



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

Decision F05-06

**MINISTRY OF HEALTH**

David Loukidelis, Acting Information and Privacy Commissioner  
September 1, 2005

Quicklaw Cite: [2005] B.C.I.P.C.D. No. 40  
Document URL: <http://www.oipc.bc.ca/orders/section56/DecisionF05-06.pdf>  
Office URL: <http://www.oipc.bc.ca>  
ISSN 1198-6182

**Summary:** The public body's request that an inquiry under Part 5 of the Act not be held is rejected. An inquiry will be held.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, s. 56.

**Authorities Considered: B.C.:** Order 01-03, [2001] B.C.I.P.C.D. No. 3; Order 02-57, [2002] B.C.I.P.C.D. No. 59.

## 1.0 INTRODUCTION

[1] This decision deals with the Ministry of Health's ("Ministry") request that I decline, under s. 56 of the Act, to proceed with an inquiry under Part 5 of the Act in relation to an access to information request, described further below, that the respondent applicant ("respondent") made to the Ministry under the *Freedom of Information and Protection of Privacy Act* ("Act").

[2] For the reasons given below, I have decided to reject the Ministry's request and direct that this matter proceed to inquiry under s. 56 of the Act.

## 2.0 DISCUSSION

### *The access request*

[3] The respondent made an access request to the Ministry under the Act. The relevant part of the request reads as follows:

...I hereby request the names of the marriage commissioners who resigned as a result of new public policy relating to same-sex marriages.

This is part of a research project for “Investigative Journalism”—a course at BCIT.

[4] The Ministry responded to the applicant on March 1, 2005, denying access to information under s. 22 of the Act:

I have reviewed your request and find that you are not eligible to receive this information under section 22(3)(i) which, as excerpted below, states that:

A disclosure of personal information is presumed to be an unreasonable invasion of a third party’s personal privacy if...the personal information indicates the third party’s racial or ethnic origin, sexual orientation or religious or political beliefs or associations...

[5] The applicant requested a review of the Ministry’s response under Part 5 of the Act and this office referred the matter for attempted settlement under s. 55. These attempts were not successful and the applicant requested that the matter proceed to an inquiry.

[6] The Ministry then wrote to this Office and asked me to exercise my discretion under s. 56 of the Act to decline to hold an inquiry. The request reads, in part, as follows:

The applicant requested the names of the marriage commissioners who resigned after being advised of the requirement to solemnize same-sex marriages in January 2004. The Ministry does have custody of this information, as these marriage commissioners clearly indicated the motivation for their resignations at the time they tendered them.

***Parties’ arguments***

[7] The Ministry’s s. 56 request said that the respondent’s request for review should not proceed to an inquiry “because it presents no arguable issue” (p. 1). The Ministry then went considerably further than its original decision in explaining its analysis of why s. 22, in its view, requires the Ministry to refuse disclosure. After setting out its analysis, the Ministry concludes by contending that “it is clear that release of the information would disclose, without their consent, the religious or political beliefs and personal employment decisions of former, not current, marriage commissioners” (p. 1). The Ministry goes on to contend that s. 22(1) of the Act “clearly protects the requested information, and the request for review raised no arguable issue otherwise.”

[8] In his submission, the respondent mentions communications during mediation by this Office, which I have not considered in deciding this matter. He questions whether it is “appropriate” for me to receive submissions on whether to hold an inquiry. On the merits of the Ministry’s request, he argues that s. 25(1) of the Act requires disclosure, in the public interest, of the information. He also gives reasons why s. 22 does not, he says, prohibit disclosure of the personal information.

[9] In its reply, the Ministry says “there is simply no merit” in the contention that s. 25(1) requires disclosure, but does not say why. The Ministry also joins issue, as it does to some extent in its initial submission, on the merits of s. 22.

### ***Discussion***

[10] Section 56(1) of the Act reads as follows:

#### **Inquiry by Commissioner**

56(1) If the matter is not referred to a mediator or is not settled under section 53, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

[11] As several previous decisions have indicated, s. 56 confers discretion as to whether to hold a Part 5 inquiry respecting a request for review. As I have noted in earlier decisions, there may be a variety of reasons why this discretion might be exercised in favour of not holding an inquiry. These include the factors expressed in Order 02-57<sup>1</sup> and Order 01-03.<sup>2</sup>

[12] The Ministry refers in its reply to my July 9, 2003 decision under s. 56, in which I declined to hold an inquiry. That decision involved a request for access to certain third-party personal information and application of s. 22. Among other differences, the respondent in this case has raised the applicability of s. 25(1) of the Act. It would be inappropriate in my view to address this issue without holding a Part 5 inquiry. Nor do I accept that the s. 22 issues around religious beliefs and other considerations are appropriately dealt with without an inquiry.

### **3.0 CONCLUSION**

[13] For these reasons, this is not an appropriate case in which to decline to hold an inquiry under Part 5 of the Act. This matter will proceed to an inquiry.

September 1, 2005

#### **ORIGINAL SIGNED BY**

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David Loukidelis  
Acting Information and Privacy Commissioner  
for British Columbia

OIPC File No. 24671

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<sup>1</sup> [2002] B.C.I.P.C.D. No. 59.

<sup>2</sup> [2001] B.C.I.P.C.D. No. 3.