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

Order 03-10

# VANCOUVER COASTAL HEALTH AUTHORITY

Mark Grady, Adjudicator
March 7, 2003

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**Summary:** Applicant requested all of his father's case file reports concerning an assessment of the father's health and related issues. VCHA is authorized to refuse disclosure under s. 19(1)(a).

**Key Words:** threaten – mental or physical health – safety – reasonable expectation of harm.

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

**Authorities Considered: B.C.:** Order No. 00-28, [2000] B.C.I.P.C.D. No. 31; Order No. 02-10, [2001] B.C.I.P.C.D. No. 10; Order No. 03-08, [2003] B.C.I.P.C.D. No. 8.

## 1.0 INTRODUCTION

[1] In a May 22, 2002 access to information request to the Vancouver Coastal Health Authority ("VCHA"), made under the *Freedom of Information and Protection of Privacy Act* ("Act"), the applicant requested from the VCHA copies of any or all of his father's case file reports. The father provided signed authorization for the son to have access to these records.

[2] In its June 24, 2002 response, the VCHA disclosed approximately 180 pages of the father's health records to the applicant. It withheld 20 pages of records under s. 19 of the Act. The applicant, in a July 22, 2002 letter, requested a review of this decision under Part 5 of the Act. He wrote that there is no rational reason to think that his frail, elderly father could do any immediate or grave harm to him or any other person and that application of s. 19 is baseless and frivolous in the context of the current situation.

[3] As mediation was not successful in resolving the issue, a written inquiry was held under Part 5 of the Act. I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

[4] The disputed records come from the VCHA's files relating to the applicant's father.

[5] The VCHA has, in support of its s. 19(1)(a) case, made some submissions and provided some affidavits entirely *in camera*. The applicant has pointed out that this makes it difficult for him to respond to the VCHA's evidence. Although I appreciate the applicant's concern, I am satisfied that the VCHA's affidavit evidence and submissions are appropriately received on an *in camera* basis.

## 2.0 ISSUE

[6] The only issue to be considered in this inquiry is whether or not the VCHA is authorized under s. 19(1)(a) of the Act to refuse access to information that it withheld under that section.

[7] In its initial submission, the VCHA confirmed that it did not refer to s. 22 of the Act in its response to the applicant's request. This exception to disclosure is, however, mandatory – a public body is required to withhold personal information where its disclosure would be an unreasonable invasion of a third party's personal privacy. The VCHA did not provide argument or evidence on s. 22. If I had considered it necessary to do so (which I have not for reasons given below), I would have requested submissions from the parties under s. 22 on the basis that it is a mandatory exception to disclosure.

[8] The applicant, in his initial submission, questioned the reasonableness of the VCHA's search for records responsive to the access request but said he would deal with this issue separately at another time.

[9] Section 57(1) of the Act provides that the VCHA has the burden of proof in an inquiry concerning a decision to refuse access to information under s. 19 of the Act.

## 3.0 DISCUSSION

[10] Section 19(1)(a) of the Act authorizes a public body to refuse to disclose information to an applicant – including personal information about the applicant – if the disclosure could reasonably be expected to "threaten anyone else's safety or mental or physical health". In Order 00-28, [2000] B.C.I.P.C.D. No. 31, which dealt with Vancouver Community Mental Health Services records, the Commissioner said the following, at p. 2, about the burden that rests on a public body seeking to apply section 19(1)(a):

> As I have said in previous orders, a public body is entitled to, and should, act with deliberation and care in assessing – based on the evidence available to it – whether

> a reasonable expectation of harm exists as contemplated by the section. In an inquiry, a public body must provide evidence the clarity and cogency of which is commensurate with a reasonable person's expectation that disclosure of the information could threaten the safety, or mental or physical health, of anyone else. In determining whether the objective test created by s. 19(1)(a) has been met, evidence of speculative harm will not suffice. The threshold of whether disclosure could reasonably be expected to result in the harm identified in s. 19(1)(a) calls for the establishment of a rational connection between the feared harm and disclosure of the specific information in dispute.
>
> It is not necessary to establish certainty of harm or a specific degree of probability of harm. The probability of the harm occurring is relevant to assessing whether there is a reasonable expectation of harm, but mathematical likelihood is not decisive where other contextual factors are at work. Section 19(1)(a), specifically, is aimed at protecting the health and safety of others. This consideration focuses on the reasonableness of an expectation of any threat to mental or physical health, or to safety, and not on mathematically or otherwise articulated probabilities of harm. See Order 00-10.

