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**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 135-1996  
December 10, 1996**

**INQUIRY RE: A decision of the Motor Vehicle Branch of the Ministry of Transportation and Highways to withhold the driving record of a third party from an applicant**

**Fourth Floor  
1675 Douglas Street  
Victoria, B.C. V8V 1X4  
Telephone: 250-387-5629  
Facsimile: 250-387-1696  
Web Site: <http://www.cafe.net/gvc/foi>**

**1. Description of the review**

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner on September 3, 1996 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 of the Motor Vehicle Branch (MVB) (the public body), then part of the Ministry of Transportation and Highways, to withhold a record containing the personal information of a third party.

**2. Documentation of the review process**

On May 13, 1996 the applicant requested a copy of the third party's personal driving record from the Insurance Corporation of British Columbia (ICBC). It transferred the request to the Motor Vehicle Branch on May 21, 1996, pursuant to section 11 of the *Freedom of Information and Protection of Privacy Act*. On May 27, 1996 the Motor Vehicle Branch responded to the applicant by refusing to disclose the third party's personal driving record. It applied section 22(1) to justify withholding the record.

On June 2, 1996 the applicant requested a review of the Motor Vehicle Branch's decision. No additional disclosure of information from the record occurred during the review period. The Motor Vehicle Branch did not consult with the third party before deciding during the initial thirty-day request period to withhold all of the record. The Office of the Information and Privacy Commissioner contacted the third party during the ninety-day review period. He then objected in writing to the disclosure of his driving record to the applicant under section 22.

On August 9, 1996 the Office of the Information and Privacy Commissioner gave notice to the applicant, the public body, and the third party of the written inquiry to be held on September 3, 1996.

### **3. Issues under review at the inquiry and the burden of proof**

The issue to be reviewed in this inquiry is the public body's application of section 22(1) to withhold the record. The applicant also raised the applicability of section 25 to the record. The relevant portions of sections 22 and 25 are reproduced below:

- 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,
  - (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,
  - (c) the personal information is relevant to a fair determination of the applicant's rights,
  - ...
  - (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
- ...
- (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,
  - ....
- 22(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
- ...

- (i) the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a public body, not including personal information supplied in support of the application for the benefit,

....

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.

25(2) Subsection (1) applies despite any other provision of this Act.

....

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. In this case, under section 57(2), since the record that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

#### **4. The record in dispute**

The applicant has requested a copy of the third party's driving record.

#### **5. The applicant's case**

The applicant states that the third party's vehicle struck the applicant's two children in an accident that took place in February 1995. He thinks that disclosure to him of the driving record of this individual would not be an invasion of his privacy for reasons presented below in greater detail.

#### **6. The Motor Vehicle Branch's case**

The Motor Vehicle Branch emphasizes that the record in dispute is held in the Driver Database:

The Public Body considers a person's driving record to be privileged information and strictly controls its disclosure. The information is normally only disclosed to third parties with the consent of the person ... the information is about, or through the Canadian Police Information

Centre (CPIC), which also considers this information to be confidential and has controls on its disclosure. (Submission of the Motor Vehicle Branch, paragraph 1.03)

The Motor Vehicle Branch's basic position is that disclosure of the record in dispute would be an unreasonable invasion of the third party's personal privacy under sections 22(1), 22(2)(f), and 22(3)(b) of the Act. A driving record reports motor vehicle related violations during the previous five years. It also includes an individual's height, weight, and eye and hair colour. (Submission of the Motor Vehicle Branch, paragraphs 4.01, 4.02, 4.03) I have discussed its detailed submissions below.

## **7. The third party's case**

The third party objects to the disclosure of his driving record to the applicant.

## **8. Discussion**

The applicant presented an extended discussion of the perceived inadequacies of the Vancouver Police Department with respect to a particular hit and run investigation. I note simply that this is not relevant to a decision on the particular access to information request at issue in this inquiry, which involves a driving record. (Submission of the Applicant, pp. 4-7)

***Section 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,***
- (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,***

....

The Motor Vehicle Branch states that the applicant's submissions about the need for public scrutiny and public safety are not credible, because the driving record of the third party "would not be of assistance to the Applicant in determining whether the police carried out a proper investigation." The Motor Vehicle Branch does not record motor vehicle accidents; it records existing violations to provide a means whereby the Superintendent of Motor Vehicles can review a person's driving record. (Submission of the Motor Vehicle Branch, paragraphs 4.07 and 4.08; Submission of the Applicant, pp. 9, 10) Finally, it is the responsibility of the Superintendent of Motor Vehicles or a court to determine if it is in the public interest to prohibit someone from driving. (Submission of

the Motor Vehicle Branch, paragraphs 4.09, 4.30) I agree with the Motor Vehicle Branch on these points with respect to the possible reliance for disclosure on these two sections.

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

The applicant claims that he requires the record in dispute in order to establish that the police acted in a negligent manner in this case. (Submission of the Applicant, pp. 10, 11) The Motor Vehicle Branch responds that the applicant has already indicated his intention to file a law suit against the Vancouver Police Department and is also participating in a scheduled public inquiry; disclosure mechanisms are provided for in both of these proceedings.

