OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER

British Columbia
Canada

Order 00-11

INQUIRY REGARDING THE COLLEGE OF PHYSICIANS AND SURGEONS' DECISION NOT TO DISCLOSE COMPLAINT RECORDS

****** This Order has been subject to Judicial Review ******

David Loukidelis, Information and Privacy Commissioner
May 10, 2000

Order URL: http://www.oipcbc.org/orders/Order00-11.html
Office URL: http://www.oipcbc.org
ISSN 1198-6182

Summary: Applicant sought information about her complaint to College regarding medical care given to her deceased sister by the third party physician. College entitled to withhold *in camera* meeting minutes under s. 12(3)(b). College not authorized by s. 12(3)(b) to withhold background staff memo or part of a College letter to the third party physician. Disclosure of that material would not reveal the substance of *in camera* deliberations of the meetings. College also not authorized by s. 15(1)(a) to refuse to disclose information on the basis it would harm a law enforcement matter. College required by s. 22(1) to withhold some personal information of the third party physician.

Key Words: *In camera* meeting – substance of deliberations – harm to a law enforcement matter – unreasonable invasion of personal privacy.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 12(3)(b), 15(1)(a), 22(1), 22(2)(e) - (h), 22(3)(a), (b), (d) and (g); *Medical Practitioners Act*, s. 70(7) - (10).

Authorities Considered: B.C.: Order No. 48-1995; Order No. 62-1995; Order No. 113-1996; Order No. 114-1996; Order No. 226-1998; Order No. 326-1999; Order No. 331-1999; Order 00-08; **Ontario:** Order M-184; Order M-1269.

1.0 INTRODUCTION

This case involves an attempt by someone who has been through one of the complaints processes conducted by the College of Physicians and Surgeons of British Columbia ("College"), under the *Medical Practitioners Act* ("MPA"), to obtain access to more

information than the College has made available under that process. The applicant argues that more disclosure is needed, so she can determine whether the College acted appropriately in dealing with her complaint. For its part, the College argues vigorously that it has disclosed information in the MPA-mandated process in a way that balances the public interest in accountability against doctors' interests in a "fair and confidential" complaint investigation and adjudication process. As part of this balancing, the College says, a number of the *Freedom of Information and Protection of Privacy Act* ("Act") exceptions to the right of access to information apply here.

This inquiry arises out of a complaint the applicant made to the College about medical care her now deceased sister had received from a physician ("third party") before her death. After the College dealt with the complaint, the applicant, on June 10, 1999, made a written request to the College under the Act for copies of the records regarding the College's handling of her complaint.

The College's response came in a letter dated August 6, 1999. The College gave the applicant partial access to the requested records. It released information on 74 pages of records and withheld nine pages in their entirety. The College withheld information under ss. 12(3), 15(1)(a), 22(1), 22(2)(f), 22(3)(b) and (d) of the Act. By a letter dated August 23, 1999, the applicant asked for a review, under s. 52 of the Act, of the College's decision. During the mediation phase of the review, the third party agreed to the disclosure of a four-page response he had sent to the College regarding its investigation. That letter, which was one of the disputed records, outlined the third party's medical treatment of the applicant's sister. As a result of this laudable disclosure, only five pages of records are involved in this inquiry.

Both the College and the applicant made submissions in this inquiry, as did the third party. The College and the third party originally sought to make a large part of their submissions *in camera*. Because I believed it was not necessary to receive most of those submissions *in camera*, I sought further argument from the College and the third party on that point. As a result, most of the material those parties had sought to submit *in camera* was disclosed to the applicant. This gave the applicant an opportunity to respond to that material.

2.0 ISSUES

The issues in this inquiry are as follows:

1. Was the College authorized by ss. 12(3)(b) and 15(1)(a) of the Act to refuse to disclose information?

2. Was the College required by s. 22(1) of the Act to refuse to disclose personal information?

Under s. 57(1) of the Act, the College bears the burden of establishing that it is authorized to refuse to disclose information under ss. 12(3)(b) and 15(1)(a). Conversely, s. 57(2) requires the applicant to establish that disclosure of information in the records

would not, for the purposes of s. 22(1), unreasonably invade the personal privacy of a third party.

