



Order F23-24

COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA

David Goodis
Adjudicator

March 29, 2023

CanLII Cite: 2023 BCIPC 28
Quicklaw Cite: [2023] B.C.I.P.C.D. No. 28

Summary: An applicant made a request to the College of Physicians and Surgeons of British Columbia (College) seeking access to records relating to himself. The applicant submitted to the College that it had a duty to disclose these records to him because disclosure would be in the public interest under s. 25 of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator found that the College was not required to disclose the records to the applicant under s. 25.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, s. 25(1)(b).

INTRODUCTION

[1] The applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) for access to records held by the College of Physicians and Surgeons of British Columbia (College) about himself that the College had not already released to him in previous FIPPA access requests.¹ The applicant submitted to the College that it had a duty to provide him with these records under s. 25 of FIPPA because disclosure would be in the public interest.

[2] The College responded to the request by advising the applicant that:

- the College and the Office of the Information and Privacy Commissioner (OIPC) have already adequately dealt with any records or information withheld from him in response to previous access requests and OIPC reviews;

¹ Applicant's request dated December 8, 2019.

- the College has not created any records in addition to those already identified as responsive to his most recent request in 2017 and earlier requests; and
- any records or information the College holds about the applicant “do not engage the public interest in any way that is required” under s. 25 of FIPPA.

[3] The applicant asked the OIPC to review the College’s decision.

[4] Mediation did not result in a full resolution of the matter, and it proceeded to inquiry.

ISSUE AND BURDEN OF PROOF

[5] In this inquiry I must decide whether the College is required to disclose information to the applicant under s. 25. FIPPA is silent on who has the burden of proving that it applies. I will follow previous OIPC orders which have said that it is in the interests of both parties to provide the adjudicator with whatever evidence and argument they have regarding s. 25.²

DISCUSSION

Background

[5] The OIPC has previously adjudicated access to information matters between the applicant and the College, including in Order F11-10, Decision F11-04, Order F20-29. I have set below a summary of the history of the disputes between the parties that is largely drawn from these orders.³

[6] The College regulates the practice of medicine in the province. All physicians who practise medicine in the province must be registrants of the College. A foreign-trained physician may apply to the College for placement on the temporary register, subject to any conditions required by the College’s registration committee.

[7] The applicant is a foreign physician who was involved in a lengthy and extensive dispute with the College over the removal of his name from the College’s

² See, for example, Order F07-23, 2007 CanLII 52748 (BC IPC) and Order F22-64, 2022 BCIPC 72 (CanLII).

³ Order F11-10, 2011 BCIPC 13, Decision F11-04, 2011 BCIPC 40, and Order F20-29, 2020 BCIPC 35.

temporary register. The applicant alleges, among other things, that the College engaged in discriminatory behaviour against him and was responsible for a “campaign of misinformation” about him.⁴ The dispute began in 1990 and made its way through various proceedings before ending unsatisfactorily for the applicant in 2005.

[8] In particular, the applicant commenced an action in 1991, suing the College for defamation arising out of the events of 1990. It is not clear how the court disposed of that action. In 2002, the applicant complained to the Ombudsperson of British Columbia. The allegations made to that office were the same as those in the applicant’s lawsuit against the College. The Ombudsperson’s Office closed its investigation in 2003, with no findings being made against the College.

[9] In 2005, the applicant filed a complaint with the British Columbia Human Rights Tribunal, alleging continued discrimination based on the same events in 1990. The allegations were the same as those brought in the 1991 court action. The Tribunal dismissed the applicant’s complaint.

[10] A few years after those events, the applicant made several different FIPPA access requests to the College for records related to the dispute and the applicant’s dealings with the College. The applicant began his requests in 2008 to 2011 and then continued in 2016 and 2017.

[11] In 2011, the applicant asked the College for access to all records relating to him. The College disclosed 1,616 pages of records to him and withheld other records under various exemptions in FIPPA. On review, in Order F11-10, the OIPC ordered the College to disclose some additional information to the applicant, but largely upheld the College’s decision.

[12] Throughout 2015, the applicant wrote to the College and other individuals and organizations about the dispute, complaining about the College’s conduct towards him. In 2016, the applicant asked the College for access to all correspondence about him. The applicant believed the College was corresponding “with different bodies and individuals” about him.

[13] During 2016, the applicant and the College exchanged numerous emails about the 2016 access request. In October 2016, the College provided the applicant with partial access to the requested records.

⁴ Applicant’s initial submission at para. 23.

[14] Throughout 2017, the applicant wrote to various individuals and organizations complaining about the College. The applicant copied the College on those communications. In October 2017, the applicant asked the College for a copy of any annual reports that mention him.

