

Chapter 3

Data Collection of Age, Sex, and Marital Status



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1 Data Collection of Age, Sex, and Marital Status

1.1 ICBC's Ability to Collect and Disclose Age, Sex and Marital Status Information

The Commission has requested ICBC to address the issue of ICBC's ability to collect and disclose age, sex and marital status information. ICBC understands that the Commission believes this information may be relevant to Basic insurance rates.

ICBC's position is that it is prohibited at the current time from collecting age, sex and marital status information from insureds and disclosing it to the Commission as a result of the *Freedom of Information and Protection of Privacy Act*.

Special Direction IC1¹ prescribes that age, gender and marital status information cannot form any part of Basic insurance rate setting, and ICBC does not use age, sex or marital status information for Optional insurance rating purposes. As a result, it is not required for any purpose under the *Insurance Corporation Act* (the "ICA") or the *Utilities Commission Act* (the "UCA") as applicable to ICBC and cannot be collected or disclosed by ICBC.

The 1992 Supreme Court of Canada decision in *Zurich Insurance Co. v Ontario (Human Rights Comm)* should also be taken into account when considering ICBC's ability to collect age, sex and marital status information.

¹ *Special Direction IC1 to the British Columbia Utilities Commission*, B.C. Reg. 321/2003, section 2(2)(b).

1.2 Freedom of Information and Protection of Privacy Act (the “FOI” Act)

1.2.1 *The Provisions of the FOI Act*

ICBC is a public body subject to the FOI Act. The purposes of the FOI Act include preventing the unauthorized collection, use or disclosure of personal information by public bodies² (see Appendix 3A for relevant sections of the FOI Act).

The FOI Act sets out the specific circumstances when personal information may be collected by ICBC³:

- when it is authorized by an act
- when it is required for law enforcement purposes
- when the information relates directly to, and is necessary for, ICBC’s operations.

The FOI Act also sets out specific circumstances when personal information may be disclosed⁴. The relevant circumstances are:

- consent of the individual
- for the purpose for which it was obtained or compiled or for a use consistent with that purpose
- when an act authorizes it.

1.2.2 *Age, Sex and Marital Status Information Collection and Disclosure Prohibited*

There is no specific statutory authorization for ICBC to collect age, sex and marital status information for insurance rating purposes. This means that ICBC can only collect that information if it actually relates to ICBC’s insurance rating activities.

Age, sex and marital status information does not relate to ICBC’s Basic insurance rating activities. Special Direction IC1 specifically prohibits ICBC’s use of age, sex and marital status information in relation to Basic insurance rate setting, with the permitted exception

² FOI Act, section 2.

³ FOI Act, section 26.

⁴ FOI Act, section 33.

of rates which provide discounts to those aged 65 or older⁵. The prohibition in Special Direction IC1 means ICBC cannot collect age, sex and marital status information for the purpose of Basic insurance rating. The exception to this prohibition is that ICBC may collect age information for those aged 65 or older, but only if ICBC offers Basic insurance rates which provide discounts to that group (which ICBC does).

There is no statutory authorization for the disclosure of age and sex information (and not marital status) which may be available from the driver licensing database for insurance rating purposes, and no basis under the FOI Act for disclosure, since any disclosure for Basic insurance rating purposes would not be consistent with the purposes for which it was collected.

The *Insurance (Motor Vehicle) Act* (“IMVA”) permits ICBC to obtain information from the Superintendent’s motor vehicle records where ICBC considers the information necessary to better carry out the IMVA and regulations⁶. Since ICBC is prohibited by Special Direction IC1 from use of age, sex and marital status information in relation to Basic insurance rate setting, that information is not necessary for the purposes of the IMVA (again with the exception of the seniors’ discount rate class) and it cannot be disclosed to ICBC for Basic insurance rating purposes.

