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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 199-1997
November 20, 1997

INQUIRY RE: A decision by the Ministry of Attorney General, Criminal Justice Branch, to withhold the names of attendees at meetings of the Abortion Services Working Group

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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 (the Office) on August 29, 1997 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision by the Ministry of Attorney General, Criminal Justice Branch, (the Ministry) to withhold the names of attendees at meetings of the Abortion Services Working Group.

2. Documentation of the inquiry process

On March 24, 1997 the applicant requested records from the Ministry of Attorney General, Criminal Justice Branch, in relation to 12 issues. The Ministry responded to the applicant on April 25, 1997 and informed him that section 3(1)(h) (formerly section 3(1)(g)) of the Act excludes all the responsive records from coverage by the Act. According to the Ministry, the matter to which the applicant's request relates is before the Courts.

The applicant requested a review by the Information and Privacy Commissioner of the Ministry's decision on May 24, 1997. Mediation resulted in the applicant withdrawing the first 11 issues from the review process, leaving only the records relating to issue 12: "attendance records of persons who attended meetings of the Abortion Services Working Group."

During mediation, the Ministry withdrew the application of section 3(1)(h) to the meeting records and provided the applicant with copies of minutes of the meetings, with the names of all attendees and the locations of meetings severed under sections 19 and 22

of the Act. The Ministry disclosed the same records with the same severing as were previously released by the Ministry of Health in February 1996 to this applicant.

The applicant requested an inquiry by the Information and Privacy Commissioner, and on August 7, 1997 the Office of the Information and Privacy Commissioner gave notice to the applicant and the Ministry of the written inquiry to be held, by agreement of the parties, on August 29, 1997. The Ministry of Health and Ministry Responsible for Seniors participated in the inquiry as an intervenor at my invitation.

3. Issue under review and the burden of proof

The issue to be reviewed by the Information and Privacy Commissioner is the Ministry of Attorney General's decision to sever the names of attendees at various meetings of the Abortion Services Working Group under sections 19 and 22 of the Act.

The relevant portions of these sections are reproduced below:

Disclosure harmful to individual or public safety

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

(b) interfere with public safety.

Disclosure harmful to personal privacy

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

(a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,

...

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

...

(e) the third party will be exposed unfairly to financial or other harm,

(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

...

(d) the personal information relates to employment, occupational or educational history,

...

(f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,

....

Section 57 of the Act establishes the burden of proof on parties in an inquiry. Under section 57(1), where access to information in the records has been refused under section 19, it is up to the public body, in this case the Ministry of Attorney General, to prove that the applicant has no right of access to the record or part of the record.

Under section 57(2), where access to information in the records has been refused under section 22, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third parties' personal privacy.

4. The records in dispute

The records in dispute consist of 17 pages of minutes taken at meetings of the Abortion Services Working Group. The information in dispute on 15 pages of these records is the names of the persons who attended these meetings. The other information that has been severed from the records (i.e., locations of meetings) is not in dispute in this inquiry. (Submission of the Ministry, Section 4.01)

5. Procedural objections

The applicant objected to my receiving an *in camera* affidavit in support of the Ministry of Attorney General's case. Having reviewed it, I am satisfied that the information contained in the affidavit is properly withheld by the Ministry under section 19 of the Act.

6. The applicant's case

The following headnotes from the ten-page written submission of the applicant provide a reasonable summary of why he believes that he has a right of access to the personal information severed from the records in dispute:

> Presumption of the right to know for the sake of financial accountability.
> Presumption that the NDP government is hiding something out of corrupt motive.
> Presumption that the right to know public records flows out of section 3 of the Charter.
> Denial of the material constitutes unjustifiable interference by the Commissioner in politics.
> Presumption that there is an *a priori* right to know for the sake of criminal investigations.
> Public money kickbacks funnelled through false fronts of abortion mills.
> Conspiracy to obstruct justice at the Ministerial level.
> Government officials who hide material evidence of crimes become parties after the fact.
> Material essential for Constitutional Challenge.
> [My] Previous Order void. (Submission of the Applicant, pp. 1-10)

I simply note that the reply submission of the Ministry effectively answers many of the extraneous arguments advanced by the applicant in the materials above.

7. The Ministry of Attorney General's case

The Abortion Services Working Group (the ASWG) is an advisory group established jointly by the Ministries of Attorney General, Health, and Women's Equality "to recommend strategies for ensuring safe access to abortion services for providers and clients. The goals of the ASWG are to ensure safety for health care providers and the women who use abortion services, and to consider solutions to the barriers faced by providers of abortion services and the women needing these services." (Submission of the Ministry, Section 1.07) It was set up in the aftermath of the shooting of a Vancouver physician on November 4, 1994. See the discussion of this event in the reasons for judgment of Madame Justice Saunders in R. v. Lewis, [1997] 1 W.W.R. 496 at p. 514-515 (Sections 46 and 47) (Submission of the Ministry, Section 1.08)

The arguments of the Ministry on the application of the relevant sections of the Act are discussed below.

8. Discussion

> **Section 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

(b) interfere with public safety.

The Ministry's basic submission is that the personal information it has refused to disclose could reasonably be expected to threaten the safety of third parties. It relies in particular on my previous Orders dealing with the disclosure of the names of health care professionals and employees of the Ministry of Health who are in some way associated with the delivery of abortion services. See Order No. 7-1994, April 11, 1994, pp. 4-6; Order No. 18-1994, July 21, 1994, p. 4; Order No. 80-1996, January 23, 1996; pg. 6, and the submission of the Ministry, Sections 5.01 to 5.09. I agree with the following submission of the Ministry:

> The Public Body submits that based on the Commissioner's previous orders, the conduct and notoriety of the Applicant, the comments of the Applicant in his correspondence, and the *in camera* affidavit, the Applicant can reasonably be perceived to be a threat to the safety or mental or physical health of anyone associated with the delivery of abortion services - such as the members and attendees of the ASWG. (Submission of the Ministry, Section 5.11)

I should add that the reply submission of the applicant provides additional support for refusing him access to the personal information in dispute. (Reply Submission of the Applicant, Items 12, 16, 25, 32, 33, 34 to 37, and 38)

I find that the Ministry has appropriately applied section 19 to the information in dispute.

Section 22: Disclosure harmful to personal privacy

The Ministry seeks to withhold access to the personal information in dispute on the basis of sections 22(1), 22(2)(a), 22(2)(c), 22(2)(e), and 22(2)(f) of the Act. In the present inquiry, I am persuaded that the two latter subsections (the third party will be exposed unfairly to financial or other harm; personal information supplied in confidence) are relevant circumstances militating against disclosure. In particular, the Ministry states that all "members of ASWG were informed that their participation would be completely confidential and that their names would not be released. Individuals would not have agreed to participate on the committee without these assurances." (Submission of the Ministry, Section 5.20)

I also agree with the reply submission of the Ministry that the reply submission of the applicant "provides evidence of the unfair exposure to harm to the third parties which would arise from the disclosure of their names." (Reply Submission of the Ministry, Section 9)

Since I would normally order disclosure of the names of public servants and others who attended meetings organized by public bodies, I note simply that section 19 is

a much more powerful protective device than section 22 in the circumstances of the present inquiry.

10. Order

I find that the Ministry of Attorney General was authorized under section 19 of the Act to refuse access to information in the records in dispute. Under section 58(2)(b) of the Act, I confirm the decision of the Ministry to refuse access to the information in the records.

I also find that the Ministry of Attorney General was required under section 22 of the Act to refuse access to the third-party personal information in the records in dispute. Under section 58(2)(c) of the Act, I require the Ministry to refuse access to the information in the records.

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David H. Flaherty
Commissioner

November 20, 1997