



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

Order F11-02

**PROVINCIAL HEALTH SERVICES AUTHORITY
AND
CHILDREN'S & WOMEN'S HEALTH CENTRE OF BRITISH COLUMBIA**

Jay Fedorak, Adjudicator

January 25, 2011

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Summary: A physician whose employment and hospital privileges at the CWHC are presently suspended requested minutes of the meetings of a medical departmental staff committee of the CWHC. The PHSA responded by providing the applicant with records while withholding information under ss. 12(1), 13, 17 and 22 of FIPPA and s. 51 of the *Evidence Act*. The PHSA subsequently ceased to rely on ss. 13 and 17. Section 51 of the *Evidence Act* applies to some but not all passages. PHSA ordered to process this latter information under FIPPA. Section 22 of FIPPA applies to the medical information of patients and staff. It also applies to the employment history of staff and prospective staff, including evaluations of work, announcement of retirements and new hiring, the passing of exams and immigration issues. Section 22 does not apply to the professional opinions that identifiable physicians expressed relating to the operation of the CWHC and the PHSA is ordered to disclose this information.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(f), 22(3)(a) and 22(3)(d); *Evidence Act*, s. 51.

Authorities Considered: B.C.: Order F09-07, [2009] B.C.I.P.C.D. No. 10; Order F07-08, [2007] B.C.I.P.C.D. No. 28; Order F06-15, [2006] B.C.I.P.C.D. No. 22; Order F10-08, [2010] B.C.I.P.C.D. No. 12; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order F08-03, [2008] B.C.I.P.C.D. No. 6; Order F05-30, [2005] B.C.I.P.C.D. No. 41; Order F01-15, [2001] B.C.I.P.C.D. No. 16; Order F08-21, [2008] B.C.I.P.C.D. No. 32; Order F08-04, [2008] B.C.I.P.C.D. No. 7; Order 01-51, [2001] B.C.I.P.C.D. No. 54; Order 02-45, [2002] B.C.I.P.C.D. No. 45.

Cases Considered: *Sinclair v. March*, [2000] B.C.J. No. 397 (S.C.); [2000] B.C.J. No. 1676 (C.A).

1.0 INTRODUCTION

[1] This order arises from two requests by an applicant to the Provincial Health Services Authority (“PHSA”) for the minutes of the meetings of a medical departmental staff committee (“departmental committee”) of the Children’s and Women’s Health Centre of BC (“CWHC”) from 2001-2010. The PHSA responded by providing the applicant with records while withholding information under ss. 12(1), 13, 17 and 22(1) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) and s. 51 of the *Evidence Act*.

[2] The applicant was dissatisfied with the responses to his requests and requested reviews by the Office of the Information and Privacy Commissioner (“OIPC”). During mediation, the PHSA agreed to release some information it originally withheld under ss. 13, 17 and 22(1) of FIPPA. Mediation failed to resolve the remaining issues and two inquiries were held under Part 5 of FIPPA.

[3] The PHSA later ceased to rely on ss. 12(1), 13 and 17 and released the information that it had originally withheld under those sections. As a result, the only remaining issues in the two inquiries are the application of s. 22(1) of FIPPA and whether s. 51 of the *Evidence Act* prohibits disclosure of certain information. I have dealt with both inquiries in this order.

2.0 ISSUE

[4] The issues before me are:

1. Whether the PHSA is required by s. 22(1) to withhold information.
2. Whether, under ss. 51(6) and (7) of the *Evidence Act*, the PHSA is prohibited from disclosing certain information.

[5] Section 57 of FIPPA sets out the burden of proof in inquiries. Under s. 57(2), the applicant has the burden respecting third-party personal information. Section 57 is silent respecting whether provisions like s. 51 of the *Evidence Act* apply. Previous orders have said that in such cases it is in the interests of the parties to present argument and evidence in support of their positions.

3.0 DISCUSSION

[6] **3.1 Background**—The applicant is a physician whose employment and hospital privileges at the CWHC are presently suspended. The events giving rise to this suspension and the multiplicity of legal proceedings that followed are

a matter of public record and are also summarized in Order F09-07¹ and Decision F07-08.²

[7] **3.2 Records in Dispute**—The records consist of the minutes for the meetings of the departmental committee of the CWHC’s Department of Pathology and Laboratory Medicine from 2001-2010.