The age and sex information is not disclosable under the terms of the FOI (absent specific consent from the individual to whom it relates) because that information in the driver licensing database is collected for driver licensing and legal identification purposes, and not for insurance rating purposes.

1.3 Zurich Insurance Co. v Ontario (Human Rights Comm.), 1992, Supreme Court of Canada

Consideration needs to be given as well to the Supreme Court of Canada’s 1992 decision in *Zurich Insurance Co. v Ontario (Human Rights Comm.)*⁷. Zurich is the

⁵ Special Direction IC1, section 2(4).

⁶ IMVA, section 30.

⁷ [1992] 2 SCR 321; (1992), 93 DLR(4th) 346; (1992), 16 CHRR D/255 (SCC).

leading case on the issue of age, sex and marital status discrimination in the context of automobile insurance.

The case involves a complaint made to the Ontario Human Rights Commission in 1983 that Zurich classified drivers using age, sex and marital status as factors. The matter reached the Supreme Court of Canada in 1992. The Supreme Court of Canada looked at whether using age sex, and marital status to determine insurance risk was discriminatory and without bona fide and reasonable justification, contrary to the Ontario *Human Rights Code*.

Zurich conceded that its differentiation for underwriting purposes by age, sex and marital status was discriminatory, so the issue for the Supreme Court of Canada was whether that discrimination was “reasonable and bona fide” for the purpose of assessing driver risk. The Court’s determination of that issue turned on whether there was, in 1983 (when the complaint was originally made), any practical alternative to using age, sex and marital status.

Zurich argued before the Supreme Court that there was no practical alternative, due to the unavailability of reliable data. The Supreme Court accepted that this may have been the case in 1983, but also stated:

The insurance industry must be allowed time to determine whether it can restructure its classification system in a manner that will eliminate discrimination based on enumerated group characteristics and still reflect the disparate risks of different classes of drivers. It would therefore be inappropriate for this Court to find a particular practice to be unreasonable when no reasonable alternative exists. While the situation as it existed in 1983 did not provide a reasonable alternative to setting premiums based on age, sex and marital status, the situation today [1992] and in the future may be quite different. **The industry must strive to avoid setting premiums based on enumerated grounds.** [emphasis added]

The Supreme Court’s final decision was that Zurich’s practice in 1983 of using age, sex and marital status information in underwriting was permitted because, “Zurich set its

premiums on the basis of the only statistics available to the insurance industry at the time in question”.

1.3.1 Post Zurich Developments

In a recent review of human rights issues relating to insurance, the Ontario Human Rights Commission stated that it, “will continue to promote the principle that the insurance industry should strive to move away from using enumerated grounds of discrimination in risk assessment”⁸. The Ontario Human Rights Commission reviewed ICBC’s use of driving experience through the claims rated scaled and concluded:

However, “years of driving” [accident free] is a variable that appears to have a causal relationship with the purposes of auto insurance. Using bona fide and reasonable risk factors that are rationally connected to their intended purpose, even though an adverse impact might result, is preferable to directly classifying individuals on the basis of enumerated grounds of discrimination⁹.

1.3.2 A Practical Alternative in 2005

If Zurich were decided today in BC, a court might find that there are practical alternatives in BC to using age, sex and marital status data to assess risk and that, as a result, collection and disclosure of that information would be contrary to the *BC Human Rights Code*.

Unlike Zurich’s situation at the time of the complaint in 1983 and the subsequent Supreme Court of Canada decision in 1992, ICBC does have reliable driver loss data which renders the use of age, sex and marital status data unnecessary.

There is also a recent external indication that there may be alternatives to using age, sex and marital status in rating. On May 28, 2004, the Alberta Government announced its recommended reforms to auto insurance in Alberta. These reforms are based on several general principles, including that:

⁸ *Human Rights Issues in Insurance Consultation Report*, Ontario Human Rights Commission, October, 2001

⁹ *Ibid*, page 14.

