

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 133-1996
November 29, 1996**

INQUIRY RE: A decision of the College of Physicians and Surgeons of B.C. to withhold the name of a third party from an applicant

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on August 23, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision of the College of Physicians and Surgeons of B.C. (the College) to withhold the name of a third party from a record supplied to an applicant.

2. Documentation of the inquiry process

On March 6, 1996 the applicant requested “a complete copy of the file you hold concerning the complaint I lodged to your College regarding Dr. [name removed], and his inappropriate handling of my wife’s case.” The applicant received all of the records in the possession of the College with the exception of those withheld under sections 19 and 22 of the Act.

On May 9, 1996 the Office of the Information and Privacy Commissioner received a request to have this decision reviewed. Through mediation, the review was reduced to the identity of a third party on a “Note to File.” An inquiry was scheduled for August 7, 1996. On July 15, 1996 the applicant advised the Office that he wished to

cancel the inquiry. However, on July 22, 1996 he withdrew his request to cancel the inquiry and stated that he wished to proceed. The public body and the third party consented to a reinstatement of the inquiry. In order to provide sufficient time for the parties to make submissions, I decided that fairness required me to reschedule the inquiry to August 23, 1996.

3. Issue under review at the inquiry and the burden of proof

The specific issue in this inquiry is the College of Physicians and Surgeons of B.C.'s application of sections 19 and 22 of the Act to the severing of the record requested by the applicant.

The relevant sections are:

Disclosure harmful to individual or public safety

19(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

(a) threaten anyone else's safety or mental or physical health,
or

(b) interfere with public safety.

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.

Section 57 of the Act establishes the burden of proof. Under that section, where access to information in the records has been refused, it is up to the public body to prove that the applicant has no right of access to the record, or part of the record, that is withheld under section 19 of the Act. In the present case, the burden under this section is on the College.

Under section 57 of the Act, if the record or part that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure would not be an unreasonable invasion of the third party's personal privacy under section 22 of the Act. In the present case, this burden is on the applicant.

4. The records in dispute

The College has disclosed 216 pages of records to the applicant. The record in dispute is a "Note to File" which records a telephone conversation that an employee of

the College had with a third party regarding actions the applicant had taken. The name of the caller has been severed.

5. The applicant's case

The applicant is acting as an agent for his wife, whose rights, he believes, have been violated, including breaches of medical confidentiality: "I believe the Third Party has shown malicious intent to bureaucratically hinder and impede the [name removed] family from evolving." The applicant now wants to know the third party's name.

6. The College of Physicians and Surgeons of British Columbia's case

The College has a statutory mandate under the *Medical Practitioners Act*, including a complaints review process regarding the quality of medical services provided by members. (Submission of the College, paragraphs 4-11)

The third party has objected to the release of his or her personal information on the basis of sections 19(1)(a) and (b) and 22 of the Act. The College determined that the information should not be released. (*In camera* Submission of the College, paragraphs 12-20; and the *in camera* portions of the Affidavit of Morris Vanandel, paragraphs 10-18, and the accompanying exhibits) It relied in particular on my Order No. 7-1994, April 11, 1994, pp. 4-6; Order No. 18-1994, July 21, 1994, p. 4; Order No. 28-1994, November 8, 1994, p. 8; and Order No. 58-1995, October 12, 1995.

The College is of the further view that the applicant has not established appropriate grounds for the release of the information in dispute under section 22 of the Act. (Reply Submission of the College)

7. Discussion

The applicant submitted a rambling account of various complicated events in which he has been involved during recent years. These are not relevant to the specific access to information request before me in this inquiry.

Section 19: Disclosure harmful to individual or public safety

The basic thrust of my decisions on the application of section 19 is to require a public body to act prudently where the health and safety of others are at issue in connection with the possible release of records. (See Order No. 89-1986, March 4, 1996, pp. 4, 5; Order No. 28-1994, November 8, 1996, p. 8) I have said in other Orders that a public body should act prudently where the health and safety of others are at issue. I am satisfied that the College has proven that information in the record in dispute should be withheld under section 19(1)(a) on the basis that there is a significant likelihood of harm to third parties.

Review of the record in dispute

The record in dispute is a name severed from an eight-line "Note to File" prepared by a staff member for the College on the basis of a telephone call to the College. The applicant has received this document with the name of the caller severed in three places. The caller reported an event involving the applicant, asked about the status of an apparent complaint to the College by the applicant, and indicated that it would be a good opportunity for the applicant to receive a forensic psychiatric assessment.

Based on the precedents cited above, my review of the submissions and affidavits of the College, and my discussion above of the appropriate application of section 19, I am of the view that the College has met its burden of proof under section 19(1) of the Act. I also find that the applicant has not met his burden of proof under section 22.

8. Order

I find that the College of Physicians and Surgeons of British Columbia is authorized to refuse access to the information in the record in dispute under section 19(1) of the Act. Under section 58(2)(b), I confirm the decision of the College to refuse access to this information.

I also find that the College of Physicians and Surgeons of British Columbia is required to refuse access to the information in the record in dispute under section 22 of the Act. Under section 58(2)(c), I require the College to refuse access to this information.

David H. Flaherty
Commissioner

November 29, 1996