



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F23-40

COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA

Elizabeth Vranjkovic
Adjudicator

May 26, 2023

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Summary: The applicant requested access to all documents relating to him and his complaint against a named physician. The College of Physicians and Surgeons of British Columbia (College) disclosed the responsive records to the applicant but withheld some information in the records under s. 22(1) (unreasonable invasion of privacy) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator found that the College correctly applied s. 22(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 22(1), 22(2), 22(3), 22(3)(d), 22(4).

INTRODUCTION

[1] An individual (applicant) made an access request to the College of Physicians and Surgeons of British Columbia (College) for all documents relating to him and his complaint against a named physician (the physician), who is a former registrant of the College.

[2] The College released the responsive records to the applicant but withheld some information in the records under s. 22(1) (unreasonable invasion of a third party's personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the College's decision. Mediation by the OIPC did not resolve the matter and it proceeded to inquiry.

PRELIMINARY MATTERS

[3] The applicant raises several preliminary matters in his submission. I will consider each of these matters in turn below.

Joinder of related inquiries

[4] The applicant says that his complaint must be heard and adjudicated concurrently with three other complaints that are inextricably intermingled with this inquiry.¹

[5] I can see that the applicant previously requested that this inquiry be heard at the same time as these three other files and the registrar of inquiries, as the commissioner's delegate, declined his request.²

[6] I am not persuaded that the registrar's decision not to combine the files should be reconsidered. Besides, the OIPC closed these three files at the investigation stage, so they will not proceed to inquiry in any case.

OIPC's decision not to investigate other complaints

[7] The applicant included with his inquiry submission an application to reconsider the OIPC's decision not to investigate other complaints he filed with the OIPC. This inquiry is not the appropriate forum for such a request.³ As a result, I decline to consider the applicant's application for reconsideration.

Exclusion of other public bodies from inquiry

[8] The applicant says that it is fundamentally biased and unjust for the OIPC to exclude two other named public bodies from the inquiry process.⁴

[9] I do not see, and the applicant has not satisfactorily explained, how it is biased or unjust to exclude two other named public bodies from the inquiry process. This inquiry is about the College's decision to withhold certain information under FIPPA. I see no reason to include any other public bodies in this inquiry.

Bias

[10] The applicant raises concerns of bias. Specifically, the applicant says that "female" OIPC civil servants who are "seemingly feminists" and "most probably all pro-abortion" will be biased against him.⁵ The applicant "demands that the

¹ Applicant's response submission at page 2. He refers to OIPC files F20-83543, F20-83547 and F20-83557.

² Registrar's letter to the parties dated January 24, 2023 which declined to add Files F20-83543, F20-83547 and F20-83557 into this inquiry.

³ The OIPC's FIPPA Guide to OIPC Processes outlines the process for appealing the OIPC's decision to decline to investigate a matter at page 8. Available online: <https://www.oipc.bc.ca/guidance-documents/1599> .

⁴ Applicant's response submission at page 7.

⁵ Applicant's amended declaration at page 4.

members in the panel... be comprised equally of normal, unbiased males and females” because of “the nature of this Complaint and Review and high potential for gender bias and collusion amongst the women on the panel.” The applicant says that he will “draw an adverse inference from OIPC’s refusal to comply with this demand.”⁶

[11] I have delegated authority to decide all matters arising in the course of this inquiry. For the reasons that follow, I find that this would not lead a reasonable or informed person to conclude that there is a reasonable apprehension of bias, and there is no reason to have a panel “comprised equally of normal, unbiased males and females” decide this inquiry.

[12] The Supreme Court of Canada has found that the concept of bias is inextricably linked to the need for impartiality, which is the requirement that a decision-maker approach a case with an open mind.⁷ There is a strong presumption of impartiality and it is displaced only where a real likelihood or probability of bias has been shown.⁸ The burden of proof is high and it lies with the party alleging bias.⁹ The test for a reasonable apprehension of bias is: “what would an informed person, viewing the matters realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.”¹⁰

[13] The applicant has not provided any evidence to support his allegation of bias. He relies solely on gender and speculation about positions on feminism and abortion to suggest that a female adjudicator will be biased against him in deciding this inquiry.

[14] I am not persuaded that an informed person, viewing the matter realistically and practically – and having thought the matter through – would conclude that there is an apprehension of bias on my part.¹¹ Therefore, I decline to recuse myself from this inquiry.

Matters unrelated to FIPPA

[15] I can see that a significant amount of the applicant’s submissions and evidence is not about the FIPPA issue to be decided in this inquiry. For example, it is clear that the applicant is dissatisfied with the conduct of the physician and

⁶ Applicant’s response submission at page 29.

⁷ *Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*, 2015 SCC 25 at para 22 [*Yukon*].

⁸ *Yukon, ibid* at para 25.

⁹ *Yukon, ibid* at para 26.

¹⁰ *Yukon, ibid* at para 20.

¹¹ This is consistent with the Supreme Court of Canada’s comments on bias in *Yukon, ibid* at para 59.

with the responses of public bodies to which he has raised concerns about the physician. The purpose of an inquiry under s. 56 is to decide the FIPPA issues in dispute between the parties – not to decide about matters unrelated to the application of FIPPA.¹² I do not have any authority over the applicant's complaints that are unrelated to FIPPA. Therefore, I decline to consider those complaints.

[16] To be clear, my role in this inquiry is to consider whether the College is required to withhold the information at issue under s. 22(1). I have focused my discussion below only on the evidence and submissions relevant to decide the s. 22(1) issue.

