



F08-02-MS Public Body Denies Parent's Request for "Capable" Child's Medical Records

A parent who believed a public body had not provided competent medical treatment to the parent's adolescent child asked the public body for records relating to the treatment. The public body refused to grant access to the medical records without the child's authorization since the child was capable of giving consent to medical treatment under section 17 of the *Infants Act*. The minor child would not authorize the public body to disclose medical records to the applicant.

Under section 3(a) of the *Freedom of Information and Protection of Privacy Regulation*, a parent may exercise access rights on behalf of a child under 19 years of age if the child is incapable of exercising those rights. In this case, we concluded that the applicant did not meet the criteria of section 3(a) of the Regulation.

First, we concluded that the applicant was not acting "on behalf of" the minor child but on the applicant's own behalf as a concerned parent. The minor child was living independently and would not consent to the applicant having access to its medical records. Secondly, we concluded that the minor child was not "incapable of exercising" its own access rights under section 3(a) of the Regulation. The minor child was legally capable of appreciating and understanding the nature its own actions. The minor child was living independently, working, had a partner, and was considered legally capable for the purposes of making medical treatment decisions.

Under the *Freedom of Information and Protection of Privacy Act*, ("FIPPA") the access request of a parent who does not meet the criteria of section 3(a) of the Regulation must be considered from the perspective of an ordinary arm's-length request about the personal information of a third party. Under section 22(3)(a) of FIPPA, the disclosure of personal information about the medical treatment of the applicant's minor child would be presumed to be an unreasonable invasion of the child's personal privacy. This information could be disclosed under section 22(4)(b) of FIPPA if there were compelling circumstances affecting the child's health or safety. In this case, however, there were no compelling circumstances that would permit the public body to disclose the medical records. "Compelling circumstances" normally connote a health emergency that would preclude obtaining an individual's consent to the release of the individual's personal information. In this case, the minor child's medical condition did not constitute the type of medical emergency that would preclude obtaining the child's consent to disclose this information.

We concluded that, without the authorization of the applicant's minor child, the decision of the public body to refuse access to the minor child's medical records was correct as the applicant was not entitled to exercise her minor child's access rights under section 3(a) of the Regulation. The applicant did not consider this result satisfactory but declined to request an inquiry.