There is a further issue. Although it is not noted in the notice of written inquiry issued by this office, in its initial submission the College raised, as a bar against disclosure, ss. 70(7) through (10) of the MPA. Since this was raised in the College's initial argument, the applicant had an opportunity to reply to the College's contention and I propose to deal with it here.

3.0 DISCUSSION

3.1 Records in Issue – The disputed records include minutes of relevant parts of meetings of the College's Quality of Medical Performance Committee ("QMPC") held on December 2, 1998 and January 20, 1999. Those meetings dealt with the QMPC's review of the applicant's complaint. Another issue concerns one paragraph from a February 1, 1999 letter from the QMPC to the third party, communicating its view of the quality of medical care given by the third party. The last record is a one-page October 21, 1998 memorandum from a physician associated with the College to the QMPC.

3.2 Does the MPA Prohibit Disclosure of Information? – The College argued that s. 70 of the MPA prohibits disclosure of the information sought by the applicant. For the reasons given in Order 00-08, I find that the Act overrides any confidentiality protection otherwise given to the College's processes under s. 70 of the MPA. Section 79 of the Act means that the Act's rights of access prevail.

3.3 *In Camera* Deliberations – Section 12(3)(b) of the Act reads as follows:

> 12(3) The head of a local public body may refuse to disclose to an applicant information that would reveal
> …
>
> (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.

The College says the minutes of the QMPC meetings held on December 2, 1998 and January 20, 1999 may be withheld under s. 12(3)(b). It also says that part of the February 1, 1999 letter to the third party from the College may be withheld, since the letter "set out the conclusion of the QMPC's deliberations held *in camera*". Last, the College argues that the October 21, 1998 staff memorandum to the QMPC can be withheld, since its disclosure would "permit the drawing of accurate inferences with respect to the substance of the QMPC's deliberations".

Overview of QMPC Processes

The College relied on Order No. 226-1998 and Order No. 326-1999 to argue that these records fall under s. 12(3)(b). The College also relied on Rules 139 through 145 of the

College, which are enacted under the authority of the MPA. Rule 145(b), in particular, was referred to and the College provided the following overview of the QMPC's role and function, as set out in Rules 139 to145.

The QMPC is responsible for the review of complaints regarding the quality of medical services provided by physicians. In receiving, reviewing and making a determination about complaints involving the quality of medical services, the College said, the QMPC performs a review function that is educational and remedial. The goal of its reviews is to determine whether there is cause for criticism of the care given by a physician and, where necessary, to provide advice or direction to the physician to improve the quality of medical care. When, as a result of its review, the QMPC finds cause for concern, it may recommend further investigation, assessment or disciplinary action to the College's Council.

Rule 145(c) requires the QMPC to inform both a complainant and the physician of the QMPC's opinion about the physician. The QMPC's practice is to provide both parties with the decision of the QMPC and the factual basis of the decision. The College submitted that the Rule does not contemplate the College releasing its complete investigation materials.

The College argued that this process is a form of peer review for physicians and not a formal hearing process. Therefore, the College said, the third party physician was not afforded the procedural protections that would be provided by the College in a formal process under the MPA. Physicians participate, the College said, with the clear understanding that, under Rule 145(b), QMPC meetings are *in camera* and that information they provide at these meetings is confidential. Physicians understand also that any information they provide may be used by the QMPC only to the extent necessary to reach a decision and to provide the basis of the QMPC's decision to the parties. The College argued that physicians accept the procedural limitations of this process because they are assured the process is essential to the College's mandate and because of the educational and remedial focus of the process. In this case, the College argued, the Rules required the third party physician to attend the QMPC meeting and, under Rule 145(b), the meeting was held *in camera*, as part of the investigation and review process just described.

