Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 18-1994
July 21, 1994

INQUIRY RE: A Request for Access to Records of the Ministry of Health and Ministry Responsible for Seniors

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1. Description of the Review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner in Victoria, British Columbia on July 6, 1994 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act) concerning a request for records in the custody or under the control of the Ministry of Health and Ministry Responsible for Seniors (the Ministry). The applicant requested copies of the contracts between the Ministry and the Everywoman's Health Centre and the Elizabeth Bagshaw Women's Clinic (the clinics).

The applicant submitted his request for copies of the contracts to the Ministry on February 14, 1994. On March 15, 1994 the Ministry responded to the applicant by providing him with the requested records. Under section 19(1)(a) of the Act, the Ministry severed from the records the names of the employees of the Ministry and of the clinics who had signed the contracts.

On April 12, 1994 the applicant requested a review by the Information and Privacy Commissioner of the Ministry's decision to delete these names. The ninety-day investigation period ran from April 12 to July 11, 1994. On June 17, 1994 the Office of the Information and Privacy Commissioner (the Office) issued a notice of written inquiry to be held on July 6, 1992.

2. Documentation of the Inquiry Process

The Office of the Information and Privacy Commissioner provided all parties involved in the inquiry with a one-page statement of facts (the fact report) which was accepted by all parties as accurate for purposes of conducting the inquiry.

Under sections 56(3) and 56(4) of the Act, the Office invited representations from the applicant, the Ministry, the clinics, the Freedom of Information and Privacy

Association (FIPA), and the B.C. Civil Liberties Association (BCCLA). All parties, except FIPA and the BCCLA, made representations.

In its initial submission, the Ministry announced its intention to provide me with three affidavits, which it requested that I consider in camera. The applicant made no comment on this request, and the Ministry duly appended the affidavits to its final submission. I accepted these in camera submissions.

In reaching my decision, I have carefully considered all of the written submissions that I received.

3. Issue under Review

The issue to be decided in this review is whether the Ministry met the threshold test of harm in applying section 19(1)(a) of the Act to the names of the contract signatories.

Under section 57(1) of the Act, at an inquiry into a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or parts thereof. Thus the Ministry bears the burden of proof in this case.

4. The Records in Dispute

The records consist of contracts between the Ministry and two clinics providing health services to the public, the Everywoman's Health Centre and the Elizabeth Bagshaw Women's Clinic. The information at issue is the names of employees of the clinics and of the Ministry of Health that have been severed from the record.

5. The Applicant's Case

The applicant believes that the names of employees of the clinics and of the Ministry of Health should be released to him, since the government's spending of public funds is a public activity. It has also been a standing tradition, the applicant argues, for access to the names of officers of a society to be public information. "I would respectfully submit that the release of names of anyone acting for the people of British Columbia is in the public interest. It is disconcerting to realize that unnamed individuals in the Province of British Columbia have the power and the anonymity to sign million dollar contracts without any accountability to the public," he stated.

Regarding the possibility that he might subject the Ministry's contract signatories to harassment, the applicant said: "[The Ministry of Health] has not presented documented evidence proving that harassment of employees would occur if their names were released ... [It] seems to be making the claim that the politics of abortion should be a litmus test for release or non-release of information. The same claim could be made in

respect of other controversial political issues ... Picketing, writing letters to the editor, making public statements on issues, etc. are not crimes. In balancing the rights of individuals, one must still work under the assumption of innocence until proven guilty. I have made no threats against the individuals or organizations cited and find it interesting that the entire population of British Columbia is to be enjoined information because one individual might act irrationally on that information ... I am not attempting to belittle the concern raised by some regarding the nature of the political debate on abortion. But the two [clinics'] submissions cited seem to have the view that I am to be discriminated against merely because of my political belief on abortion."

The applicant also pointed out that the directors of every non-profit society in British Columbia are listed in a database in Victoria, and that this information is readily available to all citizens, regardless of their beliefs on abortion. He also states that there is no documented evidence that individual directors of the clinics have suffered as a result of their names being available in this way.

6. The Ministry's Case

The Ministry severed the names of Ministry and clinic employees under section 19(1)(a) of the Act, which states:

> 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,
> [...]

