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

Order 02-10

MINISTRY OF HUMAN RESOURCES

David Loukidelis, Information and Privacy Commissioner
March 5, 2002

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Summary: The applicant requested all Ministry records relating to him from February 1993. The Ministry disclosed records to the applicant from that period and from later dates. The Ministry is required to withhold third-party personal information under s. 22(1) and is authorized to withhold information under s. 19(1)(a).

Key Words: disclosure harmful to individual or public safety – threaten – mental or physical health – safety – reasonable expectation of harm – personal privacy – unreasonable invasion.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 15, 19 and 22(1).

Authorities Considered: B.C.: Order 00-28, [2000] B.C.I.P.C.D. No. 31.

1.0 INTRODUCTION

[1] In a September 1, 2000 access to information request to the Ministry of Human Resources ("Ministry"), made under the *Freedom of Information and Protection of Privacy Act* ("Act"), the applicant asked for:

> All records, including internal memos from February 1993. Includes Ministry of Human Resources and Ministry of Social Services.

[2] In its February 13, 2001 response, the Ministry disclosed records relating to the applicant, withholding some information under ss. 15(1)(b), 19(1)(a) and 22(1) of the

Act. The applicant, in a March 20, 2001 letter, requested a review of this decision under Part 5 of the Act. He also questioned the adequacy of the Ministry's search for records, an issue he abandoned during mediation by this Office. Because the matter did not settle in mediation, I held a written inquiry under Part 5 of the Act.

[3] The disputed records come from the Ministry's files relating to the applicant. They include correspondence from third parties, a list of file transfers, a computer print-out of a file history for the applicant's file, some notes to file and a memorandum. Most of these records were disclosed to the applicant. Relatively small amounts of information were removed, although a few records were withheld in their entirety.

[4] The Ministry has, in support of its s. 19(1)(a) case, made some submissions *in camera* and has provided four affidavits entirely *in camera*. The applicant has pointed out that this makes it difficult for him to respond to the Ministry's evidence. The applicant has also submitted an *in camera* affidavit and material. The Ministry did not object to the applicant's delivering this material in his reply submission. I am satisfied that both parties' affidavit evidence and submissions are appropriately received on an *in camera* basis.

2.0 ISSUES

[5] The issues to be considered in this inquiry are as follows:

1. Is the Ministry authorized under s. 15(1)(d) of the Act to refuse access to information that it withheld under that section?

2. Is the Ministry authorized under s. 19(1)(a) of the Act to refuse access to information that it withheld under that section?

3. Is the Ministry required to refuse access to personal information under s. 22(1) of the Act?

[6] Section 57(1) of the Act provides that the Ministry has the burden of proof for the first and second issues, while s. 57(3)(a) places the burden of proof regarding the s. 22(1) issue on the applicant.

3.0 DISCUSSION

[7] **3.1 Third-Party Personal Privacy** – Because the third-party personal privacy issues are straightforward, I will deal with them first. The Ministry has withheld third-party personal information consisting of: the social insurance number of one individual; the names, file numbers and other details concerning third parties who have been receiving income assistance from the Ministry; the home telephone number of a BC Benefits Appeal Tribunal panel member; a report; and a letter that was sent to the Ministry by a third party.

[8] Having reviewed all of this material, I agree with the Ministry that it contains personal information of third parties. I also agree with the Ministry, however, that some of the information withheld from the applicant relates, in some way, to him and is his personal information. His right of access to his own personal information can, however, be overcome by third-party privacy interests and – more important in the context of this case – the s. 19 interests of third parties, which are discussed below.

[9] I find that the names, files numbers and other details regarding individuals who are receiving, or have received, income assistance is subject to the presumed unreasonable invasion of personal privacy created by s. 22(3)(c) of the Act. That section reads as follows:

> (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
>
> …
>
> (c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels, … .

[10] The applicant has not attempted, as the Ministry points out, to show why he needs this third-party personal information and I am not aware of any circumstances that favour its disclosure. The same can be said for the third-party social insurance number and home telephone number that have been withheld from the applicant, even though none of the presumed unreasonable invasions of personal privacy contemplated by s. 22(3) applies here. In the result, I am satisfied that s. 22(1) of the Act requires the Ministry to refuse to disclose third-party personal information to the applicant.

[11] I do not propose to consider whether the name or other identifying information of the author or authors of the letter that was sent to the Ministry by a third party or parties, or the report, are protected under s. 22(1). This is because I am satisfied, on the evidence before me, that s. 19(1)(a) of the Act applies to all of the disputed information, for the reasons given below.

[12] **3.2 Confidential Source of Law Enforcement Information** – The Ministry relies on s. 15(1)(d) to withhold the third party letter to the Ministry in its entirety. Section 15(1)(d) of the Act reads as follows:

> 15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
>
> …
>
> (d) reveal the identity of a confidential source of law enforcement information … .

[13] The Ministry argues that disclosure of the letter, in whole or in part, "could result in a disclosure of a confidential source of law enforcement information" (para. 5.07,

initial submission). Although I would be inclined to agree that s. 15(1)(d) applies to protect the identity of the letter's author, I am satisfied, for the reasons given below, that the Ministry is entitled to withhold all of that letter under s. 19(1)(a) of the Act. Accordingly, I do not propose to deal with the s. 15(1)(d) issue.