There will be a benchmark entry level premium, determined by vehicle use, third party liability coverage level and geographic territory. **Age sex and marital status will no longer be factors in setting premiums¹⁰.**
[emphasis added]

The Alberta Government's intention in making this change is to create a system of "fair, affordable premiums", which demonstrates that not only are there practical alternatives in 2005, but those alternatives will result in a better insurance system for consumers.

Should a court find in future that there are practical alternatives in BC, any collection or disclosure by ICBC of age, sex and marital status information for insurance purposes would be contrary to human rights law.

1.4 Conclusion

ICBC does not currently collect age (other than for age 65 and over discounts), sex and marital status information for insurance rating purposes. ICBC's position is that as a result of Special Direction IC1 and, potentially, the Supreme Court of Canada decision in *Zurich*, it is not permitted to set rates in a manner that discriminates on the basis of age (which excludes the provisions of discounts for those aged 65 and over) sex or marital status. Accordingly, with the exception of age information relating to discounts for those aged 65 and over, age, sex and marital status information is not necessary for Basic insurance rate setting, and ICBC should not be required to collect or disclose that information. ICBC does not rate Optional insurance on the basis of age, sex or marital status, and accordingly is not permitted to collect age, sex or marital status information for any insurance purpose, other than for discounts for those aged 65 and over.

¹⁰ Alberta Government at www.autoinsurance.gov.ab.ca, "Overview of Reforms".

Appendix 3A

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT **[RSBC 1996] CHAPTER 165**

Disclosure of personal information

33 A public body must ensure that personal information in its custody or under its control is disclosed only

- (a) in accordance with Part 2,
- (b) if the individual the information is about has identified the information and consented, in the prescribed manner, to its disclosure,
- (c) for the purpose for which it was obtained or compiled or for a use consistent with that purpose (see section 34),
- (d) in accordance with an enactment of British Columbia or Canada that authorizes or requires its disclosure,
- (d.1) in accordance with a provision of a treaty, arrangement or agreement that
 - (i) authorizes or requires its disclosure, and
 - (ii) is made under an enactment of British Columbia or Canada,
- (e) for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of information,
- (f) to an officer or employee of the public body or to a minister, if the information is necessary for the performance of the duties of, or for the protection of the health or safety of, the officer, employee or minister,
 - (f.1) to an officer or employee of a public body or to a minister, if the information is necessary for the delivery of a common or integrated program or activity and for the performance of the duties of the officer or employee or minister to whom the information is disclosed,
- (g) to the Attorney General for use in civil proceedings involving the government,
- (h) to the Attorney General or a person referred to in section 36 of the *Coroners Act*, for the purposes of that Act,
- (i) for the purpose of

- (i) collecting a debt or fine owing by an individual to the government of British Columbia or to a public body, or
- (ii) making a payment owing by the government of British Columbia or by a public body to an individual,
- (j) to the auditor general or any other prescribed person or body for audit purposes,
- (k) to a member of the Legislative Assembly who has been requested by the individual the information is about to assist in resolving a problem,
- (l) to a representative of the bargaining agent who has been authorized in writing by the employee, whom the information is about, to make an inquiry,
- (m) to the archives of the government of British Columbia or the archives of a public body, for archival purposes,
- (n) to a public body or a law enforcement agency in Canada to assist in an investigation
 - (i) undertaken with a view to a law enforcement proceeding, or
 - (ii) from which a law enforcement proceeding is likely to result,
- (o) if the public body is a law enforcement agency and the information is disclosed
 - (i) to another law enforcement agency in Canada, or
 - (ii) to a law enforcement agency in a foreign country under an arrangement, written agreement, treaty or legislative authority,
- (p) if the head of the public body determines that compelling circumstances exist that affect anyone's health or safety and if notice of disclosure is mailed to the last known address of the individual the information is about,
- (q) so that the next of kin or a friend of an injured, ill or deceased individual may be contacted, or
- (r) in accordance with sections 35 and 36.

