

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 7-1994
April 11, 1994**

**INQUIRY RE: A Request for Access to Records Relating to the Performance of
Abortion Services for the Ministry of Health**

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1. Description of the Review

As the Information and Privacy Commissioner, I have conducted a written inquiry under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act) concerning a series of requests for records received by the Ministry of Health from Mr. Gordon S. Watson, the applicant, on October 4, 1993 and November 1, 1993. These requests were for copies of various records relating to the performance of abortion services for the Ministry of Health.

The Ministry of Health registered the applicant's first request for 37 records as HLH-94-03. The second request for 12 records was registered as HLH-94-22. The applicant's letter of March 11, 1994 requested reviews of 21 of the Ministry's responses to the first 37 records requested; he also sought reviews of 4 of the Ministry's responses to the 12 records requested. These are the matters being dealt with in the current inquiry. The four orders below dispose of these requests.

The voluminous records sought by the applicant from the Ministry of Health concern the activities of Everywoman's Health Centre and the Elizabeth Bagshaw Women's Clinic (the clinics), both located in Vancouver. In each instance and as appropriate, the Director of the Information and Privacy Program at the Ministry of Health asked the clinics to make representations concerning the disposition of the records requested.

It is important to be aware that the Ministry of Health, in cooperation with my office, has disclosed a considerable number of records to the applicant in response to these requests. The few remaining issues not already resolved are dealt with below.

2. Documentation of the Review Process

The Office of the Information and Privacy Commissioner provided all parties involved in the inquiry with a three-page notice of written hearing, which described each of the records requiring review.

Under subsections 56(3) and (4) of the Act, each party was given an opportunity to make written representations to me. Initial submissions were made on March 24, 1994, and final submissions were received on March 31, 1994. In reaching my decision, I have carefully considered these submissions.

Under subsection 57(1) of the Act, at an inquiry into a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part. Thus the Ministry of Health bears the burden of proof in this case.

I will now review the four basic issues arising from the parties' submissions and make an order for each issue.

3. The Issues

Issue 1:

Whether the contracts between the Ministry and the clinics give the Ministry "control" of records which the clinics have refused to provide to the Ministry (both clinics' insurance policies).

The Ministry has the burden of proof to justify its refusal to disclose the clinics' comprehensive liability insurance policies (building insurance) to the applicant. The Ministry's position is that a copy of the insurance contract is not within the Ministry's control under the contract between the parties. The contract simply requires the clinics to furnish proof that they are insured; there is no contractual obligation for the contractors to provide the Ministry with an actual copy of their policy.

There is only one record, Everywoman's insurance policy (item 8), about which the issue of control must be decided, and I am limiting my order to this particular point.

Everywoman's takes the position that it is a society incorporated under the *Society Act*, and not a public body under the *Freedom of Information and Protection of Privacy Act*. Although it has a contract with the Ministry of Health to provide certain health care services, its records

"... are not, by virtue of the existence of that contract alone, accessible under the Act. Only those of Everywoman's records that are actually in

the custody, or are under the control, of the Ministry are accessible under the Act."

The Elizabeth Bagshaw Women's Clinic has adopted the same position as Everywoman's on this general point and with respect to the insurance policy.

Clauses 26, 27 and 31 of the contract between the Ministry of Health and Everywoman's Health Centre read:

26. The Contractor will keep and make available to the Province, upon request, records in a form which will allow the Province to determine that the services are being provided according to the terms of this Agreement.

27. The Contractor will furnish such information and particulars, as required by the Province, concerning the services and the care and progress of persons receiving services, upon the request of the Province.

31. The Contractor will be responsible for obtaining any available insurance necessary to fulfill the obligations and terms of this Agreement.

