

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 79-1996  
January 19, 1996**

**INQUIRY RE: A decision by the Vancouver Police Department to require a specific fee for granting access to records**

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**1. Introduction**

As Information and Privacy Commissioner, I conducted an inquiry on November 17, 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 Vancouver Police Department (the public body) to require the payment of a fee of \$1,130.00 for the disclosure of records.

**2. Issue**

The issue in this inquiry is whether the fee of \$1,130.00 has been properly assessed by the public body under section 75 of the Act. The relevant portions of this and related sections are as follows:

***General powers of commissioner***

42(2) Without limiting subsection (1), the commissioner may investigate and attempt to resolve complaints that

...

(c) a fee required under this Act is inappropriate,

....

***Right to ask for a review***

52(1) A person who makes a request to the head of a public body, other than the commissioner, for access to a record or for correction of personal information may ask the commissioner to review any decision, act or

failure to act of the head that relates to that request, including any matter that could be the subject of a complaint under section 42(2).

### ***Fees***

- 75(1) The head of a public body may require an applicant who makes a request under section 5 to pay to the public body fees for the following services:
- (a) locating, retrieving and producing the record;
  - (b) preparing the record for disclosure;
  - (c) shipping and handling the record;
  - (d) providing a copy of the record.
- (2) An applicant must not be required under subsection (1) to pay a fee for
- (a) the first 3 hours spent locating and retrieving a record, or
  - (b) time spent severing information from a record.
- (3) Subsection (1) does not apply to a request for the applicant's own personal information.
- (4) If an applicant is required to pay fees for services under subsection (1), the public body must give the applicant an estimate of the total fee before providing the services.
- (5) The head of a public body may excuse an applicant from paying all or part of a fee if, in the head's opinion,
- (a) the applicant cannot afford the payment or for any other reason it is fair to excuse payment, or
  - (b) the record relates to a matter of public interest, including the environment or public health or safety.
- ....

### ***Power to make bylaws***

76.1 A local public body, by bylaw or other legal instrument by which the local public body acts,

...

- (c) may set any fees the local public body requires to be paid under section 75.

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

The applicant argues that he should not have to pay for his access request. His view is that “the record at issue will show that the Vancouver Police knew, and took into account, that the New Democratic Party was intimately involved in the abortion industry, so that partisan politics became a factor in law enforcement around anti-abortion activity.” (Submission of G. Watson, p. 1; see also p. 4) He also alleges that the Vancouver Police are assisting in “a massive, officially co-ordinated effort underway to exterminate unwanted children by abortion ....” (Submission of G. Watson, p. 2)

I have used specific aspects of his arguments, below, as I deemed it appropriate to do so.

### **4. The Vancouver Police Department's (VPD) case**

The VPD is only proposing to charge the applicant for access to general records that do not refer to or contain his own personal information. No fees or search time have been charged for the latter material. Its initial search for all types of information produced an estimate of \$3,846.20. The charges are those approved by the Police Board and are the same as the provincial fee structure.

Realizing the search costs had made this request expensive, the fee estimate was reduced to \$1,130.00. However, due to the approach taken by the applicant and his stated feelings about the VPD, trying to have the request modified to make responding to it more simple was not a realistic alternative. (Submission of VPD, pp. 2, 3)

For reasons outlined below, the VPD rejected the public interest arguments for waiver or reduction of the proposed fee.

The VPD concluded that where “the fee is reasonable and the waiver request is turned down after a reasonable consideration of the applicant's request, the Information and Privacy Commissioner should confirm the decision of the public body.” (Submission of the VPD, p. 8)

### **5. Discussion**

I have read the applicant's submission and summarized above those points that seemed to me to have some relevance to his access request to the Vancouver Police. I note simply that a large part of his text and accompanying material had no such relevance. The applicant will have to pursue his remedies on such matters, such as the practice of abortion and his constitutional challenge to the provincial *Access to Abortion Services Act*, in other venues, since I have no jurisdiction over them. This statement is also relevant to his claims for access to records under the Act in order to pursue internal investigations and appeals that he has launched against the police and in the courts. The VPD subsequently pointed out that the applicant is currently exercising his right of having information disclosed to him in connection with his complaint against a specific police officer. (Reply Submission of the VPD, p. 2)

Because it is a consistent aspect of the approach of this applicant to my decision-making in cases involving him, I note that part of his argument to me is that unfortunate events will occur if I do not see things his way. He puts me “on notice” that he will apply for designation as an indigent as part of judicial review if he does not obtain the records he wishes without cost. (Submission of G. Watson, p. 2) If he does “not get what he wants” out of this process, he “will have to make an application for a remedy against the Privacy Commissar per section 24 of the Charter.” (Submission of G. Watson, p. 3)

***Section 75(5): The head of a public body may excuse an applicant from paying all or part of a fee if, in the head’s opinion ....***

I note first that the capacity to waive fees is permissive and not mandatory and, secondly, that the discretion is lodged with the head of the public body. I am inclined to defer to the judgment of the head of the public body on this matter, since he or she is in possession of information and experience on the matter. My role is to determine under section 42(2)(c) whether a fee required under the Act is appropriate. Under section 58(3)(c), I may confirm, excuse, or reduce a fee in the appropriate circumstances.

In this inquiry, the Inspector in charge of the VPD Information Section denied the applicant’s request for a fee waiver under both paragraphs (a) and (b) of section 75(5). (Submission of the VPD, p. 3) The VPD argues that since this authority is discretionary, I can only review it if the head committed an error. According to the VPD, discretion properly applied is not reviewable. (Submission of the VPD, p. 4)

***Section 75(5)(a): the applicant cannot afford the payment or for any other reason it is fair to excuse payment***

The applicant states that he is indigent, has been so certified by the Supreme Court of British Columbia, and does not have the money to pay the required fee: “My time is entirely taken up fighting against corruption (in which campaign this request is directly on point) so that I am not earning significant income to be able to pay the upset fee.” (Submission of G. Watson, p. 2)

The applicant claims that if his request is denied, “the state can everafter hide evidence of corruption by setting the price of documentation so high no one can afford it.” (Submission of G. Watson, p. 3)

The VPD simply concludes that the onus is on the applicant to justify this claim of indigence and that he has offered no evidence on this point beyond “a simple reference to an old court case.” (Submission of the VPD, p. 8) Furthermore:

... if all a person has to do to justify a waiver is to show he or she cannot afford the fee, poor people would have unlimited access to a public bodies’ records. The requested records must also be relevant and reasonable to the needs of the applicant. In this case, the VPD does not believe the request has been made

reasonably or that the requested records will provide relevant information to the allegations made by the requester. (Submission of the VPD, p. 8)

I agree with the VPD that the Act does not create an unlimited right of access to government records, for those who cannot afford payment, by means of a fee waiver. I have some questions about the VPD's criteria that such a request must be relevant and reasonable to the needs of the applicant. I think it is more appropriate for a public body to expect the request to be reasonable in scope and that the requester has been open to narrowing in appropriate circumstances. I do accept, however, that the VPD is in a good position, in the present inquiry, to know whether the requested records are responsive to the particular needs of this applicant. That is a judgment that a public body can make, subject to my Office's review of the material in dispute, if we deem it necessary to do so.

In general, the head of the public body should concentrate on exercising his or her discretion to waive a fee for reasons related to the financial ability of the applicant and other factors which relate to fairness. I conclude in the present inquiry that the head determined that it would not be fair to waive all of the quoted fee in this case, because of the expansive request and the questionable relevance of the information.

***Section 75(5)(b): the record relates to a matter of public interest, including the environment or public health or safety***

The applicant has flatly stated that:

It is greatly in the public interest for the material at issue to be made available so that improper influences in law enforcement can be exposed and repudiated. It is greatly in the public interest for the records at issue to be made available freely so that public confidence in the administration of Justice may be restored.  
(Submission of G. Watson, p. 1)

It is evident that the applicant equates the public interest with his concern about the practice of abortion in Canada:

I am engaged in a religious and political campaign to see to it the individual hired killers who are carrying out the executions by abortion will eventually face judgment before the Courts. As well, the overseers of this genocide policy of extermination by abortion will be held accountable as the 'brains' of the Nazi machine were at Nuremberg. (p. 2)

The applicant further argues that "it is greatly in the Public Interest to have proper laws concerning how the human remains which the abortionists carve out of their customers are disposed of. Anyone with a grain of sense will understand that, as the records of the Vancouver Police do contain data about the Public Health and Environmental aspects of disposing of babies' bodies, such material ought to be available for public scrutiny at no cost." (Submission of G. Watson, p. 7)

I stated in Order No. 55-1995, September 20, 1995, that the City of Vancouver had the authority to determine what is in the public interest under this section, “subject to my oversight of any alleged failure to act in a reasoned manner on the issue.”

The VPD argues that “[i]f the stated purpose of a request is exposing wrongdoing on the part of any public official, for the request to be in the public interest, the allegation must have a logical basis that wrongdoing may have occurred .... Having examined the records requested, in order to prepare to provide a response to the applicant, there appears to be nothing relevant to the allegations of collusion and conspiracy that are made.” (Submission of the VPD, pp. 6, 7) The VPD further suggests that the applicant appears to be willing to make applications without factual basis and offered specific examples of this tendency. With respect to one specific allegation, the VPD also submits that “serving the public interest does not involve assisting a particular political agenda.” (Submission of the VPD, p. 7)

The VPD added the following argument in its reply submission:

... it is relevant, when considering a public interest argument to waive fees, to consider how the applicant deals with information. The applicant’s own submission shows that information disclosed to him will be used in a way that is not in the public interest. (Reply Submission of the VPD, p. 1)

I agree with the VPD’s conclusion that the records requested do not relate to a matter of public interest. However, I have some concerns about a public body deciding a matter of public interest based on its own opinion that the requested records do not support allegations made by an applicant, particularly where the allegations are against the public body. But section 75(5) requires a public body to exercise its discretion based upon the head’s opinion. I am satisfied that the VPD had sufficient grounds to conclude that the records requested in this case do not relate to a matter of public interest under section 75(5)(b). The applicant, himself, did not establish to my satisfaction that the records he is seeking (as opposed to the issue of abortion) relate to a matter of public interest. Thus I conclude that the VPD properly exercised its discretion in refusing a fee waiver under this section.

## **6. Order**

I find that the fee required by the Vancouver Police Department in this case is appropriate. Therefore, under section 58(3)(c) of the Act, I confirm the fee requested by the Vancouver Police Department.

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David H. Flaherty  
Commissioner

January 19, 1996