[8] **3.3 Section 51 of the Evidence Act**—The relevant provisions of s. 51 of the *Evidence Act* in this case are listed in the appendix. Senior Adjudicator Francis considered the interpretation and application of s. 51 of the *Evidence Act* in Order F06-15 and Order F10-08.³ I take the same approach here without repetition.

[9] The PSHA provided complete copies of its Medical Staff Rules and Medical Staff Bylaws. I have considered these items carefully but have not reproduced them here.

Does section 51 of the Evidence Act apply?

[10] The PSHA applied s. 51 of the *Evidence Act* only to passages in the first request. Section 51 of the *Evidence Act* includes a provision prohibiting disclosure of certain information and that excludes the application of FIPPA in relation to that information. Where FIPPA is ousted, the “right of access” in Part 2 of FIPPA is ousted, as is the Commissioner’s jurisdiction to enforce it.

[11] The PSHA submits that its Board of Directors has appointed a Medical Advisory Committee (“MAC”) as a “medical staff committee” in accordance with s. 51 of the *Evidence Act*. The responsibilities of the MAC include:

- a) Receiving, reviewing and making recommendations on reports from Quality Review bodies and Committee concerning the evaluation of the clinical practice of members of the medical staff;
- b) Recommendations concerning the establishment and maintenance of professional standards;
- c) Reporting to the Board of Directors, the CEO and the President on the quality, effectiveness and availability of the medical care provided;
- d) Making recommendations concerning the quality of medical care at the Health Centre; and
- e) Making recommendations concerning the availability and adequacy of resources to provide appropriate medical care.⁴

¹ [2009] B.C.I.P.C.D. No. 10, paras. 10-14.

² [2007] B.C.I.P.C.D. No. 28.

³ Order F06-15, [2006] B.C.I.P.C.D. No. 22; Order F10-08, [2010] B.C.I.P.C.D. No. 12.

⁴ PSHA’s initial submission, para. 25.

[12] It submits further that the Board of Directors has established a series of other committees that report to the MAC on issues of quality assurance. These committees consist of the Safety and Quality of Medical Care Committee, the Infection Control Committee and the Mortality Review Committee. The PHSA describes these committees as “committees of health care professionals with responsibilities for the improvement of medical and hospital care or practice in the Health Care Centre”. The PHSA submits that these committees are also committees in accordance with s. 51(1) of the *Evidence Act*.⁵

[13] The PHSA submits that all of the passages that it has withheld under s. 51 of the *Evidence Act* contain information that was provided to the MAC or its subcommittees or is information about the findings or conclusions of the committees.⁶ The PHSA submits an affidavit from the Head of Pathology and Laboratory Medicine at the CWHC as evidentiary support.

[14] The PHSA submits:

The passages severed from the Department meetings minutes include specific incidents related to patient care and issues of hospital practice related to patient care that were reported to the Quality of Care Committee/Safety and Quality of Medical Care Committee and information on infectious diseases within the Health Centre that was required to be reported to the Infection Control Committee. The passages also include information relating to the findings or conclusions of the Medical Advisory Committee and the Quality of Care Committee/Safety and Quality of Medical Care Committee that were reported to the Department members in accordance with the Medical Staff Rules.⁷

[15] The PHSA submits that the departmental committee is responsible “for studying, investigating and evaluating the care provided by its members for the purpose of improving the care and are required to report regularly on those activities to the Medical Advisory Committee through the department heads.”⁸ The department heads, in turn, brief the departmental committee about matters that have been before the MAC.⁹ The PHSA does not argue, however, that it is a committee under s. 51 of the *Evidence Act* and I see no reason to conclude that it would qualify for coverage under the *Evidence Act*

[16] The applicant does not challenge the application of the *Evidence Act* directly. He merely asserts that he remains a member of the Department of Pathology and Laboratory Medicine and believes that he should be able to have access to the minutes of the meetings in the same way that he did when he

⁵ PSHA’s initial submission, para. 31.