Other sections referred to in section 33:

- (a) Reference to Part 2 in section 33(a)

Part 2 — Freedom of Information

Division 1 — Information Rights and How to Exercise Them

Information rights

4 (1) A person who makes a request under section 5 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.

(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record an applicant has the right of access to the remainder of the record.

(3) The right of access to a record is subject to the payment of any fee required under section 75.

How to make a request

5 (1) To obtain access to a record, the applicant must make a written request that

(a) provides sufficient detail to enable an experienced employee of the public body, with a reasonable effort, to identify the records sought,

(b) provides written proof of the authority of the applicant to make the request, if the applicant is acting on behalf of another person in accordance with the regulations, and

(c) is submitted to the public body that the applicant believes has custody or control of the record.

(2) The applicant may ask for a copy of the record or ask to examine the record.

Duty to assist applicants

6 (1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

(2) Moreover, the head of a public body must create a record for an applicant if

(a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and

(b) creating the record would not unreasonably interfere with the operations of the public body.

Time limit for responding

- 7 (1) Subject to this section and sections 23 and 24 (1), the head of a public body must respond not later than 30 days after receiving a request described in section 5 (1).
- (2) The head of the public body is not required to comply with subsection (1) if
- (a) the time limit is extended under section 10, or
 - (b) the request has been transferred under section 11 to another public body.
- (3) If the head of a public body asks the commissioner under section 43 for authorization to disregard a request, the 30 days referred to in subsection (1) do not include the period from the start of the day the application is made under section 43 to the end of the day a decision is made by the commissioner with respect to that application.
- (4) If the head of a public body determines that an applicant is to pay fees for services related to a request, the 30 days referred to in subsection (1) do not include the period from the start of the day the head of the public body gives the applicant a written estimate of the total fees to the end of the day one of the following occurs:
- (a) the head of the public body excuses the applicant from paying all of the fees under section 75 (5);
 - (b) the head of the public body excuses the applicant from paying part of the fees under section 75 (5), and the applicant agrees to pay the remainder and, if required by the head of a public body, pays the deposit required;
 - (c) the applicant agrees to pay the fees set out in the written estimate and, if required by the head of a public body, pays the deposit required.
- (5) If an applicant asks the commissioner under section 52 (1) to review a fee estimate or a refusal to excuse the payment of all or part of the fee required by the head of the public body, the 30 days referred to in subsection (1) do not include the period from the start of the day the applicant asks for the review to the end of the day the commissioner makes a decision.
- (6) If a third party asks under section 52 (2) that the commissioner review a decision of the head of a public body, the 30 days referred to in subsection (1) do not include the period from the start of the day the written request for review is delivered to the commissioner to the end of the day the commissioner makes a decision with respect to the review requested.
- (7) If a person asks under section 62 (2) for a review of a decision of the commissioner as head of a public body, the 30 days referred to in subsection (1) do not include the period from the start of the day the request for review is delivered to the minister responsible for this Act to the end of the day the adjudicator makes a decision with respect to the review requested.

Contents of response

- 8** (1) In a response under section 7, the head of the public body must tell the applicant
- (a) whether or not the applicant is entitled to access to the record or to part of the record,
 - (b) if the applicant is entitled to access, where, when and how access will be given, and
 - (c) if access to the record or to part of the record is refused,
 - (i) the reasons for the refusal and the provision of this Act on which the refusal is based,
 - (ii) the name, title, business address and business telephone number of an officer or employee of the public body who can answer the applicant's questions about the refusal, and
 - (iii) that the applicant may ask for a review under section 53 or 63.
- (2) Despite subsection (1) (c) (i), the head of a public body may refuse in a response to confirm or deny the existence of
- (a) a record containing information described in section 15 (information harmful to law enforcement), or
 - (b) a record containing personal information of a third party if disclosure of the existence of the information would be an unreasonable invasion of that party's personal privacy.

How access will be given

- 9** (1) If an applicant is told under section 8 (1) that access will be given, the head of the public body concerned must comply with subsection (2) or (3) of this section.
- (2) If the applicant has asked for a copy under section 5 (2) and the record can reasonably be reproduced,
- (a) a copy of the record or part of the record must be provided with the response, or
 - (b) the applicant must be given reasons for the delay in providing the record.
- (3) If the applicant has asked to examine the record under section 5 (2) or if the record cannot reasonably be reproduced, the applicant must
- (a) be permitted to examine the record or part of the record, or
 - (b) be given access in accordance with the regulations.

Extending the time limit for responding

10 (1) The head of a public body may extend the time for responding to a request for up to 30 days or, with the commissioner's permission, for a longer period if

- (a) the applicant does not give enough detail to enable the public body to identify a requested record,
- (b) a large number of records is requested or must be searched and meeting the time limit would unreasonably interfere with the operations of the public body, or
- (c) more time is needed to consult with a third party or other public body before the head can decide whether or not to give the applicant access to a requested record.
- (d) [Repealed 2002-13-3.]

(2) If the time is extended under subsection (1), the head of the public body must tell the applicant

- (a) the reason,
- (b) when a response can be expected, and
- (c) that the applicant may complain about the extension under section 42 (2) (b) or 60 (1) (a).

Transferring a request

11 (1) Within 20 days after a request for access to a record is received by a public body, the head of the public body may transfer the request and, if necessary, the record to another public body if

- (a) the record was produced by or for the other public body,
- (b) the other public body was the first to obtain the record, or
- (c) the record is in the custody or under the control of the other public body.

(2) If a request is transferred under subsection (1),

- (a) the head of the public body who transferred the request must notify the applicant of the transfer, and
- (b) the head of the public body to which the request is transferred must respond to the applicant in accordance with section 8 not later than 30 days after the request is received by that public body unless this time limit is extended under section 10.

Division 2 — Exceptions

Cabinet and local public body confidences

12 (1) The head of a public body must refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees.

(2) Subsection (1) does not apply to

- (a) information in a record that has been in existence for 15 or more years,
- (b) information in a record of a decision made by the Executive Council or any of its committees on an appeal under an Act, or
- (c) information in a record the purpose of which is to present background explanations or analysis to the Executive Council or any of its committees for its consideration in making a decision if
 - (i) the decision has been made public,
 - (ii) the decision has been implemented, or
 - (iii) 5 or more years have passed since the decision was made or considered.

(3) The head of a local public body may refuse to disclose to an applicant information that would reveal

- (a) a draft of a resolution, bylaw or other legal instrument by which the local public body acts or a draft of a private Bill, or
- (b) the substance of deliberations of a meeting of its elected officials or of its governing body or a committee of its governing body, if an Act or a regulation under this Act authorizes the holding of that meeting in the absence of the public.

(4) Subsection (3) does not apply if

- (a) the draft of the resolution, bylaw, other legal instrument or private Bill or the subject matter of the deliberations has been considered in a meeting open to the public, or
- (b) the information referred to in that subsection is in a record that has been in existence for 15 or more years.

(5) The Lieutenant Governor in Council by regulation may designate a committee for the purposes of this section.

(6) A committee may be designated under subsection (5) only if

- (a) the Lieutenant Governor in Council considers that

- (i) the deliberations of the committee relate to the deliberations of the Executive Council, and
 - (ii) the committee exercises functions of the Executive Council, and
- (b) at least 1/3 of the members of the committee are members of the Executive Council.

