

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 80-1996  
January 23, 1996**

**INQUIRY RE: A decision by the Insurance Corporation of British Columbia to withhold records relating to the Motor Vehicle Registration database**

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**1. Introduction**

As Information and Privacy Commissioner, I conducted a written inquiry on November 29, 1995 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request by Gordon S. Watson, the applicant, for review of a decision by the Insurance Corporation of British Columbia (ICBC), (the public body) to withhold records relating to the Motor Vehicle registration database. Watson wanted the names and addresses for registered owners of vehicles located at a specific place in Vancouver on a specific date in 1994.

The Motor Vehicle Branch (MVB) of the Ministry of Transportation and Highways and the Everywoman's Health Centre of Vancouver made submissions as intervenors in the inquiry.

**2. Issue**

The issue in this inquiry is whether the public body properly applied sections 19 and 22 of the Act to withhold the records under review. The relevant portions of these sections are as follows:

***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

....

***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
- ...
- (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,
- ...
- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,
- ...
- (d) the personal information relates to employment, occupational or educational history,
- ....

The public body responded to the applicant's request for records by answering the applicant's nineteen questions. Not all of the questions contained requests for records. The public body did not disclose any records in response to the applicant's questions (with the exception of question 13), but provided answers for nine questions.

The applicant acknowledged that eight questions had been answered or need not be answered at this time. Four additional questions are not requests for records and cannot be dealt with in this written inquiry. This leaves seven questions for this written inquiry, as follows:

Question 3: the identity of the person who requested the search of the motor vehicle registration database and the names and addresses of all persons and agencies to whom the resulting information was made available.

Question 4: a copy of the record(s) that initiated the motor vehicle registration search and the names and addresses of all persons and agencies who initiated the searches.

Questions 15-19: the names and addresses for service of the registered owners of five motor vehicle licence numbers.

Section 57 of the Act establishes the burden of proof on the parties in this inquiry.

1. In respect of information withheld by the public body under section 19 of the Act, it is up to the public body to prove that the applicant has no right of access to the record or part of the record. Thus ICBC has to prove that Gordon Watson has no right of access to the records that would respond to his questions.

2. In respect of third-party personal information withheld by the public body under section 22 of the Act, it is up to the applicant to prove that disclosure of the personal information would not be an unreasonable invasion of the third party's personal privacy. Thus Gordon Watson has to prove that release of the personal information he seeks will not be an unreasonable invasion of the personal privacy of third parties.

### **3. Gordon Watson's case as the applicant**

The applicant submitted a lengthy rationale for this access request, mainly centering around his views on the practice of abortion and the criminal conspiracy that he perceives as surrounding it, involving the government, the public service, the police, the courts, and my Office. For example:

For the purposes of this ICBC Review argument, my point again is that the New Democratic Party have so much filth and corruption stored up inside their little abortion enterprises that they cannot afford one single glimmer of public scrutiny to penetrate the Berlin Wall of Denial. (Submission of G. Watson, p. 7)

The applicant argues that ICBC has not provided any objective grounds for a reasonable "man" to suppose that the disclosure of the records in dispute, by responding to his questions, will result in any specific harm to individuals. ICBC is only denying him access "to protect criminals thus saving the NDP from embarrassment." (Submission of G. Watson, p. 9)  
According to Watson:

If abortionists are really afraid of me, it is because they are terrified that what I say is true: they are murderers and they will answer to God Almighty. It is an awful thing to fall into the hands of the Living God.  
(Submission of G. Watson, p. 10)

### **4. ICBC's case as the public body**

ICBC has refused to disclose additional information to the applicant on the basis of sections 19(1)(a) and 22 of the Act. I have discussed below its specific arguments with respect to these sections of the Act.