⁶ PSHA’s initial submission, para. 32.

⁷ PSHA’s initial submission, para. 36.

⁸ PSHA’s initial submission, para. 34.

⁹ PSHA’s initial submission, para. 35.

previously attended these meetings.¹⁰ He also submits that the Head of the Department of Pathology and Laboratory Science is now sending him unsevered copies of the minutes when they become available. He argues that this

confirmation waives the entire suppression being maintained on the minutes retrospectively. Any further argument from the body in this Inquiry is therefore moot. The records should be provided in their fullest.¹¹

[17] The PSHA acknowledges that the applicant is now receiving copies of the minutes routinely as a member of the department. It contends, however, that the matter at issue is his request for records under FIPPA and that “whether or not he is entitled to the records under any other legal grounds is not relevant to the determination of his entitlement to the records as an Applicant under FIPPA.”¹²

[18] I agree with the PSHA on this point. My role is to determine how FIPPA applies in the case of the applicant’s formal request and whether s. 51 of the *Evidence Act* applies to any of the information. The fact that he has other avenues of access does not affect how FIPPA applies.

Analysis

[19] Senior Adjudicator Francis found in Order F06-15 that the MAC of the CWHC and its subcommittees, such as the Infection Control Committee, are committees for the purposes of the *Evidence Act*.¹³ Any information that was submitted to the MAC or its subcommittees in accordance with s. 51(5) must not be disclosed. The same applies to any findings or conclusions of any of these committees.

[20] I have reviewed the information that the PSHA submits is subject to s. 51 of the *Evidence Act*. In her affidavit, the Head of Pathology and Laboratory Medicine addresses each passage to which PSHA has applied s. 51 of the *Evidence Act*. There are passages that reflect discussions of the MAC and its subcommittees that were communicated to the members at the departmental committee. These passages disclose the findings or conclusions of a committee covered by s. 51 of the *Evidence Act*, in accordance with s. 51(5). I find that the PSHA has applied s. 51 of the *Evidence Act* appropriately to the passages on pp. 27, 42 and 184 of the first request. This information is therefore excluded from the scope of FIPPA.

[21] The PSHA has also applied s. 51 of the *Evidence Act* to information about specific incidents relating to the medical care of a patient that the affidavit confirms was reported to, and investigated by, the Safety and Quality of Medical

¹⁰ Applicant’s initial submission p. 1; Applicant’s reply submission, p. 1.

¹¹ Applicant’s reply submission, p. 4.

¹² PSHA’s reply submission, para. 2.

¹³ Order F06-15, [2006] B.C.I.P.C.D. No. 22, para 42.

Care Committee.¹⁴ These passages contain information that was disclosed to a committee covered by s. 51 of the *Evidence Act* and/or the findings or conclusions of that committee, in accordance with s. 51(5). I find that the PHSA has applied s. 51 of the *Evidence Act* appropriately to the relevant passages on pp. 39, 43, 179 and 240 of the first request. This information is therefore also excluded from the scope of FIPPA.

[22] There is an issue, however, with how the PHSA has applied s. 51 of the *Evidence Act* to the remaining passages. In her affidavit, the Head of Pathology and Laboratory Medicine describes these passages as relating to the status or outbreak of infectious diseases that were “required to be reported to the Infection Control Committee”.¹⁵ The PHSA does not actually confirm that the information to which the record refers was either presented to the Infection Control Committee or originated with the committee, in accordance with s. 51(5).

[23] In my view this evidence was not sufficient to conclude that s. 51 of the *Evidence Act* applied. I therefore gave the PHSA an opportunity to clarify whether the committee was the source of the information in these passages, but it replied that the PHSA “will not be providing any further submissions on the issue identified in the adjudicator’s letter”.¹⁶

[24] The connection between the information and the records received or created by a s. 51 committee is crucial to the application of s. 51 of the *Evidence Act*. Senior Adjudicator Francis cites Dillon J. in *Sinclair v. March*.¹⁷

[12] ... the purpose of the protection in s. 51 is to give hospitals latitude to improve the quality of medical care and practice in hospitals. ... The scope of the section is limited. ... Hospital committees are not to be fearful that their work to advance and enhance the quality of hospital care and practice will be exposed to scrutiny in the event of civil proceedings. But the section does not give blanket protection to all of a hospital’s documentary workings under the rubric of improving patient care and practice.