[11] More recently, in Order 03-08, [2003] B.C.I.P.C.D. No. 8, the Commissioner said the following about how s. 19(1)(a) applies to information in records:

> [24] I have acknowledged that the s. 19(1)(a) reference to mental "health" goes beyond mental illness; s. 19(1)(a) may be triggered where disclosure could reasonably be expected to cause serious mental distress or anguish. See, for example, Order 00-02, [2000] B.C.I.P.C.D. No. 2; Order 00-28, [2000] B.C.I.P.C.D. No. 31, Order 00-40, [2000] B.C.I.P.C.D. No. 43, Order 01-01 and Order 01-15, [2001] B.C.I.P.C.D. No. 16. I have also said that "inconvenience, upset or unpleasantness of dealing with a difficult or unreasonable person" is not sufficient to trigger s. 19(1)(a) of the Act. See Order 01-15 at para. 74.
>
> [25] I have approached the s. 19(1) issue bearing in mind my comments in Order 02-50 about the standard of proof where a test of reasonable expectation of harm is involved. As with s. 15(1)(f), I have also kept in mind the nature of this exception, namely the fact that important third-party interests are involved. As I have noted before, the s. 19(1) exception should be approached with care and deliberation, by public bodies and in an inquiry under Part 5. See, for example, Order 01-01, [2001] B.C.I.P.C.D. No. 1.

[12] In arguing that there is a reasonable expectation of a threat to safety or mental or physical health from disclosure of the information, the VCHA provided the following information about the content of the records in dispute and the reasons for their creation.

[13] In its initial open submission (paras. 9 and 10) the VCHA said

> … there is clearly considerable third party personal information included within the disputed documents, including the identity of the author(s) of that document, which is, in the submission of the public body, inextricably linked to the identity of the third party(ies). Much of the balance of the information, however, does relate to

> the applicant and represents his personal information or his father's personal information.

[14] At paras. 2-4 of her open affidavit, a registered nurse with the VCHA provides the following helpful information about the reasons for the creation of the records in dispute:

> 2. I was responsible for conducting a mental health assessment and instituting treatment with respect to [the father], who had been referred to [my office] as a result of depression and questioned financial abuse. In the course of my assessment, [the father] made statements concerning his finances and property that raised certain questions in my mind. The applicant advised me initially that his father, who was then in hospital, could not return to live in his home as it now belonged to the applicant. In order to assess whether or not there was any evidence that [the father] has been subjected to financial or other types of abuse which would require further investigation by the Office of the Public Guardian and Trustee, I sought out information from collateral sources.
>
> 3. I did obtain information from one or more third parties. I advised my source(s) that I would not identify my source(s) to the applicant nor would I provide him with the records in dispute, which were provided to me in confidence to assist in my assessment of [the father].
>
> 4. In my work, collateral sources of information, such as friends, neighbours, relatives or caregivers, about patients are very important to me, as often they are the only source of critical details about an elderly person's home life and background, particularly when the patient is cognitively impaired, as [the father] was at the time of my assessment. Not infrequently, there are conflicts among friends and/or family members of a patient that may be relevant to my planning for the future care of the patient or for my determination as to what further supports or investigations may be necessary to protect the health and safety of the patient. In my experience, collateral sources are often reluctant to get involved in situations where there is conflict unless their confidentiality can be assured.

[15] The VCHA also provided *in camera* submissions and affidavits which, it argues, contain information that supports its position that there is a reasonable expectation that disclosure of the information in the records in dispute could threaten the safety or mental or physical health of one or more third parties.

[16] The applicant asserts that he should be able to receive at least some of the information in the 20 pages withheld in their entirety, in particular, because the VCHA confirmed that the records contain his personal information and that of his father.

[17] In its reply submission, the VCHA responds to the applicant's further suggestion that if over 180 pages could be disclosed, without any concern, then there should be no concern with disclosing the 20 pages or perhaps just a partially severed version. The VCHA says that s. 19 concerns were raised only with the possible disclosure of the 20 pages in dispute and that, in the circumstances, even partial disclosure of some of the information or preparing a summary of the information would identify the source(s) of the information.

[18] The applicant also writes that the VCHA's reliance on s. 19 to withhold information from him is not justified because,

> ... at no time did I threaten anyone or do anything that could be viewed as threatening to anyone involved in my father's care including any staff of VCHA, family or friends. Also I am not aware of any threats made by my father to third parties, nor do I believe him capable of such actions given his current physical state. (para. 3, reply submission)

[19] Most of the information that I have relied on to make my decision has been submitted on an *in camera* basis. I can say that the *in camera* information describes in detail a serious of events or incidents involving the applicant and others. I have carefully considered the applicant's perspective regarding his conduct. However, in light of the evidence presented by the VCHA – and having critically and carefully scrutinized the public and *in camera* evidence before me – I am satisfied the VCHA has established a reasonable expectation that disclosure of the severed information would threaten third party health or safety within the meaning of s. 19(1)(a). In arriving at this finding, I have also kept in mind previous s. 19(1)(a) decisions and the principles they state. As with other cases of this kind, I cannot be more specific in explaining this finding here, as to do so would risk exposing third parties to harm of the kind contemplated under s. 19(1)(a). I find that the VCHA is authorized by s. 19(1)(a) of the Act to refuse to disclose all of the severed information to the applicant.

[20] In light of my s. 19(1)(a) finding, it is not necessary for me to consider s. 22.

## 4.0 CONCLUSION

[21] For the reasons given above, under s. 58(2)(b) of the Act, I confirm that the VCHA is authorized to refuse to disclose the information it withheld under s. 19(1)(a) of the Act.

March 7, 2003

**ORIGINAL SIGNED BY**

Mark Grady
Adjudicator