The applicant argued that s. 12(3)(b) did not apply, as the QMPC was not a "meeting" as required by s. 12(3)(b). Rather, the applicant argued, the QMPC conducted an inquiry. She also argued that the QMPC meetings were not held in the absence of the public, as required by s. 12(3)(b), since the QMPC is composed, in part, of members of the public appointed by the Minister of Health. The applicant also argued that disclosure of these records would ensure accountability of the College for its handling of complaints.

In my view, when the QMPC meets, as a body functioning collectively to perform its functions under the MPA and the Rules, the QMPC is holding a meeting for the purposes of s. 12(3)(b). It is also clear that Rule 145(b) provides that the QMPC's meetings *must* be held *in camera*. I therefore find that a QMPC meeting is, unless evidence to the

contrary exists in a given case, *in camera* for the purposes of s. 12(3)(b). The fact that individuals who might, in some sense, be members of the public sit on the QMPC does not change this. They are part of the QMPC for the purposes of the MPA, the Rules and s. 12(3)(b) of the Act; their presence at a QMPC meeting does not make the meeting one attended by members of the public.

Has the College Laid the Groundwork Under Section 12(3)(b)?

In Order No. 326-1999, I confirmed that a local public body can rely on s. 12(3)(b) only if it establishes that meeting was actually held in the absence of the public in accordance with statutory authority to hold that meeting in the absence of the public. This bears repeating – a local public body can rely on s. 12(3)(b) only if it proves all of the following things:

1. A meeting of its elected officials, or of its governing body or a committee of its governing body, was actually held;

2. An Act of the Legislature, or a regulation under the *Freedom of Information and Protection of Privacy Act*, authorized the holding of that meeting in the absence of the public; and

3. Disclosure of requested information would reveal the substance of deliberations of that meeting.

If a local public body fails, in a given inquiry, to prove all three of those things, it cannot use s. 12(3)(b) to refuse to disclose information. In Order 00-08, for example, I found that the College had not established that it was entitled, in that case, to rely on s. 12(3)(b) in relation to proceedings of the College's Sexual Misconduct Review Committee.

By contrast, in this case I find the College has established, on the material before me, that the first two criteria set out above have been satisfied with respect to the two QMPC meetings in issue. The remaining question is whether the College has satisfied the third criterion.

Meaning of "Substance of Deliberations"

The first question is what is meant by the words "substance" and "deliberations" in s. 12(3)(b). In my view, "substance" is not the same as the subject, or basis, of deliberations. As *Black's Law Dictionary*, 8th ed., puts it, 'substance' is the essential or material part of something, in this case, of the deliberations themselves. See, also, Order No. 48-1995 and Order No. 113-1996.

Without necessarily being exhaustive of the meaning of the word 'deliberations', I consider that term to cover discussions conducted with a view to making a decision or following a course of action. Assistant Commissioner Irwin Glasberg took an approach similar to this in Order M-184 (September 10, 1993), a decision regarding s. 6(1)(b) of

Ontario's *Municipal Freedom of Information and Protection of Privacy Act*. That provision is very similar to s. 12(3)(b). This approach has recently been affirmed in Ontario. See Order M-1269 (January 21, 2000).

Meeting Minutes

This case is, as it relates to the meeting minutes themselves, comparable to that in Order No. 226-1998. The requested meeting minutes would, if disclosed, reveal the substance of what was debated or discussed by the QMPC at the relevant *in camera* meetings.

The minutes of the December 2, 1998 *in camera* meeting that were withheld from the applicant consist of two brief paragraphs summarizing discussion of material before the QMPC to that date. Disclosure of these minutes would reveal the "substance of deliberations" of that meeting and can be withheld under s. 12(3)(b). The College also is entitled, for the same reason, to withhold the January 20, 1999 *in camera* minutes. My review of those minutes leaves me in no doubt that they qualify for protection under s. 12(3)(b).

I find the College was authorized by s. 12(3)(b) to refuse to disclose the meeting minutes withheld by the College.