The Ministry argues that "[b]ecause of the gravity of the harm contemplated by section 19, ... the harm test under this exception has a lower threshold than some other exceptions. If the disclosure 'could reasonably be expected to threaten anyone else's safety or mental or physical health,' the Ministry may refuse to disclose it." Furthermore, it submits that "there is convincing evidence linking the disclosure of this information with results that would threaten the named individuals' health or safety."

The Ministry is concerned that disclosure of the names in dispute to one individual would have the effect of disclosing them to the anti-abortion movement, which contains some vocal and active persons. The Ministry fears that harm may occur to these employees based on past occurrences. The connection is that the applicant in the present case is actively involved in the anti-abortion movement in British Columbia.

7. The Clinics' Case

Everywoman's Health Centre (Everywoman's) noted that under section 57(2) of the Act, the applicant has to persuade me that access to the personal information in

dispute would not be an unreasonable invasion of the personal privacy of the individuals concerned. "It is common knowledge that harassment--and worse--of doctors and nurses who provide abortion services has occurred in Canada, and in Vancouver. It is also well known that harassment of others associated with Everywoman's and the Ministry has occurred." The clinic also offered certain observations on the activities of the applicant and gave me a copy of its submission to the Commission of Inquiry into Policing in British Columbia, dated July 7, 1993.

The Elizabeth Bagshaw Women's Clinic discussed the burden of proof under section 57(2) of the Act and the requirements under section 19 (disclosure harmful to individual or public safety) or section 22 (disclosure harmful to personal privacy).

8. Discussion

In my Order No. 7-1994, Re: A Request for Access to Records Relating to the Performance of Abortion Services for the Ministry of Health (April 11, 1994), I upheld the decision of the Ministry of Health not to release the names of certain health care professionals under section 19(1) of the Act (pages 4-6). I follow this reasoning in the present case and extend it, for present purposes, to the employees of the Ministry and the clinics mentioned in the records in dispute.

Under normal circumstances, I would be sympathetic to requests to disclose the names of public servants involved in the work of public bodies, since they are paid directly from the public purse. Section 22(4)(e) of the Act presumes that a disclosure of personal information about a third party's position or functions as an officer, employee, member of a public body, or as a member of a minister's staff is not an unreasonable invasion of personal privacy.

I conclude, however, that the circumstances of the present case are not normal, given the emotions surrounding the abortion issue. While in the case of the Ministry's employees, the arguments presented to me were grounded more on the employees' apprehension for their safety rather than a history of actual harassment, I accept that these employees genuinely fear for their safety, because of what has happened to other people.

Even if the applicant himself is not a member of the radical or violent wing of the anti-abortion movement, dissemination of the information he seeks in this case could have adverse consequences for the persons so identified. I prefer to act prudently in such matters.

Moreover, documentary evidence submitted to me demonstrates that the applicant is an active member of the anti-abortion movement at both the local and provincial levels. He has explicitly admitted this in his submissions. The expressed views and documented activities of the applicant persuade me that he could reasonably be perceived to threaten the safety or mental or physical health of anyone associated with the receipt or delivery of

abortion services, whether at the Ministry of Health or at the clinics, or to expose those persons to some harm. In this regard, I adopt the reasons I gave in Order No. 7-1994.

Therefore I find that disclosure of the names of the contract signatories could reasonably be expected to threaten their safety or mental or physical health [section 19(1)(a)] or may expose them unfairly to some harm [section 22(2)(e)].

Finally, the Ministry has in fact disclosed the entire substance of the contracts, which is essentially what is desirable for the purpose of subjecting the activities of the Ministry to public scrutiny [section 22(2)(a)].

The applicant has raised the issue of the availability of information on directors of the clinics in an open provincial database. For reasons discussed above about threats to safety and health, I am concerned that certain personal information about such directors should be so freely available. My Office is in fact engaged in a review of the fair information practices followed in this particular situation.

9. Order

Under section 58(2)(b) of the Act, I confirm the decision of the Ministry of Health not to release the records in dispute to the applicant.

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David H. Flaherty
Commissioner

July 21, 1994