



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order F07-03

INTERIOR HEALTH AUTHORITY

David Loukidelis, Information and Privacy Commissioner

February 12, 2007

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Summary: The IHA correctly disclosed the total number of abortions performed in its entire territory in 2004. It is required to refuse to disclose information about the numbers of abortions performed in 2004 at specific health care facilities, information about the number of abortions performed in part of the IHA's territory in 2004 or information identifying which facilities perform abortions.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22.1 & 25(1).

Authorities Considered: B.C.: Order 02-38, [2002] B.C.I.P.C.D. No. 38.

1.0 INTRODUCTION

[1] An individual made a request to the Interior Health Authority ("IHA") in the following terms:

1. Amount of abortions performed at Kelowna General Hospital during the calendar year 2004.
2. Amount of abortions performed in the Interior Health District for the calendar year 2004.
3. List of hospitals providing abortion services in the Interior Health District in 2004.
4. Amount of abortions performed in the Okanagan in 2004.

[2] The IHA disclosed to the applicant the number of therapeutic abortions performed within the IHA's territory during calendar 2004. It refused to disclose further information on the basis that s. 22.1 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") prohibited it from disclosing more information.

[3] The applicant requested a review under FIPPA and, since the matter did not settle during mediation by this office, an inquiry was held under Part 5 of FIPPA.

2.0 ISSUE

[4] The only issue in this inquiry is whether s. 22.1 of FIPPA requires the IHA to refuse to disclose information to the applicant. Under s. 57 of FIPPA, the burden lies on the IHA to establish that s. 22.1 prohibits disclosure.

3.0 DISCUSSION

[5] **3.1 Disclosure of Abortion-Related Information**—This is the first case that has arisen under s. 22.1 of FIPPA, which came into force in April 2001. It reads as follows:

Disclosure of information relating to abortion services

- 22.1(1) In this section, "**abortion services**" means lawful medical services for the termination of a pregnancy.
- (2) The head of a public body must refuse to disclose to an applicant information that relates to the provision of abortion services.
 - (3) Subsection (2) does not apply to the following:
 - (a) information about abortion services that were received by the applicant;
 - (b) statistical information, including financial information, relating to the total number of abortion services provided throughout
 - (i) British Columbia, or
 - (ii) a region that is designated under section 4 (1) (b) of the *Health Authorities Act* if more than one health care body provides abortion services in that region;
 - (c) information about a public body's policies on the provision of abortion services.
 - (4) Nothing in this section prevents any other provision of this Act from applying if a request is made under section 5 by an applicant for access to a record containing information about abortion services that were received by the applicant.

[6] This exception to the public's right of access to information is mandatory; a public body must refuse to disclose information covered by s. 22.1 and has no discretion but to refuse. Nor is there any harms test under s. 22.1; as long as information falls within the class described in this section, that information must be withheld. As exceptions to this, a public body cannot refuse under s. 22.1 to disclose information "about abortion services that were received by the applicant" for access, statistical information falling under s. 22.1(3)(b) or "information about a public body's policies on the provision of abortion services".

[7] The IHA was clearly required to refuse to disclose information that would identify specific hospitals or other health care facilities that perform abortions and it was required to refuse to disclose information about how many abortions were performed in 2004 at the Kelowna General Hospital. This information clearly falls under s. 22.1(2). The sole issue, rather, is whether other information the applicant requested can be disclosed under the exception for statistical information found in s. 22.1(3).

[8] The IHA disclosed the number of abortions performed within the IHA's territory during calendar 2004. It refused, however, to provide information on numbers of abortions performed at specific hospitals or other health care facilities within "the Okanagan", on the basis that the Okanagan is a smaller area within the IHA's territory as designated under s. 4(1)(b) of the *Health Authorities Act*. The exception under s. 22.1(3)(b)(ii) that allows disclosure of statistical information is intended to apply only to the entirety of a health region as designated under the *Health Authorities Act* and not to any sub-territory of that region. Accordingly, the IHA was correct to refuse disclosure of the total number of abortions performed "in the Okanagan" during 2004.

[9] **3.2 Public Interest Disclosure**—The applicant's submissions address at some length the policy underlying s. 22.1, which was enacted in the spring of 2001. He also addressed inconsistencies he contends he has encountered in the application of s. 22.1. Neither of these issues is relevant to this inquiry, which is restricted solely to whether or not s. 22.1 as enacted requires the IHA to refuse disclosure.

[10] The applicant goes further, however, and argues that this "is an opportunity" for the

... Information and Privacy Commissioner to follow through—to correct and educate the government on the necessity of openness in government. Section 25(1) (2) [*sic*] clearly applies in this case.¹

¹ Para. 15, applicant's initial submission.

[11] The applicant did not provide any argument to support his contention that s. 25(1) requires immediate disclosure. Section 25(1) has figured in numerous orders and, applying the approach previously taken,² I readily find that s. 25 does not require disclosure of this information.

4.0 CONCLUSION

[12] For the reasons given above, under s. 58 of FIPPA, I require the IHA to refuse access to the information that it withheld under s. 22.1.

February 12, 2007

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia

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² See, for example, Order 02-38, [2002] B.C.I.P.C.D. No. 38.