In previous orders I have said that public bodies should consider the public interest in disclosing information even if one of the Act's discretionary exceptions applies. The College said that it had, in this case, considered whether the minutes should be disclosed, but that it had decided not to disclose the minutes because the public interest in confidentiality of the College's processes outweighs the public interest in disclosure. The College commendably considered exercising its discretion in favour of disclosure. This is something public bodies should do in each case.

Staff Memorandum to the QMPC

The next record is the October 21, 1998 memorandum from a College staff member to the QMPC regarding the applicant's complaint. At para. 6 of the College's initial submission, this memorandum was described as being from a College employee "who assists the QMPC by reviewing the medical issues and the Third Party's response". The College argued, at paragraph 45 of its initial submission, that disclosure of this record would permit the drawing of accurate inferences with respect to the substance of the QMPC's deliberations. The College relied on Order No. 326-1999 on this point. The College's response letter to the applicant also cited Order No. 226-1998. In Order No. 326-1999, I said s. 12(3)(b) may be applied where disclosure of a record would, "in the circumstances of the case", permit the drawing of accurate inferences about the substance of deliberations of an *in camera* meeting. In Order 326-1999, I found that the circumstances did not support such a conclusion.

The same conclusion applies here. Nothing in the record itself, or the other circumstances, would permit the drawing of inferences from that record – which pre-dated the two *in camera* meetings – as to the substance of deliberations of the meetings. The record might reveal one subject of those meetings, *i.e.*, the QMPC's review of the applicant's complaint and the third party's conduct. But one can already infer that those matters were the subject of the meetings, both from the College's original response to the access request and its submissions here. The memorandum itself does not disclose the substance of the deliberations, on those matters, that took place at the later meetings. It says nothing about what was discussed by the QMPC. A reader could not reasonably determine if any of it represented the views of the QMPC or any individual QMPC member. Nor could an observer infer, from that record alone, the "substance of deliberations" of any *in camera* QMPC meeting. The College has not provided any evidence to support its argument that an observer could draw such inferences based on the available information. See, also, Order No. 114-1996, in which it was held that correspondence did not "reveal the actual discussions of the [School] Board" – and Order No. 331-1999.

Subject to my findings under s. 22(1), I find that the College is not authorized by s. 12(3)(b) to refuse to disclose the October 21, 1998 memorandum.

Letter to the Third Party Physician

In its initial submission, the College said that part of the February 1, 1999 letter to the third party from the College, which "set out the conclusion of the QMPC's deliberations held *in camera*", should be withheld. The material before me indicates that the College released all but the last paragraph of that letter to the applicant. The last paragraph was initially withheld under ss. 15(1)(a) and 22(3)(b) and (d) of the Act.

It appears the College did not raise s. 12(3)(b) in relation to this record until this inquiry. Since the applicant has had an opportunity to respond to this argument, I have considered it. Public bodies should, however, be timely in their reliance on exceptions not raised in their decision letters. They should make every effort to avoid raising exceptions so late in the process.

Turning to the merits of the College's argument, I cannot agree that disclosure of the severed portion would, directly or by inference, reveal the substance of deliberations "of a meeting" of the QMPC. The College's argument regarding s. 12(3)(b) and the letter is as follows:

> Similarly, the College's letter to the Third Party of February 1, 1999 set out the conclusion of the Committee's deliberations held *in camera*.

My review of the paragraph indicates that it relates to matters other than the third party's treatment of the deceased. The paragraph appears to deal with other, more general, issues and to have nothing to do with the matters discussed at the *in camera* meetings in question. There is no evidence that the contents of that paragraph were discussed at any other *in camera* meetings. On this basis, I find that disclosure of the paragraph would not

reveal the substance of deliberations of the December 2, 1998 and January 20, 1999 *in camera* meetings.

I find the College is not authorized by s. 12(3)(b) to refuse to disclose this record. This finding is subject to my finding under s. 22(1) of the Act, set out below.

3.4 Law Enforcement Exception – In its response letter, the College applied s. 15(1)(a) to the last paragraph of its February 1, 1999 letter to the third party and to the staff memorandum to the QMPC. In its initial submission, however, the College expanded this to include the *in camera* meeting minutes of the QMPC.

The applicant submitted that s. 15 does not apply to the College's inquiries in this case, as these are not law enforcement matters. The applicant also said that the College's inquiry here was complete, such that disclosure could not harm an investigation. For its part, the College cited previous orders under the Act where it was accepted the College has a law enforcement mandate. I agree that, for the purposes of the Act, the activities of the QMPC qualify as law enforcement activities under the general MPA mandate of the College. On this point, I note the QMPC may, after reviewing a complaint, recommend that disciplinary action be taken against a physician under the MPA.

On the harm issue, the College said its ability to "enforce this aspect of its mandate will be harmed if information supplied in confidence is disclosed". Disclosure of the information would "erode the College's ability to fulfill its complaint review process to its fullest potential". The College did not say what the "fullest potential" of its "complaint review process" might be or how disclosure of this information would erode, and presumably harm, its ability to reach that potential. The College said it had exercised its discretion against disclosure and that its "decision should be respected", since the College

> … is in the best position to know when disclosure may adversely affect its law enforcement mandate and the effectiveness of its investigative techniques.

The College made the same argument in the inquiry that led to Order 00-08. As I said in that order, such a course of action is not open to me. The Act provides for independent review – by a commissioner with the power to make findings of fact and law and to issue orders – of public bodies' access to information decisions. In cases involving s. 15(1)(a), the public body must establish, on the evidence it provides, that it is authorized to withhold information because its disclosure could reasonably be expected to harm a law enforcement matter.

The thrust of the College's case is that disclosure of the information to which it has applied s. 15(1)(a) is likely to have a chilling effect. It will discourage doctors from participating in the College's complaints review and investigation process, since information they provide in confidence will be disclosed. Since confidentiality is at the core of the system, disclosure will harm that system and thus a law enforcement matter.

In my view, the College's argument amounts to an assertion that disclosure of *any* of this information – and the College did attempt to expand its application of s. 15(1)(a) to everything in dispute here – will harm a law enforcement matter. This verges, in my view, on a claim that s. 15(1)(a), as regards the College's activities, is a class exemption for information relating to the College's consideration or investigation of a complaint under the MPA. I disagree. In each case, the College must prove a reasonable expectation of harm to a specific law enforcement matter.

The evidence establishes that the College's dealings with the third party in relation to the applicant's complaint are complete. Having reviewed the material before me – including the affidavit of Dr. Morris Van Andel – I have concluded that the College has not, in the circumstances of this case, established a reasonable expectation of harm to a law enforcement matter. I find the College is not authorized by s. 15(1)(a) to refuse to disclose information to the applicant.

3.5 Personal Privacy Considerations – The College refused to disclose information to the applicant on the basis that s. 22(1) prohibits disclosure. Specifically, the College originally applied s. 22(1) to the last paragraph of the College's February 1, 1999 letter to the third party. In its initial submission, however, the College expanded its application of s. 22(1) to include the *in camera* minutes, and possibly the October 21, 1998 memorandum, discussed above.

Section 22(1) provides that a public body must refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy. The College's focus here was on the third party's personal privacy but, in my view, it is first necessary to consider the personal privacy of the deceased.

The Deceased's Privacy

Some of the information in dispute qualifies as the personal information of the applicant's sister, whose medical care was in question. It is clear from various of the Act's provisions that it protects the privacy of the deceased. In cases where personal information of a deceased individual is in issue, the public body should consider the privacy interests of that individual under s. 22(1).

Although this is not one of them, there will be cases where s. 3(c) of the Freedom of Information and Protection of Privacy Regulation, B.C. Reg. 323/93 applies. It provides that the "nearest relative or personal representative" of a deceased person may act on his or her behalf under the Act. Although the applicant's access request to the College said the applicant is the *executrix* of the deceased's estate, there was no evidence before me on which I could conclude that s. 3(c) applies on the basis she is the lawfully appointed "personal representative" of the deceased. The following discussion is therefore based on general principles applicable under s. 22.