The Motor Vehicle Branch also cited a number of my previous Orders in which I stated that the Act is not the primary vehicle for obtaining access to information for purposes of legal proceedings. (See Order No. 66-1995, November 27, 1995, p. 3; Order No. 32-1995, January 26, 1995, p. 5; Order No. 107-1996, June 5, 1996, p. 3) My role is to apply the provisions of the Act regardless of rights to disclosure under other legal processes. The Motor Vehicle Branch concludes that the applicant's "submissions are not relevant or do not have sufficient probative value to outweigh the privacy rights of the Third Party." (Submission of Motor Vehicle Branch, paragraphs 4.11-4.17) I agree with the Motor Vehicle Branch on this point with respect to the possible application of this section.

***Section 22(2)(f): the personal information has been supplied in confidence,***

The Motor Vehicle Branch emphasizes that it treats a person's driving record as confidential: "Persons with driving records have the reasonable expectation that their sensitive personal information will be held in confidence by the Public Body, and will not be disclosed without their consent except for law enforcement purposes." (Submission of the Motor Vehicle Branch, paragraph 4.05; and Affidavit of Linda Brandie, paragraph 5; and Exhibit D)

This submission by the Motor Vehicle Branch is sufficient to invoke this section of the Act as a circumstance militating against disclosure, because the personal information about the driver was evidently supplied in confidence by the police to the Motor Vehicle Branch. It is the original circumstances surrounding the collection and circulation of personal information about the third party that governs the use of this section. (See Order No. 82-1996, April 9, 1996, p. 3; Order No. 106-1996, May 28, 1996, p.3; and Order No. 114-1996, August 22, 1996, p. 4)

***Section 22(3): A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if***

...

- (b) ***the personal information was compiled and is identifiable as part of an investigation into a possible violation of law,***

*except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,*

....

The Motor Vehicle Branch argues that this section reinforces the privacy rights of the third party:

The information on a driving record includes the violation date, act and section charged under, contravention description, and the location of the violation. This is all information which was compiled for the purpose of an investigation into a possible violation of law. (Submission of the Motor Vehicle Branch, paragraph 4.20)

Thus the Motor Vehicle Branch submits, and I agree, that disclosure of any information on violations that might exist on the driving record of the third party would disclose personal information that was compiled and is identifiable as part of an investigation into a violation of law under the *Motor Vehicle Act*. (Submission of Motor Vehicle Branch, paragraph 4.22)

***Section 22(4): A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if***

...

- (i) ***the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a public body, not including personal information supplied in support of the application for the benefit, or***

....

The Motor Vehicle Branch seeks to refute the applicant's argument that this section supports disclosure by emphasizing that the applicant asked for the driving record of the third party, not the details of his driving license: "... motor vehicle violations which may be listed on a driving record are not 'details of a licence.'" (Submission of Motor Vehicle Branch, paragraphs 4.23, 4.24; Submission of the Applicant, pp. 8, 9) I agree with the Motor Vehicle Branch that this distinction is an appropriate one in the circumstances of this inquiry.

In general, I find that the applicant has not met his burden of proof under section 22 of the Act.

***Section 25: Information must be disclosed if in the public interest***

The applicant claims that the Motor Vehicle Branch has to disclose the information he is requesting, because he is trying to determine whether the third party is a dangerous driver. (Submission of the Applicant, p. 11) I agree with the Motor Vehicle Branch's submission that "the interest in disclosure of the Third Party's driving record is a private interest of the Applicant, and is not information which is *clearly* in the public interest." (Submission of Motor Vehicle Branch, paragraphs 4.25, 4.29) (See also Order No. 83-1996, February 16, 1996, p. 6) The Superintendent of Motor Vehicles and the courts have the responsibility of determining who is a dangerous driver.

### **Procedural objections**

The applicant raised several procedural objections. First, he contended that the public body should have been required to make an initial submission on section 22 and not only a reply submission. This, he said, would have "evened the playing field somewhat as both parties would have had the opportunity for rebuttal in the reply submissions."

My Office has established procedures for the filing and exchange of written submissions. The party with the burden of proof is required to make an initial submission and the other party or parties have a right to reply to their initial submission. These procedures were adopted in order to make the process as fair and efficient as possible, since the party which does not have the burden of proof on an issue is not required to make extensive submissions in anticipation of the arguments of the other party.

Secondly, the applicant questioned the authority of my staff to contact the third party during the review process (as describe in the Portfolio Officer's fact report). This request for review involves personal information of a third party. Where I or my staff consider that a matter cannot be fully considered without including third parties, section 54(b) of the Act gives authority for me to give a copy of a request for review to any person, other than the head of the public body concerned, that I consider appropriate. Further, basic administrative fairness requires that a third party in such a circumstance should have an opportunity to make his or her own representations.

Finally, the applicant included in his material several excerpts from a letter from my staff and references about the mediation process. This kind of information must be excluded from the record for this inquiry, and I have not considered it. The mediation process is separate from the inquiry process, and all information provided by or communicated to the parties during that former process is treated in confidence. A party is not permitted to include in a submission any record generated by my Office during the mediation process, or any information that would disclose the same, unless the other parties consent. Thus the portion of the applicant's material that discloses this information was removed from the record for this inquiry.

## **9. Order**

I find that disclosure of the personal information in the record in dispute would be an unreasonable invasion of the privacy of the third party under section 22(1) and 22(3)(b) of the Act. Under section 58(2)(c), I require the head of the Motor Vehicle Branch of the Ministry of Transportation and Highways to refuse access to the information in the record.

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David H. Flaherty  
Commissioner

December 10, 1996