Policy advice or recommendations

13 (1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

(2) The head of a public body must not refuse to disclose under subsection (1)

- (a) any factual material,
- (b) a public opinion poll,
- (c) a statistical survey,
- (d) an appraisal,
- (e) an economic forecast,
- (f) an environmental impact statement or similar information,
- (g) a final report or final audit on the performance or efficiency of a public body or on any of its programs or policies,
- (h) a consumer test report or a report of a test carried out on a product to test equipment of the public body,
- (i) a feasibility or technical study, including a cost estimate, relating to a policy or project of the public body,
- (j) a report on the results of field research undertaken before a policy proposal is formulated,
- (k) a report of a task force, committee, council or similar body that has been established to consider any matter and make reports or recommendations to a public body,
- (l) a plan or proposal to establish a new program or to change a program, if the plan or proposal has been approved or rejected by the head of the public body,
- (m) information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy, or

(n) a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.

(3) Subsection (1) does not apply to information in a record that has been in existence for 10 or more years.

Legal advice

14 The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege.

Disclosure harmful to law enforcement

15 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) harm a law enforcement matter,

(b) prejudice the defence of Canada or of any foreign state allied to or associated with Canada or harm the detection, prevention or suppression of espionage, sabotage or terrorism,

(c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,

(d) reveal the identity of a confidential source of law enforcement information,

(e) reveal criminal intelligence that has a reasonable connection with the detection, prevention or suppression of organized criminal activities or of serious and repetitive criminal activities,

(f) endanger the life or physical safety of a law enforcement officer or any other person,

(g) reveal any information relating to or used in the exercise of prosecutorial discretion,

(h) deprive a person of the right to a fair trial or impartial adjudication,

(i) reveal a record that has been confiscated from a person by a peace officer in accordance with an enactment,

(j) facilitate the escape from custody of a person who is under lawful detention,

(k) facilitate the commission of an offence under an enactment of British Columbia or Canada, or

(l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

- (2) The head of a public body may refuse to disclose information to an applicant if the information
- (a) is in a law enforcement record and the disclosure would be an offence under an Act of Parliament,
 - (b) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or a person who has been quoted or paraphrased in the record, or
 - (c) is about the history, supervision or release of a person who is in custody or under supervision and the disclosure could reasonably be expected to harm the proper custody or supervision of that person.
- (3) The head of a public body must not refuse to disclose under this section
- (a) a report prepared in the course of routine inspections by an agency that is authorized to enforce compliance with an Act,
 - (b) a report, including statistical analysis, on the degree of success achieved in a law enforcement program unless disclosure of the report could reasonably be expected to interfere with or harm any of the matters referred to in subsection (1) or (2), or
 - (c) statistical information on decisions under the *Crown Counsel Act* to approve or not to approve prosecutions.
- (4) The head of a public body must not refuse, after a police investigation is completed, to disclose under this section the reasons for a decision not to prosecute
- (a) to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim, or
 - (b) to any other member of the public, if the fact of the investigation was made public.

Disclosure harmful to intergovernmental relations or negotiations

- 16** (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
- (a) harm the conduct by the government of British Columbia of relations between that government and any of the following or their agencies:
 - (i) the government of Canada or a province of Canada;
 - (ii) the council of a municipality or the board of a regional district;
 - (iii) an aboriginal government;
 - (iv) the government of a foreign state;

- (v) an international organization of states,
 - (b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies, or
 - (c) harm the conduct of negotiations relating to aboriginal self government or treaties.
- (2) Moreover, the head of a public body must not disclose information referred to in subsection (1) without the consent of
- (a) the Attorney General, for law enforcement information, or
 - (b) the Executive Council, for any other type of information.
- (3) Subsection (1) does not apply to information that is in a record that has been in existence for 15 or more years unless the information is law enforcement information.

Disclosure harmful to the financial or economic interests of a public body

17 (1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:

- (a) trade secrets of a public body or the government of British Columbia;
 - (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;
 - (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;
 - (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
 - (e) information about negotiations carried on by or for a public body or the government of British Columbia.
- (2) The head of a public body may refuse to disclose under subsection (1) research information if the disclosure could reasonably be expected to deprive the researcher of priority of publication.
- (3) The head of a public body must not refuse to disclose under subsection (1) the results of product or environmental testing carried out by or for that public body, unless the testing was done

- (a) for a fee as a service to a person, a group of persons or an organization other than the public body, or
- (b) for the purpose of developing methods of testing.

Disclosure harmful to the conservation of heritage sites, etc.

18 The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to result in damage to, or interfere with the conservation of,

- (a) fossil sites, natural sites or sites that have an anthropological or heritage value,
- (b) an endangered, threatened or vulnerable species, subspecies or race of plants, vertebrates or invertebrates, or
- (c) any other rare or endangered living resources.

Disclosure harmful to individual or public safety

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.

(2) The head of a public body may refuse to disclose to an applicant personal information about the applicant if the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's safety or mental or physical health.

Information that will be published or released within 60 days

20 (1) The head of a public body may refuse to disclose to an applicant information

- (a) that is available for purchase by the public, or
- (b) that, within 60 days after the applicant's request is received, is to be published or released to the public.

(2) The head of a public body must notify an applicant of the publication or release of information that the head has refused to disclose under subsection (1) (b).

(3) If the information is not published or released within 60 days after the applicant's request is received, the head of the public body must reconsider the request as if it were a new request received on the last day of that period, but the information must not be refused under subsection (1) (b).

Disclosure harmful to business interests of a third party

- 21** (1) The head of a public body must refuse to disclose to an applicant information
- (a) that would reveal
 - (i) trade secrets of a third party, or
 - (ii) commercial, financial, labour relations, scientific or technical information of or about a third party,
 - (b) that is supplied, implicitly or explicitly, in confidence, and
 - (c) the disclosure of which could reasonably be expected to
 - (i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,
 - (ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,
 - (iii) result in undue financial loss or gain to any person or organization, or
 - (iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.
- (2) The head of a public body must refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.
- (3) Subsections (1) and (2) do not apply if
- (a) the third party consents to the disclosure, or
 - (b) the information is in a record that is in the custody or control of the archives of the government of British Columbia or the archives of a public body and that has been in existence for 50 or more years.

Disclosure harmful to personal privacy

- 22** (1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.
- (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

- (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,
 - (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,
 - (c) the personal information is relevant to a fair determination of the applicant's rights,
 - (d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,
 - (e) the third party will be exposed unfairly to financial or other harm,
 - (f) the personal information has been supplied in confidence,
 - (g) the personal information is likely to be inaccurate or unreliable, and
 - (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.
- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,
 - (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,
 - (c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels,
 - (d) the personal information relates to employment, occupational or educational history,
 - (e) the personal information was obtained on a tax return or gathered for the purpose of collecting a tax,
 - (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,
 - (g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party,
 - (h) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation,

- (i) the personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations, or
 - (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.
- (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
- (a) the third party has, in writing, consented to or requested the disclosure,
 - (b) there are compelling circumstances affecting anyone's health or safety and notice of disclosure is mailed to the last known address of the third party,
 - (c) an enactment of British Columbia or Canada authorizes the disclosure,
 - (d) the disclosure is for a research or statistical purpose and is in accordance with section 35,
 - (e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff,
 - (f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body,
 - (g) public access to the information is provided under the *Financial Information Act*,
 - (h) the information is about expenses incurred by the third party while travelling at the expense of a public body,
 - (i) the disclosure reveals details of a licence, permit or other similar discretionary benefit granted to the third party by a public body, not including personal information supplied in support of the application for the benefit, or
 - (j) the disclosure reveals details of a discretionary benefit of a financial nature granted to the third party by a public body, not including personal information that is supplied in support of the application for the benefit or is referred to in subsection (3) (c).
- (5) On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the public body must give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information.
- (6) The head of the public body may allow the third party to prepare the summary of personal information under subsection (5).

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.

Division 3 — Notice to Third Parties

Notifying the third party

23 (1) If the head of a public body intends to give access to a record that the head has reason to believe contains information that might be excepted from disclosure under section 21 or 22, the head must give the third party a written notice under subsection (3).