[25] There must be evidence of a direct connection between the information in the record and it having been submitted to, or originating from, the committee, in accordance with s. 51(5). With some of the passages, there is no evidence of connection to any of the appropriate committees and, therefore, these passages in the record contain nothing that warrants the application of s. 51 of the *Evidence Act*. These passages appear on pp. 30, 36, 39, 43, 52, 90, 94, and 158. Therefore, I find that s. 51 of the *Evidence Act* does not apply to the information in these pages withheld under s. 51. This means that FIPPA applies

¹⁴ PHSA’s initial submission, Affidavit of the Head of Pathology and Laboratory Medicine, paras. 7(a), (d), (g), (m), and (o).

¹⁵ PHSA’s initial submission, Affidavit of the Head of Pathology and Laboratory Medicine, paras. 7(b), (c), (e), (h), (i), (j), (k), and (l).

¹⁶ PHSA’s supplementary submission, p. 1.

¹⁷ [2000] B.C.J. No. 397 (S.C.), reversed in part [2000] B.C.J. No. 1676 (C.A).

to this information. The PHSa must make a decision under FIPPA as to whether the applicant is entitled to have access to this information.

[26] **3.4 Third-Party Privacy**—Numerous orders have considered the application of s. 22. One example is the following passage from Order 01-53:¹⁸

[22] **3.3 How Section 22 is Applied** – When a public body is considering the application of s. 22, it must first determine whether the information in question is personal information within the Act’s definition of “personal information”. ...

[23] The next step in the s. 22 analysis is to determine whether disclosure of the personal information would be an unreasonable invasion of a third party’s personal privacy. The public body must consider whether disclosure of the disputed information is considered, under s. 22(4) of the Act, *not* to result in an unreasonable invasion of third-party privacy. ...

[24] Next, the public body must decide whether disclosure of the disputed information is, under s. 22(3), *presumed* to cause an unreasonable invasion of privacy. According to s. 22(2), the public body then must consider all relevant circumstances in determining whether disclosure would unreasonably invade personal privacy, including the circumstances set out in s. 22(2). The relevant circumstances may or may not rebut any presumed unreasonable invasion of privacy under s. 22(3) or lead to the conclusion that disclosure would not otherwise cause an unreasonable invasion of personal privacy. [italics in original]

[27] I take the same approach here.

Does the information constitute personal information?

[28] The PHSa has applied s. 22 of FIPPA to certain comments that departmental medical staff made during the meetings. The PHSa submits that these comments constitute the personal opinions of those medical staff. I will deal with this information separately below.

[29] Some of the other information at issue is the medical information of identifiable patients and employees. There is still other information that is about the employment and education of current and prospective employees of the CWHC who are also identifiable. I find that all of this information constitutes personal information about identifiable individuals. As none of the factors in s. 22(4) of FIPPA applies to this information, I will turn to s. 22(3) to determine whether disclosure would be presumed to be an unreasonable invasion of privacy.

¹⁸ [2001] B.C.I.P.C.D. No. 56.

Does information in the records constitute the medical history of third parties?

[30] The PHSA submits that some of the withheld information constitutes the medical history of individuals. I have reviewed the records and can confirm that, in some cases, the information consists of the medical information of patients and employees, including illness-related absences and maternity leave of some doctors and nurses. The disclosure of this information is presumed to be an unreasonable invasion of third-party privacy under s. 22(3)(a).

Does information in the records constitute the medical practitioners' employment or educational history?

[31] The PHSA submits that some of the withheld information constitutes the employment history of individuals. I have reviewed the records and can confirm that some of the information consists of employment and educational history of PHSA employees and prospective employees, such as candidates in job competitions. The information consists of evaluations of work, announcement of retirements and new hiring, the passing of exams and the immigration issues involving employees or prospective employees. The disclosure of this information is presumed to be an unreasonable invasion of third-party privacy under s. 22(3)(d).