It is clear the College did not apply s. 22(1) to the personal information of the deceased sister. Her personal information forms a relatively small part of the information in

dispute, although much of that information falls under the presumed unreasonable invasion of personal privacy set out in s. 22(3)(a). That section says a disclosure of personal information is a presumed unreasonable invasion of personal privacy if the "personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation".

The material before me amply demonstrates that the applicant sincerely wishes to find out what happened to her sister and why she died. There is no question the applicant's motives are proper. It is clear she has sought information only because, having been through the College's process under the MPA, she is dissatisfied with the result. She wishes to know how the College handled the matter and why it made its decision not to proceed further. (The information withheld by the College will not, I am afraid, assist the applicant in that regard.)

Having considered the circumstances of this case, including those found in s. 22(2) of the Act, I find, for two reasons, that disclosure of the deceased's personal information would not unreasonably invade the deceased's personal privacy under s. 22(1). First, the applicant has sought access for a legitimate purpose connected with the circumstances surrounding her sister's death. Second, much of the deceased's personal information has already been disclosed to the applicant or is known to her. This latter factor will not always favour subsequent disclosure through an access request under the Act, but it does so in the circumstances of this case.

For other reasons, however, I find that all of the deceased's personal information in the *in camera* meeting minutes is to be withheld. Her personal information in the minutes is so intertwined with personal information of the third party physician – and information that may be withheld under s. 12(3)(b) – that it could not be released without unreasonably invading the third party physician's personal privacy or revealing the substance of deliberations of QMPC meetings. By contrast, personal information of the deceased in the October 21, 1998 memorandum may be disclosed to the applicant without unreasonably invading the personal privacy of the deceased.

The Third Party Physician's Privacy

The College argued that disclosure of the third party physician's personal information would be a presumed unreasonable invasion of the third party physician's personal privacy under ss. 22(3)(b) and (d) of the Act. Those sections provide that a disclosure of personal information is presumed to be an unreasonable invasion of personal privacy if

> 22(3)(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.

The third party argued that the presumed unreasonable invasions of personal privacy in ss. 22(3)(d) and (g) apply here. The first of those provisions is quoted above. The second provides that a disclosure of personal information is presumed to be an unreasonable invasion of personal privacy if "the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party".

The third party argued that the circumstances set out in ss. 22(2)(e), (f), (g) and (h) are all relevant here. Section 22(2) says a public body must, in deciding whether personal information can be disclosed, "consider all the relevant circumstances", including those found in s. 22(2). Sections 22(2)(f), (g) and (h) read as follows:

> 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
> ...
>
> (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.

Regarding s. 22(2)(f), the third party said that because his participation in the QMPC process was mandatory under the Rules, and because he had an expectation that the process was confidential, the circumstances weigh against disclosure. As regards s. 22(2)(g), the third party says he was not given the opportunity to correct information that the QMPC relied on, so there is a danger that some of the information is "inaccurate or unreliable". The third party's *in camera* submissions took issue with the accuracy of some of the information in the disputed records. On the connected point under s. 22(2)(h), the third party says that because some of the personal information is inaccurate, disclosure may unfairly damage his reputation.

First, I agree with the College and the third party that the presumed unreasonable invasions of personal privacy under ss. 22(3)(d) and (g) apply to the third party's personal information. I need not, as regards the circumstances of this particular case, consider whether it has been established that s. 22(3)(b) has been shown to apply on the material before me. Second, in the circumstances of this case, there is reason to conclude that the relevant circumstances described above apply and weigh against disclosure of the severed portion of the February 1, 1999 College letter to the third party and portions of the October 21, 1998 memorandum to the QMPC. This applies also to personal

information of the third party in the *in camera* meeting minutes. (In saying this, I make no comment as to whether the third party is correct in contending that information in the College's records is, in fact, inaccurate as contemplated by s. 22(2)(g).) Third, I find that none of the relevant circumstances – including those found in s. 22(2) of the Act – favour disclosure.

