



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

Decision F09-05

PROVIDENCE HEALTH CARE SOCIETY

Michael McEvoy, Adjudicator

December 16, 2009

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Summary: Providence Health Care is not a public body under FIPPA and therefore its decision respecting release of certain records to the applicant cannot be the subject of an inquiry under FIPPA.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 21; Schedule 1 definition “health care body”; *Hospital Act*, s. 1.

Case Considered: *Dr. Francis Ho et al v. Providence Health Care Society et al* 2004 BCSC 1417.

1.0 INTRODUCTION

[1] The Hospital Employees Union (“applicant”) requested, under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”), records related to a contract between the Vancouver Coastal Health Authority (“VCHA”) and/or Providence Health Care Society (“Providence”) and Sodexo, a food service provider. The requested records include a business case the VCHA and/or Providence prepared relating to the contracting out, copies of the contract between the entities and any documents provided to the Providence board of directors relating to the decision to contract out.

[2] Providence is the entity in a contractual relationship with Sodexo and it responded to the request by releasing a severed version of its food services contracts (“contracts”) with that company. Portions of the contracts were severed under s. 21 of FIPPA. The applicant applied to this Office to have Providence’s decision reviewed. Providence subsequently determined that it could not

withhold the records and told Sodexo it intended to release them. Sodexo asked this Office to review Providence's decision.

[3] Mediation did not settle the matter. Prior to the issuance of a Notice of Inquiry, this Office told the parties that it would consider, as a preliminary matter, whether Providence was a public body under FIPPA. All three parties made initial submissions only.

2.0 ISSUE

[4] The issue is whether Providence is a public body under FIPPA.

3.0 DISCUSSION

Submissions of the parties

[5] Providence argues it is a public body under FIPPA. It says it became a legal entity in 2000—a society incorporated under the *Society Act*—through the merger of the CHARA Health Care Society (which operated Mount Saint Joseph Hospital, Youville Residence and St. Vincent's Hospital), the Sisters of Providence of St. Vincent de Paul (which operated St. Paul's Hospital) and Holy Family Hospital Society (which operated Holy Family Hospital). Providence submits that each of the previously independently managed hospital ("independent facilities") noted above was subject to FIPPA, based on the definition of a "health care body," at the time Providence was created.

[6] A "health care body" under FIPPA includes a "hospital as defined under Section 1 of the *Hospital Act*". Providence argues each of the individual independent facilities met that definition. Providence submits that:

... since each of these entities [merged to form Providence], when individually governed, was subject to FIPPA, the obligations that each of these facilities had under this legislation transferred to Providence Health Care Society when the entities were merged. As such, we have operated our facilities in compliance with FIPPA.

[7] Providence says the Minister of Health Services approved its constitution and bylaws. It submits it operates hospital and health care facilities on a non-profit basis and that the *Hospital Act* licenses all but two of its sites. Providence says that, because the *Hospital Act* governs the majority of the services it provides, the Auditor General mandates the consolidation of its financial statements with those of the province, much like a health authority.

[8] Providence submits that the individual facilities merged to create it have no independent management or governance structure. All employees are those of Providence and Providence is the legal entity authorized to enter

into contracts. More specifically, Providence submits that facilities like St. Paul's are no longer equipped "to accept statutory responsibilities under FIPPA."

[9] Providence argues that the Supreme Court of British Columbia in *Dr. Francis Ho et al v. Providence Health Care Society et al* 2004 BCSC 1417, addressed the issue of whether it assumes the legal rights and responsibilities of the merged component entities.

[10] Providence contends that the issue underlying this preliminary matter arises from a contractual agreement between Providence and Sodexo to provide food services across all its sites. It argues that this matter relates to the purpose of the legislation, that is, to make public bodies more accountable.

[11] Providence submits that its operations, and budget of more than \$450 million, more closely resemble a health authority than those of an "affiliate health care provider".¹ Providence did not explain what it meant by this term. It points to a recent government decision preventing Providence and the province's health authorities from withdrawing their membership in the Health Employers Association of British Columbia ("HEABC") while allowing other affiliate members to do so if they wished. It argues this demonstrates Providence's close alignment with health authorities.

[12] The applicant also argues Providence is a public body under FIPPA. It cites FIPPA's definition of a "health care body" and the definition of "hospital" in the *Hospital Act* and states that Providence manages a number of health care facilities under an "affiliation agreement" with VCHA. The applicant contends that each facility is designated under the *Hospital Act* and each is therefore a public body under FIPPA whose FIPPA obligations are discharged by Providence. The applicant did not explain the meaning of an "affiliation agreement" nor provide evidence of the designations it referred to.