Relevant circumstances

[32] Having found that disclosure of the medical and employment and educational history of third parties is presumed to be an unreasonable invasion of the third-party personal privacy, it would be customary for me to turn to whether the relevant circumstances rebut this presumption. In this case, the parties have not raised any relevant circumstances with respect to this information. I have reviewed the relevant circumstances listed in s. 22(2) and, from the face of the record, I cannot see any of them applying. Nor am I able to identify any other relevant circumstances that might apply.

Would disclosure be an unreasonable invasion of privacy?

[33] There are no relevant circumstances that rebut the presumption of unreasonable invasion of personal privacy with respect to the medical information of patients and staff. I find that s. 22(1) applies to this information. In addition, there are no relevant circumstances that rebut the presumption of unreasonable invasion of personal privacy with respect to the employment and educational history of staff and prospective staff. In this, I am referring to evaluations of work, announcement of retirements and new hiring, the passing of exams and the immigration issues involving employees or prospective employees. I find that s. 22(1) applies to this information.

Comments departmental medical staff made during the meetings

[34] The information at issue here is comments that staff made during the performance of their job function about issues relating to the CWHC. As noted above, the PHSA argues that these comments are the personal opinions and thus the personal information of those staff.

[35] In Order F08-03, Commissioner Loukidelis found that “an employee’s name is personal information, where it appears in the context of the proper performance of her or his employment duties and functions.”¹⁹ The same applies with the name of an employee identifying them as having expressed comments in their employment capacity. Therefore, I find that the comments identified as having been made by particular department staff members are the personal information of that individual.

[36] The PHSA submits that the comments that professional staff made during the meetings are their personal employment history information in accordance with s. 22(3)(d). It cites Order F05-30 as an authority in support of its position.²⁰ The PHSA fails to note, however, that Order F05-30 and others have found that information about what employees said and did constituted their employment history when the information was collected in the context of a workplace investigation.²¹

[37] Commissioner Loukidelis, in Order 01-53, also clarified that s. 22(3)(d) would not ordinarily apply to the name and identifying information about an employee.²² In Order 01-15, he found that s. 22(3)(d) did not apply to records of actions taken by an employee; “information as to what was done and by whom”; or to a record of a telephone call with an employee. He also held that one “employee’s comment on a work-related decision by [another] employee” did “not relate to a third party’s employment history”.²³

[38] This does not mean that information about what employees said would never constitute employment history outside the context of workplace investigations. Other examples from past orders of personal information that constitutes employment history are information about an employee’s work record, including disciplinary actions, and reasons for leaving a job.²⁴ None of these circumstances applies with respect to the comments at issue in this case.

¹⁹ [2008] B.C.I.P.C.D. No. 6, para. 84.

²⁰ PHSA’s initial submission, paras. 5(c) and 9; Order F05-30, [2005] B.C.I.P.C.D. No. 41.

²¹ See for example, Order F10-21, [2010] B.C.I.P.C.D. No. 32; Order F08-04, [2008] B.C.I.P.C.D. No. 7; Order F08-03, [2008] B.C.I.P.C.D. No. 6; Order 01-53, [2003] B.C.I.P.C.D. No. 56.

²² Order 01-53, para. 40.

²³ Order 01-51, [2001] B.C.I.P.C.D. No. 54, para. 42.

²⁴ Order 01-51, para. 41.

[39] I find that the information at issue does not fall neatly into any of the presumed unreasonable invasions of personal privacy under s. 22(3). However, as Commissioner Loukidelis held, in Order 02-45:²⁵

Because the disputed information is third-party personal information, however, it is still necessary to consider relevant circumstances in determining whether s. 22(1) requires the information to be withheld because it's [*sic*] disclosure would "unreasonably" invade personal privacy. This step is required by the opening words of s. 22(2).

[40] Therefore, I will now consider the relevant circumstances that apply with respect to this information.

