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

Order 01-18

WORKERS' COMPENSATION BOARD

David Loukidelis, Information and Privacy Commissioner
April 26, 2001

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Summary: Applicant is not entitled to have access to complete copies of résumés submitted by third-party consultants to the WCB. Presumed unreasonable invasion of personal privacy under s. 22(3)(d) is not rebutted by any relevant circumstances, including fair determination of the applicant's rights or subjecting the WCB to public scrutiny. As an exception, applicant is entitled to portions of records showing the professional qualifications held by the counsellors, which they have held out to the WCB and the public for business purposes. WCB raised s. 17 for the first time in its initial submission. WCB not entitled to raise that discretionary exception at inquiry stage.

Key Words: disclosure harmful to personal privacy – unreasonable invasion – personal information – submitted in confidence – unreasonable invasion of a third party's personal privacy.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 17 and 22.

Authorities Considered: B.C.: Order 00-48, [2000] B.C.I.P.C.D. No. 52; Order 01-07, [2001] B.C.I.P.C.D. No. 7.

Cases Considered: *Greater Vancouver Mental Health Service Society* v. *British Columbia (Information and Privacy Commissioner)*, [1999] B.C.J. No. 198 (S.C.).

1.0 INTRODUCTION

[1] The applicant in this case seeks access to information on the professional qualifications of two counsellors who provided services paid for by the Criminal Injuries Compensation Section of the Workers' Compensation Board ("WCB"), as noted in the Portfolio Officer's Fact Report. (Although the Criminal Injuries Section of the WCB is

listed as a separate public body in Schedule 2 to the *Freedom of Information and Protection of Privacy Act* ("Act"), I refer to it in this order, for convenience, as the WCB.) It appears the WCB had the résumés because the counsellors had provided services to the applicant's children that were paid for by the WCB's Criminal Injury Compensation Program ("CICP"). The applicant made an access request to the WCB for the "Statement of Qualifications" submitted by each counsellor to the Board roughly ten years ago. He also sought access to copies of the CICP "records of approval by whomever or whatever culminated in the approval of these two individuals to receive CICP funding". The WCB provided the applicant with one record, which disclosed approval for one of the two counsellors to receive CICP funding. The WCB severed the counsellor's address from the approval letter under s. 22(1) of the Act. The WCB declined to disclose any "statement of qualifications" for either counsellor. It has treated the résumés as the "Statements of Qualification" that the applicant seeks.

[2] The applicant requested a review, under s. 53 of the Act, of the WCB's decision to refuse access to the résumés. In his request for review, he said that he was seeking the

> … professional qualifications that were submitted to WCB by these two "therapists", not personal information such as age, gender or other individual characteristics.

[3] In his request for review, the applicant said that he is "entitled as a citizen of B.C. to the information on the qualification of these two individuals". As is noted in the Portfolio Officer's Fact Report, during mediation the applicant narrowed his request to information within the records on the counsellors' professional qualifications. Because the matter did not settle during mediation, I held a written inquiry under s. 56 of the Act.

2.0 ISSUE

[4] The only issue in this inquiry is whether the WCB is required by s. 22(1) of the Act to refuse to disclose the counsellors' personal information to the applicant. Under s. 57(2) of the Act, the applicant must prove that disclosure of the personal information would not be an unreasonable invasion of the counsellors' personal privacy.

3.0 DISCUSSION

[5] **3.1 WCB's Late Addition of an Exception** – At para. 16 of its initial submission, the WCB says that it "also at this time seeks to apply s. 17 and respectfully requests that it be permitted to do so." I reject that request. Section 17 formed no part of the WCB's decision on the applicant's access request. It is not mentioned in the Portfolio Officer's Fact Report, or in the Notice of Written Inquiry issued to the parties, and there is no suggestion by the WCB that it should have been mentioned.

[6] As a general proposition, the raising of additional discretionary exceptions at the inquiry stage is unacceptable. A public body must, at the time it considers an access request, assess which of the Act's exceptions to the right of access may, or must, be applied to information in requested records. Although I may, in appropriate

circumstances, permit the raising of discretionary exceptions during the inquiry process, I am not generally inclined to do so, especially in a case such as this, where the public body raises a new discretionary exception for the first time in its initial submission and without explicitly giving any reason for doing so. (I infer, from para. 20 of the WCB's initial submission that it relies on the applicant's request for review as a basis for believing s. 17(1) might apply. The WCB does not explain, however, why it did not raise s. 17(1) sooner.)

[7] It would not have made much difference if I had allowed the WCB to raise s. 17(1) in this case. It seeks to do so because, it claims, the applicant has a history of dealing with allegations against him by initiating legal proceedings against those who he believes have wronged him. The WCB says it is reasonable to conclude the applicant is "likely considering initiating a civil suit" against it. The WCB, extending this line of reasoning, says the applicant "intends again to rely on the alleged shortcomings of the counsellors who are paid by" the CICP in order to "further his case against the Board". According to the Board, at para. 22 of its initial submission,

> … the expense alone of defending itself against the Applicant's suit should constitute a financial harm to the Board. The Board submits that a financial impact can more properly be characterized as a "harm" were [*sic*] the impact is not justified, and here the probably [*sic*] cost to the Board is not justified.

[8] This theme continues, at para. 23, as follows:

> If the Applicant had any reasonable basis on which to hold the Board accountable for his children's allegations, he would be justified in initiating a civil suit. But the Applicant here has no such basis. The Supreme Court of B.C. has found that the counselors were not the cause for the allegations made against the Applicant. Therefore there can be no basis on which to hold the Board accountable on the ground that it failed to scrutinize the counselors' qualifications or paid for their services.

[9] According to the WCB, this establishes a reasonable expectation of harm to its financial interests within the meaning of s. 17(1). Briefly stated, if it were necessary to do so, I would reject this claim of s. 17(1) harm.

[10] **3.2 Counsellors' Personal Privacy** – Section 22(1) of the Act requires a public body to refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party's personal privacy. Section 22(3) creates a series of presumed unreasonable invasions of personal privacy, including where, as provided in s. 22(3)(d), the personal information requested by an applicant "relates to employment, occupational or educational history" of a third party. In determining whether a disclosure of personal information is prohibited by s. 22(1) or (3), a public body must consider all of the relevant circumstances, including those found in s. 22(2). Schedule 1 to the Act defines the term "personal information" as including "information about the individual's educational … or employment history".

[11] The portions of s. 22 relevant to this inquiry read as follows:

> 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,
>
> …
>
> (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… .
>
> (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
>
> …
>
> (d) the personal information relates to employment, occupational or educational history … .

Records In Dispute

[12] The WCB refused to disclose the résumés of each counsellor. It also refused to disclose a copy of the business card of one of the counsellors that was found in its files. The card sets out the name of the counselling business run by the counsellor, what I infer (based on references in the disputed records) is the address and telephone number of the business, and the counsellor's name. The counsellor's name is known to the applicant. Under the counsellor's name, three acronyms appear. Two refer to degrees held by the counsellor and one refers to a professional designation held by the counsellor. I do not consider the business name, business telephone number or address to be personal information of the counsellor. The rest of the information on the business card is the counsellor's personal information.

[13] The WCB also did not disclose a letter sent by this counsellor to the WCB seeking approval for funding. That letter is not responsive to the applicant's access request, since it does not disclose any information about the qualifications of that counsellor. A copy of the counsellor's résumé was, however, enclosed with the letter.

[14] In the case of the other counsellor, the WCB also withheld a letter from the counsellor to the WCB, requesting approval for funding for counselling services to victims of crime. The letter discloses the professional qualification held by the

counsellor, citing it as the basis for funding approval. It also discloses the counsellor's recent relevant experience in counselling victims. A copy of the counsellor's résumé was enclosed with the letter.

Presumed Unreasonable Invasion of Privacy

[15] The two counsellors' résumés describe the educational history of the counsellors, as well as their employment and occupational experience. In the case of one of the counsellors, the résumé describes the skills and abilities of the counsellor, as well as the counsellor's related training and professional development history. I have no hesitation in finding that the contents of the two résumés qualify as personal information relating to the employment, occupational and educational history of both counsellors within the meaning of s. 22(3)(d) of the Act. Accordingly, the disclosure of these résumés is presumed to be an unreasonable invasion of the counsellors' privacy.

[16] I accept for the purposes of this case that the business card statement of one counsellor's professional qualifications and university degrees technically qualifies as educational and occupational history information under s. 22(3)(d) of the Act. Similarly, the statement of professional qualification made in the second counsellor's letter to the WCB is covered by s. 22(3)(d).

Parties' Arguments For and Against Disclosure

[17] The applicant's wish to obtain information on the professional qualifications of the two counsellors stems from allegations of abuse levelled at him by his children. Although it is not entirely clear how it came to pass, it appears the applicant's children accused him of abuse some years ago and that, funded by the CICP, the children were treated by the counsellors. It also appears, from the applicant's initial submission, that the police investigated the allegations and decided not to recommend charges against the applicant. In an attempt to clear his name, the applicant sued both counsellors for defamation in the British Columbia Supreme Court. The action was dismissed over six years ago.

[18] It is clear from the applicant's submissions that he hotly disputes the counsellors' conclusions, based on interviews with the children conducted using recovered memory therapy, that the children had been abused in some fashion at some time. Much of his submissions consist of his detailed refutations of these allegations.

[19] The applicant summarizes his primary and secondary objectives in this inquiry as follows, at p. 22 of his initial submission:

> PRIMARY
>
> > That the Commissioner cause the Criminal Injury Compensation Program to release a total accounting of all professional qualifications and work experience which has been submitted to the CICP, including any updates, together with the date of such submissions, by both … [third parties' names].

SECONDARY

> That the Commissioner, having been … [apprised] of the extreme irregularities in this case and understanding the pain and suffering caused to an innocent family and individuals, by the misrepresentation and faulty adjudications on all levels of those involved in the wrongful decision of classifying this incident eligible for public funding, order an inquiry into this case and the total CICP program.
>
> That the Commissioner, having been … [apprised] of the extreme irregularities in this case and understanding the pain and suffering caused to an innocent family and individuals, if not in the power to order an investigation, forward a complete copy of the applicant's written Inquiry to any and all persons who do have the authority to order an investigation into this case and the total CICP program.

[20] My authority in this inquiry under the Act relates only to the question of whether or not the WCB is required to refuse to disclose the counsellors' personal information to the applicant.

[21] Rather than relating directly to the s. 22(1) issue before me in this inquiry, much of the applicant's argument focuses on his contention that the counsellors are "charlatans masquerading as therapists" and that the allegations against him were induced by the counsellors and are false. The applicant does say this, however, about the personal privacy of the counsellors (at p. 20 of his initial submission):

> Any Act … [or] regulation such as the one quoted by the WCB as a reason not to release information is originally put into place to protect individuals who are working in a legal, moral and constructive environment. The organizations and individuals involved in this devastation of this innocent family do not qualify for any such protection by the very horror of what they contributed to.
>
> The tragedy to this family was no accident. No honest mistake.
>
> The Criminal Injury Compensation Program, without apparent regard, abdicated their responsibility to screen blameless people from the swindle such as Recovered Memory Therapy, ignoring normal requirements, ignoring policy reports, ignoring science and common sense, ignoring their own requirement for follow up reports, the CICP allowed the Charlatans … [the third parties' names] to chart the total disaster of this family.
>
> …
>
> The results of such irresponsibility are predictable.
>
> …
>
> What has happened here is a total loss of integrity, a fraud and neither CICP nor the two "therapists" deserve protection.
>
> …
>
> Protections are set up to protect the innocent people doing their jobs in a normal and moral fashion, to allow CICP and these individuals to hide behind such

> protection would be like sanctioning the repugnant act of the destruction of this innocent family.

[22] The applicant also contends, at p. 6 of his reply submission, that because recovered memory therapy has been "debunked" and exposed as "quackery", he cannot understand how anyone can ever have had "appropriate" qualifications to practice that kind of therapy or how a publicly-funded agency "funded such nonsense".

