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

Order 02-17

COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA

David Loukidelis, Information and Privacy Commissioner
April 24, 2002

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Summary: The applicant, who had complained over 10 years ago to the College about one of its member physicians, requested records that included those relating to her complaint against that member. The College is authorized by s. 19(1)(a) (but not s. 19(2)) to refuse disclosure.

Key Words: harm to safety or mental or physical health – immediate and grave harm.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, 19(1)(a).

Authorities Considered: B.C.: Order No. 108A-1996, [1998] B.C.I.P.C.D. No. 43; Order 00-01, [2000] B.C.I.P.D. No. 1; Order 01-29, [2001] B.C.I.P.D. No. 30.

1.0 INTRODUCTION

[1] On June 10, 2001, the applicant wrote to the College of Physicians and Surgeons of British Columbia ("College") and – alleging that the College was ignoring her "pleading for the validation of facts" and that her "life is at dire risk" – requested access to all "investigation records" relating to five named psychiatrists, two neurologists, a medical health officer and other individuals and bodies. The College treated this request as a request for records under the *Freedom of Information and Protection of Privacy Act* ("Act"). In its July 16, 2001 response to the request, the College disclosed 239 pages of records and treated the request as relating to a single complaint that the applicant had made in 1991. The College declined to disclose, in its entirety, the respondent

physician's seven-page reply to the applicant's complaint to the College. The third party's response to the complaint in essence gives details of the third party's involvement in treating the applicant and sets out the facts, as understood by the third party, respecting the applicant's treatment. The College relied on ss. 19(1)(a), 19(2) and 22(1) of the Act in refusing access. Its response letter also cited ss. 22(2)(f) and 22(3)(b) of the Act.

[2] The College's response prompted the applicant to request, by a letter dated July 23, 2001, a review under the Act of the College's decision. Because the matter did not settle in mediation, I held a written inquiry under Part 5 of the Act. The respondent physician was given a notice under s. 54(b) of the Act and participated in this inquiry as a third party.

[3] The third party's submissions in the inquiry were made *in camera*, properly so in my view. Similarly, the College's and the applicant's initial submissions contained *in camera* material. The College also provided me with an *in camera* affidavit. All of this material is, I am satisfied, properly received *in camera*.

2.0 ISSUE

[4] The following issues must be addressed here:

1. Is the College authorized by s. 19(1) or s. 19(2) of the Act to refuse to disclose information?

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

[5] Under s. 57(1) of the Act, the College bears the burden of establishing that it is authorized to withhold information under s. 19(1) or s. 19(2) of the Act. Under s. 57(2), the applicant bears the burden of proving that disclosure of the third party's personal information would not unreasonably invade the third party's personal privacy within the meaning of s. 22(1).

3.0 DISCUSSION

[6] **3.1 Threat to Health or Safety** – Section 19(1)(a) of the Act authorizes a public body to refuse to disclose information to an applicant, including the applicant's own personal information, if the disclosure could reasonably be expected to "threaten anyone else's safety or mental or physical health." Under s. 19(2), a public body may refuse to disclose the applicant's own personal information if the disclosure could reasonably be expected to "result in immediate and grave harm to the applicant's safety or mental and physical health." The College relies on both sections here.

[7] Sections 19(1)(a) and 19(2) read as follows:

> **Disclosure harmful to individual or public safety**
>
> **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, or
>
> … .
>
> (2) The head of a public body may refuse to disclose to an applicant personal information about the applicant if the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's safety or mental or physical health.

[8] The College says public bodies are "required" to "act prudently where the health and safety of others", or an applicant, are at issue in connection with the disclosure of records. The College cites Order No. 108A-1996, [1998] B.C.I.P.C.D. No. 43. Although s. 19 does not, strictly, "require" public bodies to act prudently, I have acknowledged that they should act with deliberation and care under that section. See, for example, Order 00-01, [2000] B.C.I.P.D. No. 1.

[9] Relying on Order No. 108A-1996, the College says the test under s. 19(1)(a) is whether there is "a reasonable expectation that disclosure could threaten another person's safety or mental or physical health" (para. 16, initial submission). This paraphrases the language of the section. As I have said in a number of decisions – for example, Order 01-29, [2001] B.C.I.P.D. No. 30, at para. 17 – the reasonable expectation of harm test

> … requires evidence the quality and cogency of which is commensurate with a reasonable person's expectation that disclosure of the disputed information could cause the harm specified in the relevant section of the Act. Although it is not necessary to establish a certainty of the harm being caused, evidence of speculative harm will not suffice. There must be a rational connection between the disclosure and occurrence of the feared harm.

[10] In s. 19(1) cases, therefore, a central issue is whether a rational connection has been established between disclosure of the disputed information and a threat to health or safety.

[11] Among other things, the College appears to believe that the applicant's attempts to enlist the assistance of politicians, interest groups and the media in her access to information request, and the alleged harm she has suffered at the hands of various members of the medical profession, should be considered in relation to the s. 19 test. The College also notes that, in 1992, a physician was killed by a former patient who was

suffering from a mental illness. This raises, the College says, "in a small number of cases", concerns "regarding the safety of physicians" (para. 20, initial submission). The College puts it, at para. 20 of its initial submission, as follows:

> Due to the nature of their specialty, psychiatrists are required to deal with individuals who are irrational, unpredictable and who may pose harm and [psychiatrists] are best able to determine the potential threat each patient may pose to them or others.

[12] This is clearly an argument that I should defer to the third party's views on the s. 19(1) issue, even though the third party is not at arm's length from the merits of that issue.

[13] The College also makes the following argument, at para. 21 of its initial submission:

> Members of the College who respond to complaints against them by a patient must be protected against subsequent disclosure of material, if disclosure could result in potential harm to the member or to the College's mandate by discouraging such communications. It is clearly in the public interest to encourage members to provide information for investigations for the purpose of promoting the duty and objects of the College. Unless the College is able to protect information which, if released, could result in harm to its members, its members will no longer be forthcoming in providing information to assist in the College's investigation of complaints against its members. This would seriously and adversely impact upon the College's ability to carry out its processes and to fulfil its mandate to serve and protect the public interests.

[14] Similar public policy arguments, about the general importance of the College being able to fulfil its mandate, by having some assurance of confidentiality in communications with its members as part of the complaint process, are found at paras. 11-13 of its initial submission. I will say here that none of these arguments is relevant to the s. 19(1)(a) or s. 19(2) issues before me. Nor do they advance the College's case in any general sense. They appear to be an attempt to persuade me that there are overriding policy reasons not to disclose information relating to the College's processes, notably because of a fear that disclosure will chill participation in the College's regulatory processes. As I have said in other cases, this kind of argument cannot override the proper application of the Act's provisions.

[15] For her part, the applicant is adamant that disclosure "will not threaten anyone else's safety, mental or physical health" (p. 2, initial submission). Instead, she says, "disclosure will bring forth the truth about the wrongs committed", by whom she does not say (p. 3, initial submission). She also argues that disclosure of "the paramount medical facts and interpretation of all supernatural occurrences will only protect the Public."

[16] In her reply submission, the applicant alleges that, in 1989, she was slandered by unidentified individuals, which caused her to be suspended and eventually terminated

from employment. She alleges that her interactions with various physicians, notably psychiatrists, have seen them recklessly ignore or disregard facts. She argues the College has, by not providing the disputed information to her, "unconditionally" protected the "reckless disregard for the sanctity of my life and that of all the helpless children" on the part of various physicians. This alleged wrongdoing by the College makes it even more urgent, the applicant says, that she be given access to the disputed records. The applicant says, at p. 2 of her reply submission, that various alleged wrongs amount to 'psychological rape' and alleges that various physicians are corrupt and have abused her. She also says at p. 2 that, for "killing someone there is no statute of limitation", and argues that "all disclosures of all involved parties are necessary to proof [*sic*] the violations against the children and me as documented." She claims that, "for the past ten years the law as represented i.e. by the Royal Canadian Mounted Police and Crown Counsel are guilty of obstruction of justice." Their alleged failure to act, she says, means that what she believes is a "conspiracy" against her continues. The applicant also says the following at p. 3 of her initial submission:

> Disclosure will proof [*sic*] the wisdom behind all supernatural occurrences that were beyond my control to protect me from the assumed God-like powers and arrogance of all involved physicians and psychologists.

[17] The applicant has also provided me, on an *in camera* basis, with numerous background documents relating to her interactions, over the past 10 years or so, with a variety of physicians, other medical professionals and the College.

[19] It is not necessary to establish a reasonable expectation of harm for the purposes of s. 19(1)(a). The section calls for a reasonable expectation of a threat to health or safety. The College's *in camera* submission points to various interactions between the applicant and others that support the view that disclosure of the information could reasonably be expected to threaten the third party's health or safety. The third party's submissions themselves give, in some detail, grounds for concluding that disclosure of the disputed information could reasonably be expected to threaten the third party's mental or physical health or safety. There is evidence of a pattern of behaviour on the applicant's part that strongly supports the finding that the necessary reasonable expectation under s. 19(1)(a) has been established. I do not propose to say more than this. This is a feature of s. 19(1)(a) decisions that may be frustrating, but it is often necessary in such cases to say less than one might otherwise like. I am persuaded, on the basis of the material before me, that disclosure of any of the third party's response to the applicant's complaint to the College could reasonably be expected to threaten the third party's mental health or physical safety as contemplated by s. 19(1)(a).

[20] In light of this finding, I need not consider whether the College is authorized by s. 19(2), or required by s. 22(1), to refuse to disclose the disputed information to the applicant. I will nonetheless say that, in my view, the College has not shown that s. 19(2) authorizes it to refuse to disclose the requested information. None of the material before me, including the third party's, persuades me that disclosure of the disputed information could reasonably be expected to result in "immediate" and "grave" harm to the applicant as contemplated by s. 19(2).

4.0 CONCLUSION

[21] For the reasons given above, under s. 58(2)(b) of the Act, I confirm the decision of the College that it is authorized under s. 19(1)(a) to refuse to disclose all of the disputed records to the applicant.

April 24, 2002

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia