



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order F06-14

MINISTRY OF HEALTH

Celia Francis, Adjudicator
July 12, 2006

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Summary: Applicant requested the names of marriage commissioners who resigned after receiving a letter from the Ministry requesting the resignations of any marriage commissioners who felt they could not solemnize same-sex marriages. Ministry is not required to release the information under s. 25(1)(b) and is required to withhold the information under s. 22(1).

Key Words: personal information—personal privacy—public interest disclosure—public scrutiny—determination of rights—political or religious beliefs.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(a) & (c), 22(3)(i), 25(1)(b).

Authorities Considered: **B.C.:** Decision F05-06, [2005] B.C.I.P.C.D. No. 40; Order 01-20, [2001] B.C.I.P.C.D. No. 21; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 02-38, [2002] B.C.I.P.C.D. No. 38.

1.0 INTRODUCTION

[1] On July 8, 2003, the British Columbia Court of Appeal gave immediate effect to a previous court ruling that the common law bar against same-sex marriage violated the rights and freedoms guaranteed by s. 15 of the *Canadian Charter of Rights and Freedoms*. After that decision, the Chief Executive Officer of the British Columbia Vital Statistics Agency wrote to all marriage commissioners in the province requesting the resignations, by a specified date, of any marriage commissioners—statutory appointees under the *Marriage Act*—

who felt that they could not solemnize same-sex marriages. The basis for this request was the government's policy that all people being provided with services from the provincial government must be treated equally under the law. In response to the letter, 11 of the province's 340 Marriage Commissioners resigned.¹

[2] The applicant in this case made an access to information request, under the *Freedom of Information and Protection of Privacy Act* ("Act"), to the Vital Statistics Agency, which is part of the Ministry of Health² ("Ministry"), seeking the names of all Marriage Commissioners who resigned after being told of the requirement to solemnize same-sex marriages ("Marriage Commissioners"). The applicant stated that he needed the information for a research project as part of what he said was an "Investigative Journalism" course. The Ministry denied access to the requested information, citing s. 22(3)(i) of the Act.

[3] The applicant asked this Office to review the Ministry's decision. The matter did not settle in mediation and the applicant asked that the matter proceed to an inquiry. The Ministry then requested that the Commissioner exercise his discretion under s. 56(1) of the Act to decline to hold an inquiry. The Ministry argued, among other things, that there was "no arguable issue" to address. In Decision F05-06,³ the Commissioner said that the applicant had raised the applicability of s. 25(1) of the Act and that it would therefore be inappropriate, in the circumstances, to address that issue without holding an inquiry. The Commissioner also did not accept that s. 22 issues around religious beliefs and other considerations could appropriately be resolved in this case without an inquiry.

[4] A written inquiry therefore took place under Part 5 of the Act. This Office sent the notice of inquiry to the applicant, the Ministry and eleven third parties. The Office received submissions from the applicant, the Ministry and three third parties.

2.0 ISSUE

[5] The issues before me in this case are:

1. Is the Ministry required by s. 25(1) of the Act to disclose information to the applicant?
2. Is the Ministry required by s. 22 of the Act to refuse to disclose information to the applicant?

¹ Paras. 4.03-4.05, initial submission; McBride affidavit.

² The British Columbia Vital Statistics Agency is a program of the Ministry of Health which was, at the time of the request, the Ministry of Health Services.

³ [2005] B.C.I.P.C.D. No. 40.

[6] Previous decisions have held that, while s. 57 of the Act is silent on the burden of proof in determining whether s. 25 applies, as a practical matter, it is in the interest of each party to present evidence as to whether s. 25 applies and requires disclosure. Under s. 57(2), the applicant has the burden of proof regarding third-party personal information.

3.0 DISCUSSION

[7] **3.1 Applicant's Request for Additional Information**—The applicant originally requested only the names of the Marriage Commissioners who had resigned after receiving the Ministry's letter. That request, and the Ministry's decision to deny access to that information, are the subject matter of this inquiry. In his submissions, however, the applicant also argued that he should have access to the Marriage Commissioners' last known addresses or telephone numbers and their letters of resignation.⁴ These clearly constitute new requests for access and, if the applicant still wants this additional information, he will have to make new access requests.

[8] **3.2 Public Interest Disclosure**—Section 25(1) of the Act provides for mandatory disclosure of certain information in the public interest, without an access request. Section 25(1) reads as follows:

Information must be disclosed if in the public interest

- 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
- (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
 - (b) the disclosure of which is, for any other reason, clearly in the public interest.

[9] The Information and Privacy Commissioner has discussed the application of s. 25 in a number of orders (see, for example, Order 01-20⁵ and Order 02-38⁶). I will not repeat those discussions but have applied the same principles here.

[10] The applicant stated that, for journalistic purposes, he would like to interview the Marriage Commissioners who resigned. He essentially argued that the Marriage Commissioners may have been the victims of discrimination on the basis of religious or political beliefs and that the Ministry's request for their

⁴ Page 9, initial submission.

⁵ [2001] B.C.I.P.C.D. No. 21.

⁶ [2002] B.C.I.P.C.D. No. 38.

resignations may amount to constructive dismissal. He contended that these possibilities, together with the grounds that the Ministry has relied upon to refuse to disclose information, provide “a sufficient foundation to believe that a human rights violation may have occurred”.⁷ He stated that a human rights “violation” is a “grave” matter. He argued that this is a matter of urgency because the alleged violations may be repeated and said this:

Where a human rights violation may have occurred, and where a public body may have advertently or inadvertently participated in that violation, it is in the public interest that all relevant information be released so that the violation may benefit [*sic*] from public exposure of the facts and so that the violation will not be repeated by the public body.⁸

[11] In support of this argument, the applicant referred to federal and provincial human rights case law on the duty to accommodate religious beliefs and to a case on constructive dismissal from employment. He also suggested that the Marriage Commissioners might benefit from the release of information about their “constructive dismissal”, referring to other case law in support of this view.⁹ I do not find the applicant’s arguments relating to constructive dismissal or alleged human rights violations helpful or persuasive here.

[12] The Ministry provided evidence that Marriage Commissioners are statutory appointees, not employees of the Province.¹⁰ The applicant addressed this by stating that it appears that some of the commissioners were considered to be employees and some were not, but because “a human rights violation is a serious matter, there would appear to be no need to debate this issue.”¹¹ He submitted, briefly, that there are cases when the courts have held that individuals who are thought to be agents are actually employees. I do not find this to be helpful either.

[13] The Ministry asserted that this case does not meet the threshold requirements of s. 25. Citing Orders 01-20 and 02-38, the Ministry argued that there must be both a compelling need and an element of urgency for disclosure. It further argued, and I agree, that “the immediate disclosure of the information at issue is not clearly necessary in the interests of public debate and/or political participation”.¹²

[14] I reject the applicant’s arguments with respect to s. 25. I agree with the Ministry that there is nothing in the evidence before me to support a finding of

⁷ Pages 2-4, initial submission.

⁸ Page 2, initial submission.

⁹ Pages 6-8, initial submission.

¹⁰ Para. 4.02, initial submission; McBride affidavit.

¹¹ Page 3, initial submission.

¹² Pages, 11-13, initial submission.

urgency or compelling interest in the disclosure of information, as the Information and Privacy Commissioner has found in past orders. I fail to see how disclosing the names of the 11 Marriage Commissioners who resigned after receiving the Ministry's letter in any way falls within the class of compelling or urgent public interest as contemplated in s. 25(1). I find that s. 25(1)(b) does not apply here.

[15] **3.3 Personal Privacy**—The Information and Privacy Commissioner has discussed the application of s. 22 in a number of orders (see, for example, Order 01-53¹³). I will not repeat that discussion but have applied the same principles here. The relevant portions of s. 22 are as follows:

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.
- (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,
- (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,
- ...
- (i) the personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations, or

Are the names personal information?

[16] The applicant argued that the names of the Marriage Commissioners are not third-party personal information.¹⁴ Given the Act's definition of "third party", and many previous rulings in which individuals' names have been treated as

¹³ [2001] B.C.I.P.C.D. No. 56.

¹⁴ Page 8, initial submission.

falling within the Act's definition of "personal information",¹⁵ I find that the Marriage Commissioners' names are their personal information.

[17] **3.4 Presumed Unreasonable Invasion of Privacy**—The Ministry discussed only one category of information under s. 22(3), s. 22(3)(i). I also consider below whether s. 22(3)(d) applies here.

Religious or political beliefs

[18] The Ministry relied on s. 22(3)(i) of the Act as authority for its refusal to release the requested information. It argued that releasing the Marriage Commissioners' names will "necessarily result in the disclosure of the views of these third parties".¹⁶ The applicant did not make any specific arguments with respect to s. 22(3)(i).

[19] I do not agree with the Ministry's position on s. 22(3)(i). The fact that some Marriage Commissioners resigned after receiving the Ministry's letter does not necessarily mean that they resigned for religious or political reasons. In order to make a finding that s. 22(3)(i) applies, I would need evidence (for example, the reasons, if any, the Marriage Commissioners provided in their resignation letters, which are not before me). Two of the three Marriage Commissioners who made submissions (all of whom asked that their names not be disclosed) alluded to s. 22(3)(i), but I do not consider that, on its own, the requested list of names of Marriage Commissioners who resigned after receiving the Ministry's letter reveals anything definitive about the beliefs of the individuals on that list. Based on the evidence before me, I find that s. 22(3)(i) does not apply.

Occupational history

[20] The Ministry stated that the Marriage Commissioners are not employees of the Ministry but "statutory appointees". Their resignations are therefore not part of their "employment history". Nevertheless, these individuals held official appointments, under the *Marriage Act*, as Marriage Commissioners. The requested list of names thus reveals an aspect of their "occupational history", that is, the fact that they held and then resigned the position or "occupation", whether full- or part-time, of Marriage Commissioner. The disclosure of this type of personal information is clearly presumed to be an unreasonable invasion of third-party privacy under s. 22(3)(d).

[21] **3.5 Relevant Circumstances**—I will now consider whether any relevant circumstances apply here that favour or weigh against disclosure of the

¹⁵ See, for example, Order 01-53.

¹⁶ Para. 4.13, initial submission.

third parties' personal information. The Ministry and the applicant both discussed s. 22(2)(a), while the Ministry also addressed s. 22(2)(c).

Public scrutiny

[22] The applicant relied on s. 22(2)(a) of the Act, arguing that disclosure of the names of the Marriage Commissioners is desirable in order to subject the activities of the government of British Columbia or a public body to public scrutiny. He stated that his previous arguments with respect to "public interest" are relevant to the consideration of this section.

[23] I have carefully considered the arguments and authorities the applicant provided. I do not agree with the applicant's conclusion that the Marriage Commissioners will, as he put it, "benefit from the release of information about their constructive dismissals".¹⁷

[24] The Ministry argued,¹⁸ and I agree, that release of the Marriage Commissioners' names does nothing to further the discussion on Ministry policy or the public debate surrounding solemnization of same-sex marriages. The names would also not add to an understanding of the process the Ministry followed in requesting the resignations of those individuals who felt they could not solemnize same-sex marriages. I find that s. 22(2)(a) is not relevant.

Fair determination of applicant's rights

[25] The Ministry raised s. 22(2)(c) as a possible factor to be considered. It then rejected this section as applicable in this case, saying the applicant had not shown that he was acting for the Marriage Commissioners nor that he had any legal rights at stake here.¹⁹ The applicant did not discuss this issue. I find, for reasons the Ministry put forward, that it is not relevant in the present inquiry.

Conclusion on s. 22(1)

[26] I have found above that the disputed information is "personal information" and that it falls under s. 22(3)(d). There is thus a presumption that disclosure of the list of names would be an unreasonable invasion of third-party privacy. Based on the evidence before me, I have found that no relevant circumstances favour disclosure. Neither the applicant nor the Ministry raised any other relevant circumstances and I am not aware of any others that apply here. The applicant has not rebutted the presumed unreasonable invasion of privacy. I find that s. 22(1) requires the Ministry to withhold the information in dispute.

¹⁷ Page 8, initial submission.

¹⁸ At para. 4.18, initial submission, and para. 13, reply submission.

¹⁹ Para. 4.19, initial submission.

4.0 CONCLUSION

[27] For the reasons given above, under s. 58 of the Act, I require the Ministry to refuse access to the information which it withheld under s. 22(1).

[28] For reasons discussed above, no order respecting s. 25(1)(b) is necessary.

July 12, 2006

ORIGINAL SIGNED BY

Celia Francis
Adjudicator

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