(2) If the head of a public body does not intend to give access to a record that contains information excepted from disclosure under section 21 or 22, the head may give the third party a written notice under subsection (3).

(3) The notice must

(a) state that a request has been made by an applicant for access to a record containing information the disclosure of which may affect the interests or invade the personal privacy of the third party,

(b) describe the contents of the record, and

(c) state that, within 20 days after the notice is given, the third party may, in writing, consent to the disclosure or may make written representations to the public body explaining why the information should not be disclosed.

(4) When notice is given under subsection (1), the head of the public body must also give the applicant a notice stating that

- (a) the record requested by the applicant contains information the disclosure of which may affect the interests or invade the personal privacy of a third party,
- (b) the third party is being given an opportunity to make representations concerning disclosure, and
- (c) a decision will be made within 30 days about whether or not to give the applicant access to the record.

Time limit and notice of decision

24 (1) Within 30 days after notice is given under section 23 (1) or (2), the head of the public body must decide whether or not to give access to the record or to part of the record, but no decision may be made before the earlier of

- (a) 21 days after the day notice is given, or
- (b) the day a response is received from the third party.

(2) On reaching a decision under subsection (1), the head of the public body must give written notice of the decision to

- (a) the applicant, and
- (b) the third party.

(3) If the head of the public body decides to give access to the record or to part of the record, the notice must state that the applicant will be given access unless the third party asks for a review under section 53 or 63 within 20 days after the day notice is given under subsection (2).

Division 4 — Public Interest Paramount

Information must be disclosed if in the public interest

25 (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

- (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
- (b) the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

(3) Before disclosing information under subsection (1), the head of a public body must, if practicable, notify

- (a) any third party to whom the information relates, and
- (b) the commissioner.

(4) If it is not practicable to comply with subsection (3), the head of the public body must mail a notice of disclosure in the prescribed form

- (a) to the last known address of the third party, and
- (b) to the commissioner.

(b) Reference to section 34 in section 33(c)

Definition of consistent purposes

34 (1) A use of personal information is consistent under section 32 or 33 with the purposes for which the information was obtained or compiled if the use

- (a) has a reasonable and direct connection to that purpose, and
- (b) is necessary for performing the statutory duties of, or for operating a legally authorized program of, the public body that uses or discloses the information or causes the information to be used or disclosed.

(c) Reference to sections 35 and 36 in section 33(r)

Disclosure for research or statistical purposes

35 A public body may disclose personal information or may cause personal information in its custody or under its control to be disclosed for a research purpose, including statistical research, only if

(a) the research purpose cannot reasonably be accomplished unless that information is provided in individually identifiable form or the research purpose has been approved by the commissioner,

(a.1) the information is disclosed on condition that it not be used for the purpose of contacting a person to participate in the research,

(b) any record linkage is not harmful to the individuals that information is about and the benefits to be derived from the record linkage are clearly in the public interest,

(c) the head of the public body concerned has approved conditions relating to the following:

- (i) security and confidentiality;

(ii) the removal or destruction of individual identifiers at the earliest reasonable time;

(iii) the prohibition of any subsequent use or disclosure of that information in individually identifiable form without the express authorization of that public body, and

(d) the person to whom that information is disclosed has signed an agreement to comply with the approved conditions, this Act and any of the public body's policies and procedures relating to the confidentiality of personal information.

Disclosure for archival or historical purposes

36 The archives of the government of British Columbia, or the archives of a public body, may disclose personal information or cause personal information in its custody or under its control to be disclosed for archival or historical purposes if

(a) the disclosure would not be an unreasonable invasion of personal privacy under section 22,

(b) the disclosure is for historical research and is in accordance with section 35,

(c) the information is about someone who has been dead for 20 or more years, or

(d) the information is in a record that has been in existence for 100 or more years.