[14] **3.3 Threat to Third Party Health or Safety** – Section 19(1)(a) of the Act authorizes a public body to refuse to disclose information to an applicant – including personal information about the applicant – if the disclosure could reasonably be expected to "threaten anyone else's safety or mental or physical health". In Order 00-28, [2000] B.C.I.P.C.D. No. 31, I said the following, at p. 2, about the burden that rests on a public body seeking to apply s. 19(1)(a):

> As I have said in previous orders, a public body is entitled to, and should, act with deliberation and care in assessing – based on the evidence available to it – whether a reasonable expectation of harm exists as contemplated by the section. In an inquiry, a public body must provide evidence the clarity and cogency of which is commensurate with a reasonable person's expectation that disclosure of the information could threaten the safety, or mental or physical health, of anyone else. In determining whether the objective test created by s. 19(1)(a) has been met, evidence of speculative harm will not suffice. The threshold of whether disclosure could reasonably be expected to result in the harm identified in s. 19(1)(a) calls for the establishment of a rational connection between the feared harm and disclosure of the specific information in dispute.
>
> It is not necessary to establish certainty of harm or a specific degree of probability of harm. The probability of the harm occurring is relevant to assessing whether there is a reasonable expectation of harm, but mathematical likelihood is not decisive where other contextual factors are at work. Section 19(1)(a), specifically, is aimed at protecting the health and safety of others. This consideration focuses on the reasonableness of an expectation of any threat to mental or physical health, or to safety, and not on mathematically or otherwise articulated probabilities of harm. See Order 00-01.

[15] In arguing that there is a reasonable expectation of a threat to physical health or safety from disclosure of the information, the Ministry acknowledges (at para. 5.20, initial submission) that it is not aware of any incident in which the applicant has "physically harmed someone". It says, however, that a number of incidents give rise to a "legitimate concern" that the applicant is a risk to third-party health and safety. At para. 5.23 of its initial submission, it cites the following as support for its s. 19(1)(a) case:

- There have been previous incidents involving the Applicant wherein his verbal abuse of staff has lead (1) to his being banned from attending Ministry Offices in Vernon and (2) reports being made to the RCMP regarding staff safety concerns (see Exhibits "H" and "I" to the affidavit of Alan Hughes);
- Some advocate programs have refused to assist the Applicant because of his past behaviour;

- The Applicant has been banned from seeing a psychiatrist at the local health unit because of his inappropriate behaviour in the past;
- The applicant has advised Ministry staff that … [*in camera*];
- The … advised the Ministry on June 20, 1994 that the Applicant's services as a volunteer were no longer needed due to the Applicant (allegedly) stealing a van;
- The Applicant's file contains an "H/S" Alert. Such an alert is added to Ministry files when a B.C. Benefits recipient demonstrates that he or she is a safety threat (see Exhibit "J" to the affidavit of Alan Hughes).

[16] The Ministry offered further incidents and factors, supported by *in camera* evidence, on an *in camera* basis. The Ministry notes, as well, that it has barred the applicant from visiting its offices.

[17] The applicant believes the Ministry has "overreacted, as the applicant knows the difference between assertive behaviour and aggressive behaviour." He says that he has no criminal record and "has never been accused of being dangerous" and that he has "never harmed anyone." He contends that any "legitimate concerns that the Ministry may have are of their own making and are not based on fact or evidence", but merely assertion. He also alleges that *all* of the evidence "is fabricated by the Ministry". He refutes the above-quoted Ministry allegations about his past behaviour, contending the real issue is that the Ministry "doesn't care for those of us who assert themselves". He says "there is no rational connection between the disclosure and the threat".

[18] In this case, none of the factors advanced by the Ministry would, on its own, be determinative of the s. 19(1)(a) issue. Taken together, however, they speak to a history of behaviour on the applicant's part that legitimately raises concerns under s. 19(1)(a). In light of the factors advanced by the Ministry – and having critically and carefully scrutinized the public and *in camera* evidence before me, as well as the contents of some of the records the applicant himself submitted to me – I am satisfied the Ministry has established a reasonable expectation that disclosure of the severed information would threaten third-party health or safety within the meaning of s. 19(1)(a). As with other cases of this kind, I cannot be more specific in explaining this finding here, as to do so would risk invading third-party privacy and would risk exposing third parties to harm of the kinds contemplated under s. 19(1)(a). I find that the Ministry is authorized by s. 19(1)(a) of the Act to refuse to disclose the severed information to the applicant.

4.0 CONCLUSION

[19] For the reasons given above, I make the following orders:

1. Under s. 58(2)(b) of the Act, I confirm the Ministry's decision that it is authorized to withhold the information that it withheld under s. 19(1)(a) of the Act; and

2. Under s. 58(2)(c) of the Act, I require the Ministry to refuse to disclose the personal information that it withheld from the applicant under s. 22(1) of the Act.

March 5, 2002

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia