



OFFICE OF THE
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Order F13-25

FORENSIC PSYCHIATRIC SERVICES COMMISSION

Elizabeth Barker
Adjudicator

November 26, 2013

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Summary: The applicant sought access to the clinical progress notes made by his court-ordered psychiatrist. The Commission refused to disclose the responsive records because it said disclosure could reasonably be expected to threaten the psychiatrist's health and safety, under s. 19(1)(a) of FIPPA. The adjudicator found that the Commission is authorized to refuse to disclose to the applicant the information withheld under s. 19(1)(a).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 19(1)(a); *Forensic Psychiatry Act*, [RSBC 1996] Chapter 156; *Criminal Code of Canada* (R.S.C., 1985, c. C-46).

Authorities Considered: B.C.: Order 00-02, [2000] B.C.I.P.C.D. No. 2; Order 00-10, [2000] B.C.I.P.C.D. No. 11; Order 00-28, [2000] B.C.I.P.C.D. No. 31; Order 00-40, [2000] B.C.I.P.C.D. No. 43; Order 01-01, [2001] B.C.I.P.C.D. No. 1; Order 01-15, [2001] B.C.I.P.C.D. No. 16; Order 03-08, [2003] B.C.I.P.C.D. No. 8; Order F07-24, [2007] B.C.I.P.C.D. No. 39; Order F10-07, [2010] B.C.I.P.C.D. No. 11.

INTRODUCTION

[1] This inquiry concerns an individual's request to the Forensic Psychiatric Services Commission ("Commission") for the clinical progress notes made by his attending psychiatrist ("Psychiatrist"). The Commission withheld the notes under s. 19(1)(a) because it believes that disclosure to the applicant could reasonably be expected to threaten the Psychiatrist's health and safety.

ISSUE

[2] The issue in this case is whether the Commission is authorized by s. 19(1)(a) to refuse access to the requested information. Under s. 57(1) of FIPPA, the onus is on the public body, in this case the Commission, to prove that s. 19(1)(a) applies and the applicant has no right of access to the requested information.

DISCUSSION

[3] **Background**—The applicant requested that the Commission provide him with a copy of test data about himself, a full report from his attending Psychiatrist from September 20, 2010 to February 14, 2012, and a summation of his more recent interview with a second psychiatrist.

[4] The Commission identified 66 pages of responsive records. It disclosed eight pages consisting of the second psychiatrist's summation of his recent interview with the applicant. However, the Commission withheld what it calls the psychological raw test data under s. 3(1) as not being within the scope of FIPPA. It also refused to disclose 58 pages of progress notes made by the Psychiatrist under s. 19(a) and s. 15(1)(f) (disclosure harmful to law enforcement).

[5] The applicant requested that the Office of the Information and Privacy Commissioner review the Commission's decision. During the review, the applicant clarified that he no longer wanted the test data, and the only records he still sought were the Psychiatrist's progress notes. Mediation was unsuccessful in resolving the issues related to the Psychiatrist's progress notes, so that matter was forwarded to inquiry under Part 5 of FIPPA.

[6] In its initial submission, the Commission clarifies that it no longer relies on s. 15(1) to withhold the Psychiatrist's progress notes. It is only withholding the information under s. 19(1)(a).

[7] **Records at Issue**—The records in dispute consist of 58 pages of clinical progress notes prepared by the Psychiatrist between September 20, 2010 and February 14, 2012, describing her sessions with the applicant.

Section 19(1)(a) – Threat to Safety or Mental or Physical Health

[8] The relevant provisions of FIPPA are as follows:

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, ...

[9] In Order 00-28, former Commissioner Loukidelis describes the nature of evidence required in such cases:

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.¹

[10] I agree with the above understanding of the law and apply it to the facts in this case.

[11] The material provided indicates that the Commission was established under the *Forensic Psychiatry Act* and is responsible for the assessment, treatment and clinical case management of individuals with mental disorders who are in conflict with the law. These services are provided on both an in-patient and community basis.