[41] The PHSA submits that the departmental medical staff members supplied their comments in confidence.²⁶ Therefore, PHSA takes the position that s. 22(2)(f) is a relevant circumstance with respect to this information. The PHSA submits that disclosure of the comments would have the effect of discouraging the free exchange of opinions at the meetings, which would harm the quality of the decisions that the committee makes and could harm the quality of health care.²⁷ The head of the department deposes:

Based on my experience as a member of the Department attending Department meetings, members, including myself, expect that their comments and opinions offered in the meetings will be treated confidentially by the other members of the Department and not be repeated or disclosed outside of the meeting participants, and treat as confidential the comments and opinions of other Department members provided during the Department meetings. ...

If the comments and opinions expressed by Department members during Department meetings are not treated confidentially, other members will not offer their full comments and opinions on important issues in the Department and the Health Centre and the quality and depth of the discussions on those issues will be impaired.²⁸

[42] The applicant agrees with the PHSA on these points, but denies that there is any reason to believe that, if the information were disclosed to him, he would not keep it confidential.²⁹ This affidavit evidence persuades me that the members of the department have expectations of confidentiality with respect to comments that they make at the meetings. I find that they have supplied this information in confidence in accordance with s. 22(2)(f) and this is a relevant circumstance that favours withholding the information.

²⁵ [2002] B.C.I.P.C.D. No. 45, para. 26.

²⁶ PHSA's initial submission, paras. 9-10.

²⁷ PHSA's initial submission, para. 11.

²⁸ PHSA's initial submission, Affidavit of In her affidavit, the Head of Pathology and Laboratory Medicine, paras. 8 and 10.

²⁹ Applicant's reply submission, p. 3.

[43] The key consideration in this case is, however, that the opinions that members of the department expressed in the meetings, while constituting their personal information, are not opinions of a personal nature. They are professional opinions. They are comments that physicians have made in their professional capacity about issues relating to their work. None of the comments relates to their personal lives. In Order F08-03, Commissioner Loukidelis concluded that s. 22(1) did not apply to the personal information of employees because the information “lacks a distinctly personal dimension” and that this was the only relevant circumstance he considered in his analysis.³⁰ I find that the same consideration applies in this case, as the information is similar in character.

[44] In assessing the relevant circumstances, I found that the fact that the comments were professional in nature and were expressed in a professional capacity meant that they lacked a “distinctly personal dimension”, and this weighs strongly in favour of disclosure. The only circumstance weighing in favour of withholding the comments was that the department staff members provided them in confidence. I gave that consideration little weight, because the comments were not of a personal nature. Therefore, I find that disclosure of the comments would not be an unreasonable invasion of the personal privacy of the department staff members who made them. Section 22(1) does not apply to this information.

[45] In the alternative, if the comments do constitute the staff members’ employment history, I find that the relevant circumstance with respect to the non-personal nature of the comments rebuts any presumption that disclosure would be an unreasonable invasion of personal privacy and s. 22(1) does not apply to this information.

4.0 CONCLUSION

[46] For the reasons discussed above, I make the following orders under s. 58 of FIPPA:

1. I find that s. 51 of the *Evidence Act* applies to the information, as the PHSA has applied it, on the following pages: 27, 39 (Program 4), 42, 43 (Program 4), 179, 184 and 240.
2. I find that s. 51 of the *Evidence Act* does not apply to the information, as the PHSA has applied it, on the following pages: 30, 36, 39 (Program 5), 43 (Program 5), 52, 90, 94, and 158. I require the head of the PHSA to comply with FIPPA by processing the applicant’s request for access to this information.

³⁰ Order F08-03, [2008] B.C.I.P.C.D. No. 6, paras. 76-86.

3. Subject to paragraph # 4 below, I require the PHSA to refuse to disclose, in accordance with s. 22(1), the information in the requested record.
4. I require the PHSA to disclose to the applicant the information, which it had previously withheld under s. 22, on the following pages of the first request: 5 (item 6.4 only), 32, 68, 71 (item 6.0b only), 79, 82, 85, 87, 88, 94, 96, 97, 98, 99, 103, 104, 114 (item 7.0 Program 1 only), 115 (item 9.1 only), 117, 118, 119, 120, 128, 133 (item 6.3 only), 136 (paras. 4 and 8 only), 142, 145, 146, 148, 164, 193, 203, 206 (item 4.2 only), and 207. I also require the PHSA to disclose to the applicant the information, which it had previously withheld under s. 22, on the following pages of the second request: 3, 7, 12, 21, and 24.
5. As conditions under s. 58(4), I specify the following:
 - a. I require the head of the PHSA to give the applicant and me evidence of its compliance with para. 2 above within 30 days of the date of this order, as FIPPA defines “day”, that is, on or before , March 9, 2011 and, concurrently, to copy me on its cover letter to the applicant, together with any records it discloses.
 - b. I require the PHSA to give the applicant access to the information identified in para. 4 above within 30 days of the date of this order, as FIPPA defines “day”, that is, on or before March 9, 2011 and, concurrently, to copy me on its cover letter to the applicant, together with a copy of the records.

January 25, 2011

ORIGINAL SIGNED BY

Jay Fedorak
Adjudicator

Appendix

The relevant provisions of the *Freedom of Information and Protection of Privacy Act* read as follows:

Disclosure harmful to personal privacy

- 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 ...
- (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 ...
- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation, ...
- (d) the personal information relates to employment, occupational or educational history, ...

Relationship of Act to other Acts

- 79 If a provision of this Act is inconsistent or in conflict with a provision of another Act, the provision of this Act prevails unless the other Act expressly provides that it, or a provision of it, applies despite this Act.

The relevant provisions of the *Evidence Act* read as follows:

Health care evidence

51(1) In this section:

“board of management” means a board of management as defined in the *Hospital Act*;

“committee” means any of the following:

- (a) a medical staff committee within the meaning of section 41 of the *Hospital Act*;
- (b) a committee established or approved by the board of management of a hospital, that includes health care professionals employed by or practising in that hospital, and that

for the purpose of improving medical or hospital care or practice in the hospital

- (i) carries out or is charged with the function of studying, investigating or evaluating the hospital practice of or hospital care provided by health care professionals in the hospital, or
- (ii) studies, investigates or carries on medical research or a program;
- (c) a group of persons who carry out medical research and are designated by the minister by regulation;
- (d) a group of persons who carry out investigations of medical practice in hospitals and who are designated by the minister by regulation;

“health care professional” means

- (a) a medical practitioner,
- (b) a person qualified and permitted under the *Dentists Act* to practise dentistry or dental surgery,
- (c) a registered nurse as defined in the *Nurses (Registered) Act*,
- (d) [Repealed 1998-42-7.]
- (e) a person registered as a member of a college established under the *Health Professions Act*,
- (f) a pharmacist as defined in the *Pharmacists Act*, or
- (g) a member of another organization that is designated by regulation of the Lieutenant Governor in Council;

“hospital” means a hospital as defined in the *Hospital Insurance Act* and includes

- (a) a hospital as defined in the *Hospital Act*, and
 - (b) a Provincial mental health facility as defined in the *Mental Health Act*; ...
- (5) A committee or any person on a committee must not disclose or publish information or a record provided to the committee within the scope of this section or any resulting findings or conclusion of the committee except
- (a) to a board of management,
 - (b) in circumstances the committee considers appropriate, to an organization of health care professionals, or
 - (c) by making a disclosure or publication

- (i) for the purpose of advancing medical research or medical education, and
 - (ii) in a manner that precludes the identification in any manner of the persons whose condition or treatment has been studied, evaluated or investigated.
- (6) A board of management or any member of a board of management must not disclose or publish information or a record submitted to it by a committee except in accordance with subsection (5) (c).
- (7) Subsections (5) and (6) apply despite any provision of the *Freedom of Information and Protection of Privacy Act* other than section 44 (2) and (3) of that Act.
- (8) Subsection (7) does not apply to personal information, as defined in the *Freedom of Information and Protection of Privacy Act*, that has been in existence for at least 100 years or to other information that has been in existence for at least 50 years.

Hospital Act

“board of management” means the directors, managers, trustees or other body of persons having the control and management of a hospital;

- 41(1) In this section, **“medical staff committee”** means a committee established or approved by a board of management of a hospital for
- (a) evaluating, controlling and reporting on clinical practice in a hospital in order to continually maintain and improve the safety and quality of patient care in the hospital, or
 - (b) performing a function for the appraisal and control of the quality of patient care in the hospital.