] I uphold the head's decision to give the Applicant access to the grazing lease, and order that the Public Body give the Applicant access to the grazing lease.

[para 29.] 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