

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 227-1998
April 23, 1998**

INQUIRY RE: A decision of the College of Physicians and Surgeons of British Columbia to withhold records (that may exist) relating to complaints made about a member of the College

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on December 2, 1997 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision of the College of Physicians and Surgeons of British Columbia (the College) to withhold all records (that may exist) relating to complaints made against a College member (the third party).

2. Documentation of the inquiry process

On June 26, 1997 the applicant's solicitor made an access request under the *Freedom of Information and Protection of Privacy Act* (the Act) to the College for records containing information about a College member. In particular, the applicant was seeking the dates, general nature, and the results of any complaints to the College about the member and any information related to whether the member had been reviewed, investigated, cited, or disciplined for any matter related to competency, ethics, or practice standards. The applicant also requested any information that the College had relating to the member's gross income.

On July 8, 1997 the College responded to the request and confirmed that the member is a fully registered and qualified psychiatrist, has never been the subject of any disciplinary action by the College, and that the College has no information about the member's income. The College refused, under section 22 of the Act, to disclose any information that may exist about complaints involving the member.

On July 16, 1997 the applicant's solicitor submitted a request for review of the College's response to the access request. With the consent of the College and the

applicant, the deadline for the inquiry was extended to November 25, 1997. I granted a further extension to December 2, 1997 in response to a request made by the third party.

3. Issue under review and the burden of proof

The issue before me in this inquiry is the College's application of section 22(1) of the Act to records (that may exist) containing information about any complaints to the College about a particular member.

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(2), if the record or part that the applicant is refused access to under section 22 contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third-party's personal privacy.

The relevant sections of the Act are as follows:

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,
 - ...
 - (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,

- (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
- ...
 - (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,
 - ...
 - (d) the personal information relates to employment, occupational or educational history,
 -
- (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
- ...
 - (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,
 - ...
 - (f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body,
 -

4. Procedural objections

The applicant has objected to the third party making his entire submission *in camera*. The basis of the applicant's objection is that, if the entire submission is withheld, the applicant has no ability to reply to the third party's submissions, even though the third party is afforded a reply to the applicant's submissions.

While I understand the basis of the applicant's concerns, the Act nevertheless contemplates that *in camera* submissions be received to the exclusion of other parties to an inquiry in appropriate circumstances. Section 56(4)(b) of the Act provides me with authority to accept submissions *in camera*. This provision should be read in connection with section 47(3) of the Act, which requires me to withhold from disclosure in an inquiry "any information the head of a public body would be required or authorized to refuse to disclose if it were contained in a record requested under section 5" or "whether information exists, if the head of a public body in refusing to provide access does not indicate whether the information exists." Consistent with these provisions, the Notice of Written Inquiry, given to the parties to this inquiry, reads in part:

A party may request that information in a written submission, either in whole or in part, be filed on an *in camera* basis where it may disclose the contents of the records in dispute or where it contains information which may be subject to an exception under the Act. A party making an *in camera* submission must give reasons to the Commissioner as to why it should be received *in camera*.

I have reviewed the reasons advanced on behalf of the third party for requesting that his submission, in its entirety, be *in camera*. I have also reviewed the third party's *in camera* submissions. I am satisfied that the third party's submissions have been appropriately made *in camera*.

5. The records in dispute

The College has not confirmed with the applicant if there are any records of complaints responsive to the applicant's access request.

6. The applicant's case

The applicant is a plaintiff in various motor vehicle injury cases involving the Insurance Corporation of British Columbia (ICBC), which scheduled an independent medical psychiatric examination of her by the third party in this case. The examination occurred on October 21, 1997. (Submission of the Applicant, paragraphs 6 and 7) The applicant made the access request before the examination. (Submission of the Applicant, paragraph 16)

The applicant states that she is essentially seeking access to information about the "dates, general nature and results" of any complaints, reviews, investigations, citations, or discipline about a specific physician (who is a psychiatrist) related to ethics, competence, or practice standards. She does not want any details or identities of complainants or investigators: "The barest of information is requested in order that the Applicant can assess [the third party's] psychiatric examination and report on the Applicant." (Submission of the Applicant, paragraph 4)

The applicant submits that the College is at least required to provide a list of dates of complaints against the third party. (Submission of the Applicant, paragraph 15)

The applicant argues that she is aware, on the basis of a 1996 British Columbia Court of Appeal decision, that the third party in this inquiry has been found negligent at least once. (Submission of the Applicant, paragraph 41) The applicant also submitted information indicating the relatively substantial amounts of money that the third party earns each year doing independent medical examinations for ICBC. (Submission of the Applicant, paragraphs 43 and 44)

I have discussed below the applicant's submissions on the application of various sections of the Act to the records in dispute.

7. The College of Physicians and Surgeons' case

In its open written submissions, the College submits generally that the information should not be disclosed on the basis of sections 15 and 22 of the Act. Section 15 of the Act was not relied on by the College as a reason to withhold access to any information in the first instance, and was not identified as an issue in the inquiry. I have therefore not dealt with the College's submission that section 15 applies in this inquiry.