The applicant has not, therefore, persuaded me that the third party's personal information can be released to her (including some of the personal information found in the October 21, 1998 memorandum). It is one thing to conclude that the personal privacy of the deceased would not unreasonably be invaded, in the circumstances, by disclosing her personal information to the applicant. It is another matter for me to conclude that the applicant has rebutted the presumed unreasonable invasions of the third party physician's personal privacy. Subject to what is said below, I find that the College is required by s. 22(1) to refuse to disclose some of the personal information of the third party physician found in the disputed records, as specified in the orders made below.

Some of the third party's personal information in the records has already been disclosed to the applicant, through disclosure to her of the third party's October 13, 1998 letter to the College and disclosure of the bulk of the College's February 1, 1999 letter to the third party. Because of this circumstance, I find that the presumed unreasonable invasions of personal privacy described above have been rebutted in relation to the personal information that is found in those letters and in the disputed records. This finding is subject to the above s. 12(3)(b) finding.

Last, although it is not entirely clear from its submissions, the College may have applied s. 22(1) to the name of the author of the October 21, 1998 memorandum, who is a College employee and who is mentioned elsewhere in the records. That individual's name cannot be withheld under s. 22(1) (or any other section).

To assist the College with the above s. 22(1) findings, I have provided the College with a copy of the October 21, 1998 memorandum, and the other records, with the personal information the College cannot disclose severed under s. 22(1).

4.0 CONCLUSION

For the reasons given above:

1. I find that the College is authorized by s. 12(3)(b) of the Act to refuse access to the December 2, 1998 and January 20, 1999 *in camera* meeting minutes and, under s. 58(2)(b) of the Act I confirm the decision of the College to refuse access to those records;

2. I find that the College is not authorized by s. 12(3)(b) of the Act to refuse access to the October 21, 1998 memorandum and the last paragraph of the February 1, 1999 letter to the third party and, subject to the order in paragraph 4, under s. 58(2)(a) of the Act I require the College to give the applicant access to that information;

3. I find that the College is not authorized by s. 15(1)(a) of the Act to refuse access to information in the disputed records and, subject to the order in paragraph 4, under s. 58(2)(a) of the Act, I require the College to give the applicant access to information withheld by the College under that section;

4. I find that the College is not required by s. 22(1) of the Act to refuse to disclose:

   (a) some of the third party physician's personal information in the October 21, 1998 memorandum, the December 2, 1998 *in camera* meeting minutes or the January 20, 1999 *in camera* meeting minutes;

   (b) personal information of the deceased found in the disputed records; or

   (c) the name of the College employee who wrote the October 21, 1998 memorandum,

   and under s. 58(2)(a) of the Act, but subject to the order in paragraph 1, I require the College to give the applicant access to that personal information; and

5. I find that the College is required by s. 22(1) of the Act to refuse to disclose:

   (a) some of the third party physician's personal information in the October 21, 1998 memorandum, the December 2, 1998 *in camera* meeting minutes and the January 20, 1999 *in camera* meeting minutes; and

   (b) the third party's personal information in the last paragraph of the College's February 1, 1999 letter to the third party,

   and under s. 58(2)(c) of the Act I require the College to refuse to disclose the third party's personal information to the applicant.

In order to assist the College, I have prepared severed copies of the disputed records. The copies of the December 2, 1998 and January 20, 1999 *in camera* meeting minutes show which personal information of the third party physician cannot be disclosed, under *both* s. 12(3)(b) and s. 22(1). The copy of the October 21, 1998 memorandum shows the personal information of the third party physician that cannot be disclosed under s. 22(1) (the remainder of that record must be disclosed in light of paragraphs 2, 3 and 4, above). Last, the copy of the February 1, 1999 letter to the third party physician shows the last paragraph as having been severed under s. 22(1).

May 10, 2000

David Loukidelis
Information and Privacy Commissioner
for British Columbia