[15] In late 2017, the College informed the applicant that he was only mentioned in the 2005 annual report and the College had already given him a copy of this record. The next day, the applicant requested that the College provide access to all correspondence about him from October 2016 to November 2017.

[16] In Order F20-29, the OIPC adjudicator found that some of the records he requested in 2017 were exempt under various provisions of FIPPA and ordered the College to disclose other records to the applicant.

Records and information at issue

[17] The records and information at issue consist of the records or parts of records that the College previously withheld from the applicant as a result of the requests that resulted in Orders F11-10 and F20-29.

Public interest disclosure, s. 25

[18] The applicant submits that the College must disclose the dispute information to him because s. 25 applies. In essence, the applicant submits that disclosure of the records would reveal wrongdoing on the part of various College officials, and that disclosure would serve the public's interest in holding public bodies accountable. Although he does not specify if he means s. 25(1)(a) or (b), it is apparent he believes s. 25(1)(b) applies.

[19] The relevant portions of s. 25 of FIPPA read:

25 (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

...

(b) the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

[20] Section 25 requires the disclosure of “information”, not necessarily the disclosure of the entire record that contains that information. In many instances the obligation under s. 25 to disclose information to the public, an affected group of people or an applicant will be satisfied by disclosing the pertinent, relevant, information from the record.⁵

[21] Given what s. 25(2) states, if s. 25(1) applies, it overrides every other provision in FIPPA, including the exceptions to disclosure and the privacy protections in FIPPA. Therefore, the threshold for proactive disclosure under s. 25(1) is very high. The s. 25(1) duty to disclose exists only in the “clearest and most serious of situations” and the disclosure must be “not just arguably in the public interest, but clearly (i.e., unmistakably) in the public interest.”⁶

[22] The first question to answer when deciding if s. 25(1)(b) applies is whether the information concerns a matter that engages the public interest. For instance, is the matter the subject of widespread debate in the media, the Legislature, or by officers of the Legislature or oversight bodies? Does the matter relate to a systemic problem rather than to an isolated situation?

[23] If the matter is one that engages the public interest, the next question is whether the nature of the information itself meets the high threshold for disclosure. The list of factors that should be considered include whether disclosure would:

- contribute to educating the public about the matter;
- contribute in a substantive way to the body of information that is already available;
- facilitate the expression of public opinion or allow the public to make informed political decisions; or
- contribute in a meaningful way to holding a public body accountable for its actions or decisions.

[24] In any given set of circumstances there may be competing public interests, weighing for and against disclosure, and the threshold will vary according to those

⁵ Order F22-64, 2022 BCIPC 72.

⁶ For the principles discussed here, see also OIPC Investigation Report F16-02 <https://www.oipc.bc.ca/investigation-reports/1972> at pp. 26-27 and the OIPC’s guide “Section 25: The Duty to Warn and Disclose”, December 2018 [Guide] <https://www.oipc.bc.ca/resources/guidance-documents/>.

interests. FIPPA exceptions themselves are indicators of classes of information that, in the appropriate circumstances, may weigh against disclosure of the information.

Does the matter engage the public interest?

[25] The applicant provides lengthy and detailed submissions about what he believes is serious misconduct on the part of various officials with the College. He asserts that disclosure of the withheld information will serve the public interest by revealing these actions and by allowing the public to hold the College to account.

[26] I accept that there is a general public interest in how professional regulatory bodies conduct their statutory oversight functions. However, I do not accept that the information in dispute could invoke the College's duty under s. 25(1)(b). It appears that the concerns raised by the applicant are specific to him, and there is no evidence to indicate that the general public has or would have any significant interest in the actions taken by the College with respect to the applicant that date back to the 1990s.

[27] Even if I were to accept that the matter engages the public interest, there is little basis on which to conclude that nature of the information itself meets the high threshold for disclosure.

[28] First, the applicant has already received a significant portion of the records the College holds about him.

[29] Second, there has already been a significant degree of independent scrutiny of the College's actions on behalf of the public. Both the Human Rights Tribunal and the Ombudsperson conducted reviews of the College's actions in dealing with the applicant, and the applicant brought a court action against the College (although it is not clear how the court disposed of that action).

[30] To conclude, I find that the matter raised by the applicant does not engage the public interest and that, even if it did, he has not provided a sufficient basis on which to conclude that disclosure of the records would advance any such public interest.

CONCLUSION

[31] For the reasons given above, under s. 58(2) of FIPPA, I confirm the College's decision that it is not required under s. 25 to disclose the information in dispute to the applicant.

March 29, 2023

ORIGINAL SIGNED BY

David Goodis, Adjudicator

OIPC File: F20-82242