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Decision F11-04

COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA

Jay Fedorak, Adjudicator

November 23, 2011

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Summary: The College requested relief from any future requests of the physician. There are no requests currently open. The physician had already received all of his own personal information. The College does not require relief under s. 43 of FIPPA to be able to refuse to provide additional copies of records it had already provided to him. The adjudicator declined to give the College the formal authority under s. 43 to disregard future requests.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 43.

Authorities Considered: B.C.: Auth. (s. 43) 99-01, December 2, 1999, (unreported); Order 00-26, [2000] B.C.I.P.C.D. No. 29; Order 01-34, [2001] B.C.I.P.C.D. No. 35; Order 02-18, [2002] B.C.I.P.C.D. No. 18; Auth. (s. 43) 02-01, [2002] B.C.I.P.C.D. No. 47; Auth. (s. 43) 02-02, [2002] B.C.I.P.C.D. No. 57; Order 04-25, [2004] B.C.I.P.C.D. No. 25; Order 04-36, [2004] B.C.I.P.C.D. No. 37; Decision F05-01, [2005] B.C.I.P.C.D. No. 4; Order F05-10, [2005] B.C.I.P.C.D. No. 11; Decision F05-03, [2005] B.C.I.P.C.D. No.21; Decision F06-02, [2006] B.C.I.P.C.D. No. 3; Decision F06-03, [2006] B.C.I.P.C.D. No. 6; Order F06-05, [2006] B.C.I.P.C.D. No. 10; Order F06-07, [2006] B.C.I.P.C.D. No. 12; Order F06-08, [2006] B.C.I.P.C.D. No. 13; Order F06-09, [2006] B.C.I.P.C.D. No.14; Decision F07-08, [2007] B.C.I.P.C.D. No 28; Order F09-07, [2009] B.C.I.P.C.D. No. 10; Order F09-25, [2009] B.C.I.P.C.D. No.31; Decision F10-09, [2010] B.C.I.P.C.D. No. 47; Order F11-10, [2011] B.C.I.P.C.D. No. 13.

Cases Considered: B.C.: *Crocker v. British Columbia (Information and Privacy Commissioner)* (1998), 155 D.L.R. (4th) 220 (B.C.S.C.); *Mazhero v. British Columbia (Information and Privacy Commissioner)* (1998), 56 B.C.L.R. (2d) 333 (B.C.S.C.).

INTRODUCTION

[1] The College of Physicians and Surgeons of British Columbia (“College”) asked the Office of the Information and Privacy Commissioner (“OIPC”) for authorization to disregard any further requests for records that the physician may make under the *Freedom of Information and Protection of Privacy Act* (“FIPPA”). The College asserts that these requests would be frivolous, vexatious and/or repetitious for the purposes of s. 43 of FIPPA. The physician currently does not have any open requests with the College.

ISSUE

[2] The issue to be decided under s. 43 is whether there are requests from the physician that are frivolous or vexatious and/or whether owing to their repetitious nature would unreasonably interfere in the operations of the College.

[3] The College seeks the following remedies:¹

- Authorization to disregard all future requests for general information from or on behalf of the physician;
- Authorization to disregard future requests for the physician’s personal information for two years;
- Authorization to disregard any access requests in excess of one open request, after the two years has elapsed;
- The College not be required to spend more than five hours responding to each request;
- The College be able to determine what constitutes a single request; and
- Authorization to disregard any request for records that have been the subject of a previous request to the College by the physician.

DISCUSSION

[4] **Background**—The physician is a foreign physician who had a dispute with the College arising out of his membership on what the College describes as the Temporary Register. One of his requests under FIPPA resulted in Order F11-10.² That order outlined the background to the request, but I will repeat it here for the sake of convenience.

[5] In April 1990, the College Executive Committee resolved to erase the physician’s name from the Temporary Register, based on misrepresentations he made at the time he applied for registration. In May 1990, the Executive

¹ These are set out in paras. 45-47 of the College’s application of August 30, 2011.

² [2011] B.C.I.P.C.D. No. 13.

Committee of the College rescinded the Resolution of April 20, 1990 and resolved to accept his resignation as a member of the College.

[6] In December 1991, the physician commenced an action, suing the College for defamation arising out of the events of April and May 1990. The action against the College was dismissed. In February 2002, the physician complained to the Office of the Ombudsperson of British Columbia, making the same allegations as he had made in his court action. The Ombudsperson's Office closed its investigation in March 2003, with no findings being made against the College. In 2005, the physician filed a complaint with the British Columbia Human Rights Tribunal ("BCHRT"), alleging continued discrimination arising out of the same events of April and May 1990. The BCHRT dismissed the Applicant's complaint.

[7] The College said that the physician has also made 20 requests to it under FIPPA. It consolidated these 20 into seven requests and has dealt with all of them.³

[8] The College points out that, in the present case, the physician has already exhausted his dispute resolution claims with the College, the Ombudsperson, the BC Human Rights Tribunal and the courts. He has received copies of all of the records and there is no longer any ongoing business between him and the College.

[9] **Applicable Principles**—Section 43 gives the OIPC the discretionary power to authorize public bodies to disregard requests that:

- (a) would unreasonably interfere with the operations of the public body because of the repetitious or systematic nature of the requests, or
- (b) are frivolous or vexatious.

[10] **Description of Previous Requests**—The College provided me with a description of the physician's previous requests for access to records. They are as follows, with the year in which he made them:

1. Documents, including notification sent by a doctor in May 1990 to all authorities; letters sent by another doctor to the physician and his counsel in May 1990; and correspondence the College received from the Registrar Medical Council Canada in 1990. (2008)
2. All records pertaining to the physician's membership in the College December 1989 to April 1990. (2008)
3. All correspondence to and from the College regarding his status since 1990. (2008)

³ He also made a request for correction of personal information under s. 29 of FIPPA.

4. Names of all doctors who stand erased on the College's records during 1989-1990; all records of the College's dealings with ABC Australia about the physician; a character reference from a professor; a two-page document a doctor presented to the Executive Committee. (2009)
5. Requests for unspecified information. (2009)
6. Respondent's entire file excluding records subject to solicitor-client privilege. (2009)
7. Duplicate of request #6 for the physician's entire file excluding records subject to solicitor-client privilege. (2011)

[11] The reason the physician made request #7 (a duplicate of request #6) is as follows. Request #6 went to inquiry, and resulted in Order F10-11, which determined that he was not entitled to access some of the information. In that inquiry, he had attempted to argue that s. 25 of FIPPA applied to the records (which, if it applied, would have required disclosure of all of the information as being in the public interest). Adjudicator Francis did not permit him to argue the application of s. 25 of FIPPA because he raised the matter of its application too late in the process. Subsequent to the release of Order F10-11, he made a second request for the same records because he wanted another opportunity to gain access to the information that the Order denied him. He seems to have believed that s. 25 still applied to the information despite Order F10-11.

[12] The College responded to his second request (request #7) by indicating that it was not required to make a duplicate response and refused to do so. The physician did not ask for a review of that response, and that matter is now closed. Since then, he has not made another request for the same information.

[13] **The Requests in Issue**—There are no requests in issue, as the physician does not currently have any open requests with the College. The College is asking for relief only from future requests, which I find problematic. While previous decisions have provided limits on the number or subject matter of future requests to which public bodies would be required to respond, in each case, the public body was facing multiple open requests. The OIPC has not granted relief for any cases where there were no open requests. I see no reason to do so here.

[14] There is no evidence that the physician has made multiple requests simultaneously. He has not made a new request since 2009, other than recently making a duplicate request described above. All but two of his requests have been for his own personal information, and he has now received copies of all records containing his personal information. According to the College, there is no new information about him for him to request. Order F11-10 has determined the information that he was entitled to receive and that which the College was entitled to withhold.

[15] I agree that the College should not be required to process any further requests for records that he has already received. However, as I noted in Decision F10-09⁴, previous orders have found that FIPPA does not normally require public bodies to disclose copies of records that they have already provided to the same applicant, either through a previous request or another avenue of access. Therefore, public bodies do not normally require relief under s. 43 to deal with such requests.

[16] In this case, the physician made two requests for the same information. In response to the second request, the College refused to provide the physician with a second set of records, and closed the file. As I noted above, that matter is now closed. I see no reason why the College could not respond in the same way to any future requests where some, or all, of the same information is at issue.

[17] I also note that the College has indicated that the physician has exhausted all avenues of complaint with respect to events of 1990. It appears unlikely that the physician could make any future requests that would impose an unreasonable burden on the College.

[18] The College has indicated that the physician has in the past accompanied his requests for records with multiple emails about the requests and other issues which it says constitute harassment. I note that s. 43 of FIPPA does not provide the OIPC with any powers authorizing public bodies to disregard communications from applicants or to absolve them from responding to such communications. I also note, on the other hand, that there is no requirement in FIPPA for public bodies to respond to questions or other kinds of communications from applicants, other than to provide access to records requested in accordance with s. 5. There is nothing in FIPPA that prevents the College from dealing with these communications as it chooses.

CONCLUSION

[19] In the circumstances of this case, I conclude that no order is warranted.

November 23, 2011

ORIGINAL SIGNED BY

Jay Fedorak
Adjudicator

OIPC File: F11-45592

⁴ [2010] B.C.I.P.C.D. No. 47, paras. 26-27.