ISSUE

[17] At this inquiry, I must decide whether the College is required to refuse to disclose the information in dispute under s. 22(1).¹³

[18] Section 57(2) places the burden on the applicant to establish that disclosure of the information at issue would not unreasonably invade a third party's personal privacy. However, the College has the initial burden of proving the information at issue qualifies as personal information under s. 22(1).¹⁴

DISCUSSION

Background

[19] The College oversees and regulates the practice of medicine by physicians and surgeons in British Columbia in the public interest.¹⁵ The applicant filed a complaint with the College about the physician.

Information at issue

[20] The responsive records consist of 484 pages. The information in dispute is a unique identifying number (identifier) assigned by the College to the physician.¹⁶ The identifier appears on four pages of the responsive records.

Unreasonable invasion of personal privacy, s. 22(1)

[21] Section 22 requires a public body to refuse to disclose personal information if its disclosure would be an unreasonable invasion of a third party's

¹² Order F23-23, 2023 BCIPC 27 at para 77.

¹³ Whenever I refer to section numbers in this order, I am referring to sections of FIPPA.

¹⁴ Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

¹⁵ Public body's initial submission at para 1.

¹⁶ Public body's initial submission at para 5.

personal privacy.¹⁷ Numerous orders have considered the application of s. 22, and I will apply those same principles here.¹⁸

[22] The College says that s. 22(1) applies to the identifier.¹⁹ The applicant does not make any submissions about the identifier or s. 22(1).

Personal information

[23] The first step in any s. 22 analysis is to determine if the information in dispute is personal information within the meaning of FIPPA.

[24] Personal information is defined in FIPPA as “recorded information about an identifiable individual other than contact information.”²⁰ Previous orders have said that information is about an identifiable individual when it is reasonably capable of identifying an individual, either alone or when combined with other available sources of information.²¹ FIPPA defines contact information as “information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”²²

[25] The College says that the identifier is the personal information of the physician.²³ The College’s evidence is that the identifier is a six digit sequential number and it is used by the College primarily to uniquely identify a physician registrant.²⁴

[26] I find that the identifier is recorded information about the physician and is clearly not contact information. Therefore, I find that the identifier qualifies as personal information.

Disclosure not an unreasonable invasion of privacy, s. 22(4)

[27] The second step in the s. 22 analysis is to determine if the personal information falls into any of the types of information listed in s. 22(4). If so, disclosure would not be an unreasonable invasion of a third party’s personal privacy.

¹⁷ Schedule 1 of FIPPA says: “third party” in relation to a request for access to a record or for correction of personal information, means any person, group of persons, or organization other than (a) the person who made the request, or (b) a public body.

¹⁸ See, for example, order F15-03, 2015 BCIPC 3 (CanLII) at para 58.

¹⁹ Public body’s initial submission at para 5.

²⁰ Schedule 1 of FIPPA.

²¹ Order F19-13, 2019 BCIPC 15 (CanLII) at para 16, citing Order F18-11, 2018 BCIPC 14 at para 32.

²² Schedule 1 of FIPPA.

²³ Public body’s initial submission at para 8.

²⁴ Affidavit of the College’s Deputy Registrar and Chief Legal Counsel at para 5.

[28] The College says that s. 22(4) does not apply.²⁵

[29] I have considered all of the subsections in s. 22(4) and I find that none of them apply.

Presumptions of unreasonable invasion of privacy – s. 22(3)

[30] The third step in the s. 22 analysis is to determine whether s. 22(3) applies to the personal information. If so, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy.

[31] The College says, and I find, that s. 22(3)(d) applies.²⁶

[32] Section 22(3)(d) creates a presumption against releasing personal information related to a third party's employment, educational or occupational history.

[33] The College submits that the identifier is part of the physician's occupational history.²⁷ The College explains that an identifier is used to uniquely identify a physician registrant, is an access point to all information about a registrant, is the primary key for linking various component databases of its information systems, and is used as part of the credentials for physicians to use the College's online services.²⁸ Thus, the College says that the identifier is linked to all aspects of the physician's contact with the College.²⁹

[34] I find that the identifier is part of the physician's occupational history within the meaning of s. 22(3)(d) because it is an individual, personal identifier assigned to him as part of his occupation.³⁰ Thus, disclosing the identifier is presumed to be an unreasonable invasion of the physician's personal privacy.

Relevant circumstances, s. 22(2)

[35] The final step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those listed in s. 22(2). It is at this step that the s. 22(3) presumption may be rebutted.

[36] The College says that no relevant circumstances overcome the s. 22(3)(d) presumption or otherwise justify disclosing the identifier.³¹

²⁵ Public body's initial submission at para 9.

²⁶ Public body's initial submission at para 9.

²⁷ Public body's initial submission at para 9.

²⁸ Public body's initial submission at paras 5 and 6.

²⁹ Public body's initial submission at para 9.

³⁰ Order F23-14, 2023 BCIPC 16 at para 87.

³¹ Public body's initial submission at para 10.

[37] I have considered whether any relevant circumstances, including those listed under s. 22(2) apply, and I find that none apply.

Conclusion, s. 22(1)

[38] I find that the identifier qualifies as personal information. I also find that the s. 22(3)(d) presumption against disclosing information related to a third party's occupational history applies and no relevant circumstances weigh in favour of disclosure. Therefore, the presumption against disclosure has not been rebutted and the College must withhold the identifier.

CONCLUSION

[39] For the reasons given above, under s. 58(2)(c) of FIPPA, I require the College to refuse access to the information it withheld under s. 22(1).

May 26, 2023

ORIGINAL SIGNED BY

Elizabeth Vranjkovic, Adjudicator

OIPC File No.: F20-81598