[12] On August 13, 2010, the applicant was convicted of disobeying a court order contrary to s. 127 of the *Criminal Code*, and in particular the condition prohibiting him from contacting his former wife. As a condition of his sentence, he was required to attend a Commission clinic for psychological/psychiatric assessment and treatment. It was at this time that the Psychiatrist was assigned to treat him. She met with him on a regular basis and made the clinical progress notes, which are the responsive records in this inquiry.

[13] The Commission's submission includes copies of emails and letters that the applicant sent to the Psychiatrist and to others about her. The Commission describes that correspondence as follows:

Initially, the Applicant's emails reflected his romantic feelings towards [Psychiatrist]. Over time, however, his email and other communications to

¹ Order 00-28, [2000] B.C.I.P.C.D. No. 31, p. 2. Section 19(1) has been considered in many orders, for example, Order F07-24, [2007] B.C.I.P.C.D. No. 39; Order F10-07, [2010] B.C.I.P.C.D. No. 11; Order 01-01, [2001] B.C.I.P.C.D. No. 1; Order 00-02, [2000] B.C.I.P.C.D. No. 2; Order 00-10, [2000] B.C.I.P.C.D. No. 11.

or about her have taken on a more negative, threatening, accusatory and angry tone.²

[14] Given the nature of these communications, the Commission assigned a different (male) psychiatrist to treat the applicant. The applicant was informed that the communications were unwanted and distressing to the Psychiatrist and that he should stop. Despite this advice, he continued to send the same type of correspondence. As a result, the police charged the applicant with criminal harassment of the Psychiatrist under s. 264 of the *Criminal Code*, which prohibits conduct that causes another individual to reasonably fear for their safety.³ Subsequently, the applicant was charged on two separate occasions with breaching bail conditions that prohibit him from contacting or communicating with the Psychiatrist.

[15] The Commission submits that it can be reasonably expected that the applicant will use the requested progress notes as a “springboard to perpetuate his intrusive, persistent and fear-inducing behaviour towards [the Psychiatrist]”.⁴

[16] The applicant denies that he poses any public safety issue and submits the accusations that he does are false, libellous and defamatory. In correspondence to the College of Psychologists and the College of Physicians and Surgeons, he claims that the Commission is withholding the responsive records because it has been fabricating his medical history.⁵

[17] In my view, the Commission has provided ample information to support a finding that disclosure could reasonably be expected to threaten the health and safety of the Psychiatrist. For example, the Commission provided affidavit evidence from the Psychiatrist and from another forensic psychiatrist who is the Vice President of Medical Affairs and Research at the Commission’s Forensic Psychiatric Hospital in Port Coquitlam. The majority of their evidence was accepted *in camera* into this inquiry, so I am restricted in what I may say about it. However, I can say that it convinces me that there is a rational connection between disclosure of the withheld records and a threat to the health and safety of the Psychiatrist.

[18] I have also reviewed the applicant’s emails and letters to the Psychiatrist, and they progress from intense and unsettling declarations of love and sexual interest to hostility and accusations of professional incompetence and misconduct. The content, tone and persistent nature of this correspondence, combined with what the inquiry materials reveal about the applicant’s previous pattern of conduct towards others and the justice system, also persuade me that

² Commission’s submission, para. 38.

³ At the time of this inquiry, the trial related to this charge had not yet taken place.

⁴ Commission’s submission, para. 42.

⁵ Commission’s submission, appendices, p. 104.

there is a rational connection between disclosure of the withheld records and a threat to the health and safety of the Psychiatrist.

CONCLUSION

[19] In conclusion, I find that the Commission has proven that disclosure of the withheld information could reasonably be expected to threaten the health and safety of the Psychiatrist. Therefore, it has appropriately applied s. 19(1)(a) to the records.

ORDER

[20] For the reasons given above, under s. 58 of the Act, I confirm that the Commission is authorized to refuse to disclose to the applicant the information withheld under s. 19(1)(a) of FIPPA.

November 26, 2013

ORIGINAL SIGNED BY

Elizabeth Barker, Adjudicator

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