



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

Decision F08-11

LAW SOCIETY OF BRITISH COLUMBIA

Celia Francis, Senior Adjudicator

December 5, 2008

Quicklaw Cite: [2008] B.C.I.P.C.D. No. 36

Document URL: <http://www.oipc.bc.ca/orders/section56/DecisionF08-10.pdf>

Summary: The Law Society's request that this matter not proceed to inquiry is granted.

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

Authorities Considered: **B.C.:** Order 02-01, [2002] B.C.I.P.C.D. No. 1; Decision F07-04, [2007] B.C.I.P.C.D. No. 20; Decision F08-08, [2008] B.C.I.P.C.D. No. 26.

1.0 INTRODUCTION

[1] The Law Society of British Columbia ("Law Society") has asked that, under s. 56 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), an inquiry on the respondent's request for review not be held respecting the respondent's request for records. For reasons which follow, I have exercised my discretion to grant the Law Society's request.

2.0 DISCUSSION

The access requests

[2] The respondent complained to the Law Society about a named lawyer. In the course of her dealings with the Law Society, she requested access to records on the number of complaints filed against the lawyer, the nature of and details on any complaints and any discipline imposed on the lawyer.¹ The Law

¹ Respondent's request of November 2, 2007.

Society responded that complaints about lawyers are confidential under the Law Society's rules, except those leading to a disciplinary hearing. It also said that, under s. 8(2)(b) and s. 22(1) of FIPPA, it could neither confirm nor deny the existence of any complaints against the lawyer and could not provide any information about complaints that did not result in a disciplinary hearing. In response to the request for information on any disciplinary action taken against the lawyer, the Law Society enclosed a copy of information it had published in its Discipline Digest summarizing a discipline matter involving the lawyer.²

[3] The respondent then requested copies of the citation and the hearing transcript regarding that disciplinary matter.³ The Law Society provided a severed copy of a citation it had issued against the lawyer. It said there was no hearing transcript for that case because the citation was rescinded and no formal hearing took place.⁴

[4] The respondent requested reviews of these responses by this Office.⁵ It does not appear that the respondent takes issue with the Law Society's response concerning the hearing transcript but it is evident that she wishes to pursue her request for complaint records. Mediation by this Office did not resolve the issues in dispute and the matter was set down for an inquiry under Part 5 of FIPPA at which point the Law Society asked under s. 56 that an inquiry not be held.

Parties' Arguments

[5] The Law Society argued that it correctly applied s. 8(2)(b) and s. 22 of FIPPA in response to the respondent's request for records of complaints against the named lawyer. It contended that, in Order 02-01,⁶ the Information and Privacy Commissioner had previously confirmed the Law Society's application of s. 8(2)(b) and s. 22 respecting a request for records of complaints against lawyers. It argued that it is plain and obvious in this case that the requested records are subject to s. 8(2)(b) and s. 22⁷ and that there is no arguable issue that merits an inquiry.⁸

[6] The respondent made a number of general arguments to the effect that the public should have accurate and complete information on the Law Society's regulation of its members and that a "public inquiry" into the Law

² Law Society's response of December 17, 2007.

³ Respondent's request of December 21, 2007.

⁴ Law Society's response of February 6, 2008.

⁵ Respondent's requests for review of November 2, 2007 and February 17, 2008.

⁶ [2002] B.C.I.P.C.D. No. 1.

⁷ The Law Society referred here to Decision F07-04, [2007] B.C.I.P.C.D. No. 20.

⁸ Law Society's s. 56 application letter of July 11, 2008 and reply of August 25, 2008.

Society's complaint and investigation processes would be appropriate. She also expressed dissatisfaction with the Law Society's conduct of her complaint against the lawyer, including its failure to refer her complaint to the discipline committee.⁹ She did not however directly address the Law Society's arguments concerning the application of ss. 8(2)(b) and 22 in this case. Nor did she provide any argument on the issue of whether an inquiry should proceed here.

Issue

[7] 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.

[8] A number of previous decisions and orders have laid out the following principles for the exercise of discretion under s. 56:¹⁰

- the public body must show why an inquiry should not be held
- the respondent (the applicant for records) does not have a burden of showing why the inquiry should proceed; however, where it appears obvious from previous orders and decisions that the outcome of an inquiry will be to confirm that the public body properly applied FIPPA, the respondent must provide "some cogent basis for arguing the contrary"
- the reasons for exercising discretion under s. 56 in favour of not holding an inquiry are open-ended and include mootness, situations where it is plain and obvious that the records fall under a particular exception or outside the scope of FIPPA, and the principles of abuse of process, *res judicata* and issue estoppel
- it must in each case be clear that there is no arguable case that merits an inquiry

Analysis

[9] The Law Society said that it applied s. 8(2)(b) and s. 22 in response to the respondent's request for records related to the named lawyer. Section 22 requires public bodies to withhold personal information where its disclosure would be an unreasonable invasion of third-party privacy. Section 8(2)(b) reads as follows:

⁹ Respondent's response of August 20, 2008.

¹⁰ See, for example, Decision F07-04, [2007] B.C.I.P.C.D. No. 20, and Decision F08-08, [2008] B.C.I.P.C.D. No. 26.

Contents of response

- 8(2) Despite subsection (1) (c) (i), the head of a public body may refuse in a response to confirm or deny the existence of ...
- (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.

[10] As the Law Society noted, in Order 02-01, Commissioner Loukidelis considered a case which is similar to this one, where the applicant was requesting records of any complaints (other than his own) against a number of specified lawyers. The Commissioner had this to say regarding the Law Society's application of s. 8(2)(b):

[55] I will discuss below the Law Society's disclosure practices in relation to complaints against its members or former members in connection with the "Member History" printouts that the Law Society has withheld in their entirety from the applicant. It is sufficient at this point to say that the Law Society has properly applied s. 8(2)(b) in this case. In my view, disclosure of the mere existence or non-existence of complaint information would indirectly reveal whether negative opinions have been recorded about the professionalism or honesty of Law Society members or former members in a context where there is a significant likelihood of unfair damage to their reputations. As I discuss further below, I consider that information about the existence of a complaint against a lawyer is personal information that relates to the employment or occupational history of the lawyer within the meaning of s. 22(3)(d) of the Act. Section 22(3)(d) provides that disclosure of such information is presumed to unreasonably invade the personal privacy of the individual whose personal information it is. Even though such information is not, properly understood, an indication of any actual wrongdoing, it is nonetheless likely that negative conclusions will be drawn about the member or former member from the mere existence of such information. I consider that disclosure of this information would be an unreasonable invasion of the personal privacy of the Law Society members or former members involved here.

[11] I recognize that the respondent does not have the burden of showing why an inquiry in this case should proceed. However, she has not provided a "cogent basis" for arguing that the Law Society has misapplied ss. 8(2)(b) and 22 in this case and why, particularly in light of the Commissioner's findings in Order 02-01, an inquiry should proceed.

[12] It appears the respondent's principal grievance is with the Law Society's conduct of her complaint and that she wishes to subject its complaint and investigation processes to general scrutiny. This, however, does not suffice to establish a basis for concluding that an inquiry in this case would have a different result from previous orders on this topic. I find it plain and obvious that s. 8(2)(b) and s. 22(1) apply here and there are no arguable issues that merit an inquiry.

3.0 CONCLUSION

[13] For reasons given above, this matter will not proceed to an inquiry under Part 5 of FIPPA. This Office's file on the review will be closed.

December 5, 2008

ORIGINAL SIGNED BY

Celia Francis
Senior Adjudicator

OIPC File: F07-34298 & F07-34352