The applicant generally wants licence plate information about third parties. ICBC argues under section 19 that:

In this case releasing the names of individuals who had been at or around the abortion clinic at the relevant time would threaten their safety and mental or physical health. It is clear from recent events that persons who are in the delivery or receipt of abortion services are at risk of being physically harmed or even killed by radical elements of the anti-abortion movement. Recent shootings in both Canada and the U.S. of doctors who are so engaged bear testimony to that fact. As well, they and their patients are frequently subjected to protests at the site of the abortion clinic. At the least, revealing the names and home addresses would subject these individuals to harassment in the form of protests at their home and delivery of unwanted mail. At the worst, it puts all these people at risk of being assaulted or killed. (Submission of ICBC, paragraph 19)

In this connection, ICBC relies on my Order No. 7-1994, April 11, 1994, p. 6 and on the comments made in Watson's recent correspondence with ICBC. (Submission of ICBC, paragraphs 21-33):

It is ICBC's submission that, based on the Commissioner's findings in Order 7, the notoriety of Mr. Watson, and the comments contained in the correspondence in the instant case, there is a substantive objective threat of harm to the registered owners of the licence plates in question since it is likely that they are all either clients of the clinic or are staff or volunteers working there. ICBC also believes that releasing the names of those who initiated or received the results of the plate search would jeopardize those individuals on the above noted evidence of Mr. Watson's propensity to violence. (Submission of ICBC, paragraph 34)

ICBC further denies access to specific license plate information under section 22 of the Act on the grounds that it would violate the privacy rights of these individuals. It notes that section 22 is a mandatory exception and that the burden of proof is on the applicant. (Submission of ICBC, paragraphs 35-40) As noted below, ICBC relies specifically upon sections 22(3)(a) and (d) and section 22(2)(c). (Submission of ICBC, paragraphs 41-51)

## **5. The Motor Vehicle Branch (MVB)'s case as an intervenor**

The Motor Vehicle Branch strongly opposes the applicant's request and supports the positions taken by ICBC. It emphasizes the high standards that I have set for disclosure under sections 19 and 22 in my Orders No. 7-1994, April 11, 1994, pp. 4, 6, and No. 18-1994, July 21, 1994, and Investigation Report P95-005, March 31, 1995, and urges me to follow these precedents in this inquiry for purposes of consistency. MVB argues that Order No. 7-1994, April 11, 1994 implies that "those attending at abortion clinics would be included in the types of individuals whose safety or mental or physical health is threatened. You clearly recognized that the intentions of the Applicant must be considered."

The MVB states that Investigation Report P95-005 which concerned the Motor Vehicle Database, “attempted to heighten public awareness of individual privacy rights and privacy risks associated with such databases. The present request by the Applicant is a clear example of those risks and an infringement of the rights of people whose information is contained in that database.”

MVB concludes that to release any of the information requested “would clearly be an infringement of the privacy rights of the individuals involved and a very serious threat to their physical or mental health and safety.”

## **6. The Everywoman’s Health Centre case as an intervenor**

Everywoman’s Health Centre’s submission supported ICBC’s decision to withhold records under sections 19 and 22 of the Act in accordance with my Order No. 7-1994.

## **7. Discussion**

I offer one example of the approach that the applicant takes to my role as Commissioner in order to give some sense of the tone of his submissions, which makes it difficult to me to take seriously his various protestations of innocence with respect to the persons whose personal information he is requesting:

... [I]f you deny my rights to access information I need to make full answer and defence in my appeal, I will put your name on the list of those conspiring to obstruct Justice. One way or another I will make you answer at law. Mark my words: I will hound you right out of the civil service and I will sue you for misfeasance. (Submission of G. Watson, p. 5)

From the very beginning, the main thrust of my effort is to make people think for themselves about whether or not the child in the womb has a right to life .... Which is where you come in sir. If you shut me out now while I am still being reasonable, don’t come crying to me later about vigilantes who take the law into their own hands to stop abortionists one way or the other. I exhort you to deal with me, because you sure don’t want to deal with the guys who come after me. (Submission of G. Watson, p. 11)

This approach, and the language thereof, closely resembles what I described in greater detail in my Order No. 7-1994, pp. 4-6. ICBC further used the last quote to support its fears, with respect to section 19, that the release of the names of the individuals at the clinic to the applicant might result in their names being given to “vigilantes.” (Reply Submission of ICBC, p. 3)

### ***Is Motor Vehicle Registration information public data?***

The applicant submits that the “principle at issue overall is whether it is an invasion of privacy for a public body to make available data which is on public record. Obviously, if a piece

of data is on the public record, it is a matter of public business thus ought to be open for inspection.” (Submission of G. Watson, p. 10) ICBC correctly points out that the Motor Vehicle Database is in fact not a matter of public record, in the sense of being generally available for public access, a point further made in our Investigation Report P95-005.

***Section 19(1)(a): threaten anyone else’s safety or mental or physical health***

The applicant claims that I cannot make a finding of threat to the physical or mental well-being of individuals without naming specific individuals who are at risk:

I put you on notice that failing to name the individual(s) whose mental or physical well-being you say is jeopardized by release of the information at issue will constitute a failure to deliver due process. Failing stating detailed facts about REAL harms potential upon REAL people, then the Commissar’s opinion is unfounded. The Commissar reveals his own part in the NDP campaign to demonize me with vague hypothetical smear tactics. (Submission of G. Watson, p. 11)

I have noted in prior orders that there is no statutory requirement that the real or potential harms to individuals must be specified in precise detail.

However, ICBC noted that the applicant states that ICBC’s failure to disclose information to him means that he is prevented “from examining the abortionist who performed criminal abortion upon the customer August 3, 1994.”

This supports ICBC’s objective concern that if the applicant receives the names of the individuals in question, he will harass them and this supports ICBC’s refusal to allow access to the records on section 19 grounds. (Reply Submission of ICBC)

It cites additional evidence of the same sort that there is a very real likelihood of harassment of women who may have, or may consider having, abortions.

Based on the submission of ICBC, I find that it has met the burden of proof to rely on this section to deny access to the applicant to the licence plate information he requested.

***Section 22(3)(a): the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation***

ICBC argues that the licence plate information in dispute may relate to a medical treatment or evaluation:

Releasing the names of these individuals to the applicant could reveal the fact that they underwent a sensitive medical treatment (abortion) or received medical advice concerning such a treatment and such a disclosure would be an unreasonable invasion of their privacy. (Submission of ICBC, paragraphs 41-42)

Although ICBC “is not in a position to ascertain the exact relationship of the people whose names and addresses are being requested to the clinic,” it claims that “it is reasonable to assume that a majority of these people would be patients at the clinic.” (Submission of ICBC, paragraph 40)

I find that there is a presumption against disclosure of the personal information in dispute under section 22(3)(a) of the Act for reasons set forth by ICBC.

***Section 22(3)(d): the personal information relates to employment, occupational or educational history***

ICBC argues that releasing the personal information in dispute might reveal that individuals were volunteers or staff of the clinic, which would be part of their employment history. (Submission of ICBC, paragraph 43) I find that the connection between licence plate numbers and job location falls under this section in the context of this particular case.

***Section 22(2)(e): the third party will be exposed unfairly to financial or other harm***

ICBC, for reasons previously argued in connection with section 19, is concerned that third parties might be exposed to harm on the basis of the proposed disclosures. (Submission of ICBC, paragraphs 13-34 and 44, 45) I agree that this was a relevant circumstance for ICBC to consider in reaching its decision in this matter. It is also a relevant factor which supports a finding that section 22(1) applies to the information requested in this case.

***Section 22(2)(c): the personal information is relevant to a fair determination of the applicant’s rights***

ICBC notes that the applicant seeks access to this information to prepare for an appeal of an assault charge against him. It argues that he should use the criminal justice system to obtain the information he requires: “Given the concerns around the personal safety of individuals connected with the abortion clinic, these considerations are best determined by a court of law.” (Submission of ICBC, paragraphs 46-51) I agree with ICBC that this is the appropriate avenue for the applicant to use, in this particular case, to seek redress of this particular concern.

In my opinion, the applicant has not established that section 22(2)(c) requires disclosure for a “fair determination of his rights.” I am not persuaded that the particular third-party personal information in this case is relevant to a fair determination of rights in the court processes that he is currently involved in.

***The burden of proof: section 22***

With respect to the section 22 arguments, the burden of proof is on the applicant, and I find that he has not met it.

I find that, under section 22(1), disclosure of the information requested would be an unreasonable invasion of privacy of the third parties.

**8. Order**

I find that ICBC was authorized to refuse access to the information requested under section 19 of the Act. I also find that ICBC was required to refuse access to the same information under section 22(1).

Under section 58(2)(b), I confirm the decision of ICBC to refuse access to the information requested by the applicant. Under section 58(2)(c), I require ICBC to refuse access to the same information.

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David H. Flaherty  
Commissioner

January 23, 1996