The reporting requirements in clauses 26 and 27 authorize the province to ask for copies of records that relate to the performance of services under the contract. Clause 31 of the contract requires Everywoman's to have the insurance necessary to fulfill its contractual obligations. The contract does not authorize the province to request copies of records such as Everywoman's comprehensive liability insurance policy because the insurance policy does not fall within the reporting requirements of clauses 26 and 27. If the province has any power under the contract to request information about Everywoman's insurance policy, that power is limited to receiving confirmation that the necessary insurance is in place. The Ministry of Health's position is that the insurance policy is not a record under the control of the Ministry because it was not created for the purpose of providing services under the contract.

I find that, for the purposes of this particular case, the clinics' actual insurance plan is not under the control of the Ministry and is not a requestable record under subsection 4(1) of the Act. The issue of the clinics' initial refusal to provide the requested record to the Ministry is not an issue that I need consider here.

Order

Under subsection 58(2)(b) of the Act, I confirm the decision of the Ministry of Health that the clinics' actual insurance plan itself is not under the control of the Ministry.

Issue 2:**Whether the Ministry has a duty to provide the applicant with information or records that are routinely available elsewhere.**

The Ministry has informed the applicant that certain information he sought was routinely available elsewhere. The alternative (and originating) sources include: the Office of the Registrar of Companies; the Obstetricians and Gynecologists Society of Canada; the National Abortion Federation; and the College of Physicians and Surgeons of British Columbia.

The Ministry of Health argues that subsection 2(2) of the Act stipulates that the Act does not replace other procedures for access to information that is not personal information and that is available to the public. Moreover, in several instances, the Ministry indicated that it does not have copies of the records sought in its files.

Order

Under subsection 58(2)(b) of the Act, I confirm the decision of the Ministry of Health that it is permissible under the Act to refer the applicant elsewhere for copies of certain records that are available to the public elsewhere, where the information sought by the applicant is not personal information.

Issue 3:**Whether section 19 of the Act applies in the present circumstances to allow the severing of the names of individual contract signatories and of individual doctors and nurses.**

The Ministry refused access to the following information on the basis of subsection 19(1) of the Act: the name of the signatory to the contract for one of the clinics; the names of physicians performing abortions at each of the clinics; and the names of nurses who work at the clinics.

Subsection 19(1) reads:

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 considers information about abortion clinics extremely sensitive because of the highly-charged emotional issues involved. It submitted two affidavits from physicians about the risks faced by persons working in this field.

The Ministry also argues that the applicant, an active and vocal anti-abortionist, is very angry with people working in the abortion field. "He has threatened and been verbally abusive to doctors, passerbys [sic] at the clinics, and employees of the Ministry of Health."

The Ministry further believes that releasing the names of physicians working at the clinics could reasonably be expected to subject those doctors and their families to harassment and threats.

Everywoman's Health Centre also advanced detailed and convincing evidence, including references to a decision of the Ontario Information and Privacy Commissioner (Re Ministry of Natural Resources, Order P-213, January 16, 1991), that, in this context, disclosure of names of its health care professionals would be an unreasonable invasion of their personal privacy as it would expose them to harassment and other forms of harm (see subsection 22(2)(e) of the Act). The Elizabeth Bagshaw Women's Clinic adopted the positions of Everywoman's on this issue.

The applicant's strong views on abortion require brief elucidation in order to establish the context for the present inquiry and my decisions on certain issues. His original request for information of November 1, 1993, to the Ministry of Health, for example, refers to Everywoman's and Elizabeth Bagshaw as "baby killers," "abortion mills," "predators," and "abortuaries."

The applicant has also made four written submissions to me concerning his requests for review; these total 22 pages of single-spaced text and one handwritten page, plus various appendices and copies of correspondence and publications.

The applicant is very candid about his motives and concerns. His language in the requests for review includes the following references:

"the witches in the God damned abortion mills;" "communist/feminists;" "baby butchers;" "godless socialists;" "the New DemoTyrant government;" "child extermination services;" "local baby butchering shops;" and "the goddamned abortionists."

Public servants and their ministers are described as

"the little feminazis;" "socialist sows;" "communists-in-drag;" "the two-bit Stalins who run Health;" and "little sleazbag [sic] of a lawyer."

The following quotations further illustrate the freely-described motives and concerns of the applicant and are directly applicable to my decisions below about the applicability of section 19 of the Act:

"Considering the modus operandi of abortionists as a group, it is probable these bloody murderers are operating to advance their God damned feminist agenda precisely as they did previous to the Morgue&Dollar decision...."

"Abortion is a crime against humanity. Ultimately its perpetrators will be held to the same standard as war criminals and they will face the same end as Eichmann.... The extermination camps for enemies of the Third Reich are perfectly paralleled today in the North American child extermination facilities.... Eventually the butchers of Bosnia will be prosecuted and quite possibly executed, as was done at Nurnberg [sic]. I have every confidence that, similarly, once public opinion swings on the abortion issue, so too the abortionists will swing from gallows here...."

The applicant describes himself, in his correspondence with me, as being engaged in the discharge of his religious obligation to demand a life for a life in accordance with the Book of Revelation: "The wrath of God abides upon this nation as long as it condones the sacrifice of innocent children to the goddesses of feminism. It is my duty to repudiate evil."

The applicant also has firm expectations of me:

"Mr. Flaherty, like it or not, you are the system and your integrity is what is on trial.... Do you have the testicular wherewithal to shine the light or [sic] free enquiry upon the dark recesses of wickedness where the abortion blood money payoffs are made?... The people of this nation are groaning because wicked men and lesbians sit in government. Are you on the side of the treasonous abortionist vermin or are you on the side of Liberty? Do you fear men or do you fear God? **TURN ON THE SEARCH LIGHT OF FREE ENQUIRY!!**"

The conduct of the applicant persuades me that he can reasonably be perceived to be a threat to the safety or mental or physical health of anyone associated with the receipt or delivery of abortion services, whether at the Ministry of Health or at the clinics. I therefore find that there is detailed and convincing evidence that disclosure of the names of individual contract signatories and of individual doctors and nurses could reasonably be expected to threaten the safety or mental or physical health of other persons.

Order

Under subsection 58(2)(b) of the Act, I confirm the decision of the Ministry of Health to refuse access to the names of certain health care professionals under subsection 19(1) of the Act.

Issue 4:

Whether section 43 of the *Medical and Health Care Services Act* is applicable to certain requests for information under the *Freedom of Information and Protection of Privacy Act*.

The applicant has asked for the name of every physician who has billed the Medical Services Plan for abortion services performed upon a minor child at the two clinics. The Ministry refused access to these personal records under subsection 19(1) of the Act, which was quoted above. I agree with the Ministry's decision.

In addition, the Ministry argues that section 43 of the *Medical and Health Care Services Act* prohibits the disclosure of information that identifies an individual practitioner. Section 43 reads:

43. Each member or former member of the commission or the board, each employee or former employee of the ministry employed in the administration of this Act, each inspector or former inspector appointed under this Act, every member or former member of an advisory committee and any other person engaged or previously engaged in the administration of this Act must keep confidential matters that identify an individual beneficiary or practitioner that come to his or her knowledge in the course of their employment or duties, and must not communicate any of those matters except
- (a) in the course of the administration of this Act or another Act or program administered by the minister,
 - (b) in court proceedings,
 - (c) to a regulatory body that has authorized a practitioner or diagnostic facility to render service in British Columbia, or
 - (d) in accordance with section 35 of the *Freedom of Information and Protection of Privacy Act*.

Subsection 78(1) of the Act states that "the head of a public body must refuse to disclose information to an applicant if the disclosure is prohibited or restricted by or under another Act." The confidentiality provision in section 43 of the *Medical and*

Health Care Services Act overrides the right to request access to records under the *Freedom of Information and Protection of Privacy Act*.

Order

Under subsection 58(2)(b) of the Act, I confirm the decision of the Ministry of Health to refuse access to the requested record due to the overriding confidentiality requirement in the *Medical and Health Care Services Act*.

David H. Flaherty
Commissioner

April 11, 1994