[13] The applicant also argues that the records in dispute are contracts arising from a request for proposals issued jointly by VCHA and Providence. It further argues that the contracts specifically recognize Providence's obligations as a public body under FIPPA, though it did not provide copies of these contracts.

[14] Sodexo takes no position with respect to this preliminary issue other than to say it always understood Providence was a public body under FIPPA and that it provided confidential information and entered into a contract with Providence on that assumption.

¹ Providence's submission, p. 3.

Analysis

[15] FIPPA and its schedules delineate what entities are public bodies and are thus covered under the legislation. In this case, Providence and the applicant argue that Providence is a “health care body”, which FIPPA defines as follows:

"health care body" means

- (a) a hospital as defined in section 1 of the *Hospital Act*,
- (b) a Provincial auxiliary hospital established under the *Hospital (Auxiliary) Act*,
- (c) a regional hospital district and a regional hospital district board under the *Hospital District Act*,
- (d) a local board of health as defined in the *Health Act*,
- (e) a metropolitan board of health established under the *Health Act*,
- (f) a Provincial mental health facility as defined in the *Mental Health Act*, or
- (g) a regional health board designated under section 4 (1) of the *Health Authorities Act*, or
- (h) [Repealed 2002-61-17]

[16] The applicant and Providence both say paragraph (a) of this definition applies. The definition of “hospital” in s. 1 of the *Hospital Act* reads as follows:

"hospital", except in Parts 2 and 2.1, means a nonprofit institution *that has been designated as a hospital by the minister* and is operated primarily for the reception and treatment of persons

- (a) suffering from the acute phase of illness or disability,
- (b) convalescing from or being rehabilitated after acute illness or injury, or
- (c) requiring extended care at a higher level than that generally provided in a private hospital licensed under Part 2;... [emphasis added]

[17] Is Providence, the entity that is a party to the requested contracts, a hospital covered by FIPPA? It is clear from the evidence that Providence is a not-for-profit entity, a society incorporated under the *Society Act*. However, neither it nor the applicant cites any evidence, or argues that the Minister of Health Services has designated Providence as a hospital under the *Hospital Act*. The best Providence can muster is that certain individual facilities it now operates were at one time run by their own separate societies that were covered by FIPPA by virtue of being designated a hospital, with their FIPPA responsibilities being assumed by Providence when it took over the assets and

undertaking of the earlier societies. The applicant's submission is a variation on this theme. However, Providence provides no explanation as to a mechanism by which this transfer could occur under FIPPA. The legislation does not provide what might be called successor rights and I see no analogy to, or application of, corporate law that makes Providence a public body under FIPPA. The *Ho* case is not relevant because it bears no relation to FIPPA obligations and turns on the specific wording of the corporate bylaws in question.²

[18] No other FIPPA definitions under "health care body", or related to "public body", are applicable here and I find that Providence is nowhere designated under FIPPA or its schedules as a public body. For the above reasons, Providence is not a "public body" as defined under FIPPA.

[19] The applicant notes that Providence entered into a contract that "recognizes" its "obligations" under FIPPA. Such a declaration is meaningless if the entity in question does not fall within the definition of a public body under FIPPA.

[20] Providence's arguments concerning the consolidation of its financial statements, the amount of public money expended on providing health care services and its role with HEABC are persuasive reasons why Providence should be a public body with obligations under FIPPA. I applaud Providence for acting in a spirit of openness and transparency. Providence would however have to be designated as a "Schedule 2" public body under s. 76.1 of FIPPA, a hospital under the *Hospital Act*, or defined in some other fashion as a public body under FIPPA for that law to apply to it.

[21] FIPPA's obligations apply only to a "public body" as defined under Schedule 1 of the legislation. As such, jurisdiction to conduct a review under s. 52 of FIPPA, and an inquiry under s. 56, is limited to requests for review of "any decision, act or failure to act of the head" of a public body "that relates to that request" for access to the "head of a public body."

[22] Given my finding that Providence is not a public body, there is no jurisdiction under FIPPA to proceed with the inquiry or to make any order under s. 58 of FIPPA.

December 16, 2009

ORIGINAL SIGNED BY

Michael McEvoy
Adjudicator

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² See pages 7 and 8 of the decision in *Dr. Francis Ho et al.*