The College has disclosed "information which is a matter of public record and which reflects the third party's registration status with the College including any disciplinary action taken against the third party, of which there has been none." The College has also made a more detailed *in camera* submission setting out the specific basis of its decision under section 22 of the Act to withhold any records of the nature sought by the applicant. (Submission of the College, paragraphs 1 to 3)

The College's general position is that the nature of the information sought is highly personal and confidential and relates to the College's complaints, investigative, and peer review processes. It argues that there is a public interest in fostering and protecting such processes, which is recognized and established in the provisions of the *Medical Practitioners Act* and Rules. The College submits that complaints against its members should not be disclosed, unless they result in formal disciplinary action, or unless the College concludes that disclosure of the complaint information is in the public interest. It submits that there is no public interest at stake in the present inquiry. (Submission of the College, paragraphs 1 and 9 to 11)

The College has described various general matters about its mandate, complaint investigations, and disclosure and publication that I canvassed recently in Order No. 221-1998, April 16, 1998, thus there is no need to repeat such general matters here. (Submission of the College, paragraphs 12 to 31) Its *in camera* submission discusses such issues as the complaints review process that I have also recently canvassed in Order No. 226-1998, April 22, 1998. (Submission of the College, paragraphs 32 to 34)

The College submits that disclosure of any possible information in this inquiry would be contrary to section 22 of the Act, the *Medical Practitioners Act* (the MPA), and the fulfillment of its legislative mandate.

8. The third party's case

The third party has appropriately made all of his submissions on an *in camera* basis.

9. Discussion

For reasons that are plausible in the circumstances of this inquiry, the College has made most of its submissions on the application of section 22 to this inquiry on an *in camera* basis. Thus I am somewhat constrained from a fuller discussion of section 22 of the Act in this Order. I can, however, discuss the applicant's submission more fully.

The applicant relies on section 22(2)(a), (b), and (c) and section 22(4)(b) and (f) in support of her argument that disclosure of any records would not be an unreasonable invasion of the third party's privacy. The applicant also made arguments that section 22(2)(e), (g), and (h) are not relevant circumstances in this inquiry. I have discussed some of these specific arguments below before reaching a general conclusion.

Section 22(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 ... (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,

The applicant relies on section 22(2)(b) and submits that "as a matter of public health and safety, individuals should be entitled to obtain relevant information about the history of any physician who proposes to treat them." (Submission of the Applicant, paragraph 18)

I find that there is no matter affecting public health or safety properly before me in this inquiry that would make the applicant's argument a relevant circumstance favoring disclosure.

(c): the personal information is relevant to a fair determination of the applicant's rights,

The applicant notes that she is both an applicant, a litigant in a case involving ICBC, and someone required by the latter to see a particular physician: "If the Applicant has no right to information about a doctor appointed by her opponent in litigation, then the potential for abuse is immense." (Submission of the Applicant, paragraph 22)

I find that there is no information at issue in this inquiry that is relevant to a fair determination of the applicant's rights.

(e): the third party will be exposed unfairly to financial or other harm,

In anticipation of arguments that the third party might advance with respect to the application of this subsection, the applicant submitted that the operative word is "unfairly." (Submission of the Applicant, paragraph 57)

I find that the disclosure of any existing information about the third party in this inquiry would expose him unfairly to financial or other harm. See Order No. 70-1995, December 14, 1995, p. 8.

(g): the personal information is likely to be inaccurate or unreliable,

I find that the disclosure of any information in dispute about the third party in this inquiry to the applicant is likely to be inaccurate or unreliable in the context of this inquiry. See Order No. 71-1995, December 15, 1995, p. 7.

(h): the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

The applicant argues, in this regard, that she is seeking “only limited information, without detail, as to the third party’s conduct in his public activity carrying on business.” (Submission of the Applicant, paragraph 63)

I find that the disclosure of any existing information about the third party in this inquiry may unfairly damage his reputation.

With respect to the overall issue of the application of section 22 in this inquiry, I agree with the College, generally, that the type of information sought by the applicant is personal information, and that disclosure of any of this type of information, that may exist in this instance, would be an unreasonable invasion of the personal privacy of the third party. (*In camera* Submission of the College, paragraphs 57 to 73) My findings on the application of section 22 to the type of information sought appropriately parallel those in Order No. 221-1998.

The applicant relies on section 22(2)(a), (b), and (c) to say that these relevant circumstances warrant disclosure of the type of information sought. The relevant circumstances relied on by the College to argue that disclosure would constitute an unreasonable invasion of a third party’s personal privacy (discussed above) outweigh those relevant circumstances set out in section 22(2)(a) and (c).

Having considered as well the applicant’s arguments that the relevant circumstances set out in section 22(2)(e), (g), and (h) would not apply to the type of information sought, I am of a contrary view. Disclosure of this type of information would unfairly expose a physician to financial or other harm, would likely be unreliable as untested, and might unfairly damage a physician’s reputation.

9. Order

I find that the College of Physicians and Surgeons was required to withhold

third-party personal information in the records in dispute under 22 of the Act. Under section 58(2)(c) of the Act, I require the College of Physicians and Surgeons to refuse access to the third-party personal information in the records in dispute under section 22.

David H. Flaherty
Commissioner

April 23, 1998