[23] It appears from the applicant's reply submission that he considers the WCB to be somehow "culpable". As I understand it from the material before me, however, the only thing the WCB did is pay for the counsellors' treatment of the applicant's children and, through the CICP, perhaps provide them with some compensation for what was alleged to have been done to them. The applicant, it appears, believes that, by paying for the counsellors' work and providing compensation, the WCB has become "culpable", I infer because the decision to compensate lends credence to the allegations. For this reason, he says the WCB "acted recklessly and failed in their obligation to ensure innocent people are not harmed" and that the WCB recklessly failed to "ensure proper use of public funds".

[24] In its initial submission, the WCB cites, as relevant to this inquiry, ss. 22(2)(a), (c), (e) and (f). Its reference to ss. 22(2)(a) and (c) anticipates the applicant's argument that disclosure of this third-party personal information is desirable for the purpose of subjecting the WCB's activities to public scrutiny and that the disclosure is relevant to a fair determination of the applicant's rights.

Fair Determination of the Applicant's Rights

[25] I will deal first with the question of whether the personal information is relevant to a fair determination of the applicant's rights. As I noted in Order 01-07, [2001] B.C.I.P.C.D. No. 7, the word "rights" in s. 22(2)(c) refers to legal rights, as was confirmed by Lynn Smith J. in *Greater Vancouver Mental Health Service Society* v. *British Columbia (Information and Privacy Commissioner)*, [1999] B.C.J. No. 198 (S.C.). As I noted above, the applicant sued the counsellors for defamation. If the educational, employment and occupational history of the counsellors was relevant to a fair determination of the applicant's legal rights in that action, it was open to the applicant to attempt to get that information through the discovery process, contemplated by the *Rules of Court*, in the context of that litigation.

[26] Nor am I persuaded that the personal information of these third parties is relevant to a fair determination of any legal rights the applicant might have against the WCB. The essence of the applicant's complaint against the WCB is, it appears, that the CICP paid for the counsellors' services and paid compensation to the applicant's children based on allegations, for which the counsellors are responsible. In light of the outcome of the applicant's lawsuit against the two counsellors, I do not find that their s. 22(3)(d) personal information is relevant to any fair determination of any legal rights the applicant may or may not have against the WCB. I find that s. 22(2)(c) is not a relevant circumstance.

Unfair Exposure to Harm

[27] The WCB claims that s. 22(2)(e) is a relevant circumstance. Under that section, a public body must consider whether a third party will be exposed unfairly to financial or other harm as a result of disclosure of the personal information. In support of its contention that this is a relevant circumstance, the WCB submitted an *in camera* affidavit sworn by Patricia Brownell on November 29, 2000. In it, Patricia Brownell deposed that the WCB contacted one of the counsellors during the Part 5 request for review process and that the counsellor had opposed release of her personal information to the applicant, a position that the counsellor confirmed in a letter to the WCB that was appended as Exhibit "B" to Patricia Brownell's affidavit. It is clear the counsellor was told who the applicant is and that the applicant knows the identity of the counsellor. I am unable to conclude that there is any rational connection between the harm the counsellor says she would unfairly be exposed to through disclosure of her personal information and the disclosure of that personal information. Details as to the education, employment and occupational experience of the counsellor cannot reasonably be connected to the harm the counsellor says she is likely to suffer at the hands of the applicant if that information is disclosed. I find that s. 22(2)(e) is not a relevant circumstance.

Information Supplied in Confidence

[28] The WCB says the disputed personal information was submitted to it in confidence, which means that s. 22(2)(f) is a relevant circumstance. The WCB cites no evidence in support of the contention that the personal information was submitted in confidence, either explicitly or implicitly. It simply asserts, at para. 54 of its initial submission, that "records relating to the third parties' qualifications were implicitly submitted in confidence to the Board." The WCB argues, in the same paragraph, that the *in camera* affidavit of Patricia Brownell, including its exhibits, establishes that one third party submitted her information, and "wishes it held by the Board, in confidence." The *in camera* material does not establish any confidential supply within the meaning of s. 22(2)(f). Nor am I prepared to draw such a conclusion on the basis that the information is of a nature that is subject to the presumed unreasonable invasion of personal privacy described in s. 22(3)(d). Personal information of this kind may well be submitted other than in confidence (for example, to prospective employers). I find that s. 22(2)(f) is not a relevant circumstance in this case.

Subjecting the WCB to Public Scrutiny

[29] The last issue to be addressed is whether disclosure of the counsellors' personal information is desirable for the purpose of subjecting the WCB's activities – specifically, through the CICP – to "public scrutiny" within the meaning of s. 22(2)(a). In Order 00-48, [2000] B.C.I.P.C.D. No. 52, the applicant in that case did not persuade me that disclosure of job candidates' educational and occupational histories was desirable for the purpose of public scrutiny of the public body's hiring practices. I make the same finding here. At the very least, I am not persuaded the applicant intends – or has the means – to pursue public scrutiny of the WCB's practices, through the CICP, using the disputed personal information.

Other Relevant Circumstances

[30] In the final analysis, it is clear that the presumed unreasonable invasion of personal privacy created by s. 22(3)(d) applies to the two résumés. The applicant has not persuaded me that any relevant circumstance – including any set out in s. 22(2) – favours disclosure of the educational, occupational or employment history of the counsellors. The fact that the WCB has not persuaded me that any of the relevant circumstances it cites actually applies does not affect the outcome – the s. 22(3)(d) presumption applies and the applicant has failed to rebut that presumption. Subject to the findings below, I find that the WCB is required by s. 22(1) of the Act to refuse to disclose the résumés to the applicant.

[31] As an exception to this, I have concluded that the WCB is not required by s. 22(1) to refuse to disclose to the applicant the counsellors' professional qualifications. This is, in any case, the information he indicated was relevant to him – the counsellors' 'statements of qualifications'. I will deal first with the counsellor whose business card is in dispute.

[32] It is a relevant circumstance, in my view, that this individual has listed professional qualifications or designations on a business card, which was given to the WCB and is almost by definition public. The counsellor uses the card, it is reasonable to conclude, for (among other things) the solicitation of business. With that information having been held out in such a manner, I fail to see how its disclosure to the applicant would unreasonably invade the counsellor's personal privacy. The same goes for the corresponding information in the résumé itself. The WCB must, however, withhold the dates on which, and the institution or governing body from which, the qualification or degree was received. I note, in any case, that such details are not sought by the applicant and are thus outside the scope of his request. In addition, as I noted above, I consider business contact information on the business card not to be personal information of the counsellor. Although that information is not, strictly speaking, responsive to the request, I see no basis on which the WCB must or can withhold it and there is no point severing the business card.

[33] The professional designation held by the second counsellor is set out in the second paragraph of the counsellor's letter to the WCB seeking CICP funding approval. It is relevant, in my view, that the counsellor held out the designation as a basis for getting CICP funding. There is no indication, again, that this information was supplied in confidence to the WCB. It is reasonable to conclude that the counsellor also holds out this designation publicly, in order to obtain business. As with the first counsellor's qualifications and designations, I fail to see how disclosure of the designation would unreasonably invade the personal privacy of the counsellor. The designation is mentioned only in the letter – the counsellor 's résumé does not set it out, so no part of the résumé can be disclosed. Also, lines eight through eleven of the letter contain information about the counsellor's employment history and cannot be disclosed by virtue of s. 22(3)(d). The rest of the letter is out of scope, as it does not relate to the applicant's request. It is, however, innocuous information stating that the counsellor seeks funding

approval, not personal information. Disclosure would not, in any case, constitute an unreasonable invasion of personal privacy.

[34] I find that the WCB is not required by s. 22(1) to refuse to disclose the personal information respecting professional qualifications shown on the severed copy of the disputed records that I have provided to it with its copy of this order. Again, I find that the WCB is required by s. 22(1) to refuse to disclose the rest of the information it withheld under that section.

4.0 CONCLUSION

[35] For the above reasons, under s. 58(2)(c) of the Act, I require the WCB to refuse access to the personal information that it withheld under s. 22(1), except that I require the WCB to give the applicant access to the information shown on the severed copy of the disputed records that I have provided to the WCB with its copy of this order.

April 26, 2001

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia