

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 295-1999
February 18, 1999**

INQUIRY RE: A decision by the Ministry of Health and Ministry Responsible for Seniors to refuse to disclose the names and addresses of 500 people contacted by the Ministry's Continuing Care Division

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on January 5, 1999 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review by an applicant of the decision by the Ministry of Health and the Ministry Responsible for Seniors (the Ministry) to refuse to disclose the names and mailing addresses of approximately 500 continuing care clients who had refused consent to allow the Ministry's Continuing Care Division to access their Revenue Canada files.

2. Documentation of the inquiry process

On August 11, 1998 the applicant requested "the names and complete mailing addresses, including postal codes, of those 500 odd persons who...refused to grant consent for [the Continuing Care Division's] access to their Revenue Canada Tax information." The Ministry responded on September 21, 1998. Access to the record was denied under section 22 of the Act on the grounds that disclosure of the information would constitute an unreasonable invasion of the privacy of the third parties.

On September 29, 1998 the applicant requested that I review the decision of the Ministry to withhold the information. Notices of inquiry were sent out on December 10, 1998.

3. Issue under review and the burden of proof

The issue under review is whether the Ministry has appropriately relied on section 22 of the Act to withhold the personal information requested by the applicant.

Under section 57(2) of the Act, if the record or part 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 record in dispute is a computer list of the names, addresses, and postal codes of the approximately five-hundred people who refused to give consent to the Ministry's Continuing Care Division to access their Revenue Canada files.

5. The applicant's case

The submission of the applicant focused on a detailed, literally semantic analysis of section 22(3)(j) of the Act dealing with the use of personal information for purposes of solicitation. She attempts to distinguish between "mailing lists" under section 22(3)(j) from "mailing lists" as a generic term. Although I have read this material carefully, I respectfully disagree with the effort to outflank the plain language of the subsection as discussed further below. The applicant also had the benefit of the detailed (and persuasive) response of the Ministry to its submission on this subsection.

6. The Ministry of Health's case

Under the *Continuing Care Act* R.S.B.C. 1996, c. 70, the Minister of Health has entered into arrangements with continuing care operators to pay for various services to individuals who meet a means test. This involves the client authorizing Revenue Canada Taxation to release the necessary income documentation.

The applicant in this inquiry wanted to know the names and address particulars of more than 500 persons who have apparently refused consent for access to their tax information. The Ministry refused to do so because of the requirements of section 22 of the Act. I have discussed below its submissions on the application of this section.

7. Discussion

Section 22: Disclosure harmful to the personal privacy of third parties

The Ministry submits "that the disclosure of the names and mailing addresses of the continuing care clients who have not provided their consent to Revenue Canada for the release of their income tax information to the Public Body, would be an unreasonable invasion of their privacy."

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

In raising this section the applicant states that lack of access to the requested list of names may have an impact on the future legal course the applicant takes. However, the applicant also states in the sample letter provided that she is willing to pursue legal action on her own, if support cannot be generated for a class action suit. Given that lack of access to the mailing list would not impede the applicant's ability to access the court system, I cannot see that section 22(2)(c) has any applicability in this situation.

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

Section 11 of the *Continuing Care Act* requires that personal information obtained under the Act be kept confidential, except for specified purposes. The Ministry submits that the personal information in dispute "is information submitted in accordance with a request under the *Continuing Care Act* and is required to be held in confidence." A person who exercises his or her right not to consent to the disclosure of their personal tax information does so with an expectation of confidentiality. I agree.

The Ministry relies in particular on the presumptions created by the Legislature in sections 22(3)(a), 22(3)(f), and 22(3)(j) that disclosure of the requested information would be an unreasonable invasion of third party personal privacy. In brief, the Ministry makes the following points in support of this reliance:

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

The information requested identifies individuals who have a frailty or an acute or chronic illness or disability and require special health services, and therefore implicitly discloses personal information which relates to a medical condition and treatment. I agree.

Section 22(3)(f): the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,

The applicant, who is likely to know other individuals who are receiving continuing care benefits, will be able to determine from the record in dispute which of these individuals did consent to the disclosure of their income information because their name does not appear on the record. This point is not very compelling in the overall context of the application of section 22 in this inquiry.

Section 22(3)(j): the personal information consists of the third party's name, address, or telephone number and is to be used for mailing lists or solicitations by telephone or other means.

The Ministry submits that the applicant's own admission, that she will send out an initial mailing should she receive the list of names and addresses requested, satisfies the test under section 22(3)(j). See Order No. 214-1998, February 10, 1998, p. 6. The applicant does not agree with this interpretation as she believes that the mailing list in question in this inquiry is of a non-coercive nature and, therefore, does not meet the criteria of section 23(3)(j). Although I have considered the applicant's arguments, I agree with the Ministry's viewpoint.

I found persuasive, as well, the two following summary statements of the Ministry in its reply submission:

The Public Body submits that the Applicant is clearly attempting to collect names and addresses of a select group of people for the purpose of sending similar information (i.e., the proposed mail-out) in a systematic manner to those appearing on the list. The disclosure of the names and addresses requested by the Applicant is presumed to be an unreasonable invasion of third party personal privacy.

....

One of the goals of the Act is to minimize intrusiveness into the lives of individuals in this province (see Order 100-1996, [April 24, 1996], page 4), and in this regard the Act clearly protects from disclosure the names and addresses of individuals to be used for mailing lists. (Reply Submission of the Ministry, p. 3)

I find that, with respect to section 22 of the Act, the applicant has not met her burden of proof.

8. Order

I find that the Ministry of Health and Ministry Responsible for Seniors is required under section 22 of the Act to refuse to disclose all of the information in the records in dispute.

Under section 58(2)(c) of the Act I therefore require the Ministry of Health and Ministry Responsible for Seniors to refuse access to all of the information in the records in dispute.

David H. Flaherty
Commissioner

February 18, 1999