

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 237-1998
May 27, 1998**

INQUIRY RE: A decision of the Ministry of Health to withhold records 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 March 31, 1998 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 the decision of the Ministry of Health to withhold from an applicant copies of the “names, dates, signatures, ticks and crosses” from the Medical Services Plan (MSP) applications of certain third parties.

2. Documentation of the inquiry process

On November 23, 1997 the applicant requested copies of the MSP application forms of two people who had been involved in litigation as witnesses in relation to a skiing accident what he suffered in 1992. On December 3, 1997 the Ministry of Health refused access to these records under section 22 of the Act.

The applicant requested a review of this decision on January 8, 1998. The Inquiry was set for April 1, 1998, but the applicant asked that this date be changed to March 30, 1998 since he was going to be away. The Ministry did not object to the change in dates. On February 23, 1998 the amended schedule and revised Notices of Inquiry were issued.

3. Issue under review and the burden of proof

The issue under review is the Ministry of Health’s application of section 22(1) of the Act to the disclosure of the records in dispute. The Ministry considered sections 22(2)(e) and (f) in its decision to withhold them.

Section 57 of the Act establishes the burden of proof in this matter. Under section 57(2) of the Act, if the record or part to which the applicant is refused access contains personal information about a third party, it is up to the applicant to prove that disclosure of the personal information would not be an unreasonable invasion of the third party's personal privacy.

The relevant sections of the Act are as follows:

- 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
- ...
- (c) the personal information is relevant to a fair determination of the applicant's rights,
- ...
- (e) the third party will be exposed unfairly to financial or other harm,
- (f) the personal information has been supplied in confidence,
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4. The records in dispute

The records in dispute consist of the Medical Services Plan Group Application Forms of two third parties. Both of the third parties have asked that these records not be disclosed to the applicant.

5. The applicant's case

The applicant is seeking access to handwriting samples of two individuals who testified in a lawsuit that he brought against Mt. Washington Ski Resort Ltd. His view is that it would not be an invasion of their privacy, because he is asking for "limited access only to ticks and or x's, names, dates and signatures." Apparently the issue of who ticked a particular box on a snow report is important for purposes of potential charges of perjury and obstruction of justice that the applicant wishes to bring forward. (Submission of the Applicant, pp. 1-3)

6. The Ministry of Health's case

The Ministry submits that the disclosure of the records in dispute would be an unreasonable invasion of the personal privacy of the third parties. (Submission of the Ministry, paragraph 5.02) I have discussed below its specific submissions on the application of sections of the Act.

7. Discussion

This application for access is related to the applicant's unsuccessful civil action against Mt. Washington Ski Resort Ltd. for an accident that he suffered in 1992 while receiving ski lessons from one of its employees. The applicant's negligence claim was dismissed at trial, and an appeal to the British Columbia Court of Appeal was dismissed. The applicant was denied leave to appeal to the Supreme Court of Canada. The applicant wishes, however, to challenge the evidence led at trial. To that end, he is seeking access to handwriting samples (names, dates, signatures, ticks and crosses from the third parties, so that he can provide these samples to a handwriting expert. (Submission of the Applicant; Submission of the Ministry, paragraphs 1.07 to 1.13) The applicant is seeking to challenge and dispute the identity of the person who claims to have recorded information on a Ski Area Accident Report. (Submission of the Ministry, paragraph 5.03)

The applicant wishes me to take into account his interests in litigation and the losses which he may suffer as a result of the award of costs against him and to take certain steps to assist him in acquiring information to challenge the evidence led at trial. (Submission of the Applicant, pp. 3-4) While I recognize that the applicant faces extremely serious financial repercussions as a result of the litigation, my jurisdiction extends only to a decision concerning his right to access the records in dispute. Contrary to the applicant's claim, "the real issue in this inquiry" is not ensuring "justice and fairness to all parties" in relation to all of the issues arising from the ski accident, but rather to determine whether the applicant is entitled to disclosure of the personal information of the third parties under this Act. (Reply Submission of the Applicant, p. 1) I am not in a position to intervene with respect to any possible "injustice" that he may have suffered. (Reply Submission of the Applicant, p. 5)

Section 22: Disclosure harmful to the personal privacy of third parties

The applicant seeks handwriting samples to challenge the identity of the individual who claimed to have recorded information on the Ski Area Accident Report. In my view, it is clear that the information recorded in the MSP application forms and the handwriting reflected on the forms constitutes personal information of the third parties. (Submission of the Ministry, paragraphs 5.03 and 5.04; See Order No. 35-1995, March 27, 1995, p. 13)

Section 22(2)(c): the personal information is relevant to a fair determination of the applicant's rights,

The applicant argues that disclosure of the information he is seeking is relevant to a fair determination of his rights because he is at risk of losing his home as a result of the court costs awarded against him at trial.

The Ministry submits that if the “Applicant believes that handwriting samples of the Third Parties from the MSP Forms are required for his leave application or possible appeal, then the Applicant should ... be asking the Court to firstly determine their possible relevancy to the issues before it, and if found to be relevant, seek an order from the Court for production of these records.” (Reply Submission of the Ministry) I agree with the Ministry that this other avenue may be available to the applicant.

Counsel for the third parties advised that the applicant’s application for leave to appeal from the Order of a Supreme Court Justice concerning costs was dismissed by the British Columbia Court of Appeal earlier in 1998.

I have considered all of the evidence filed concerning the litigation and conclude that it is unlikely that disclosure of the personal information requested is relevant to a fair determination of the applicant’s rights. If, as the applicant contends, there are issues concerning perjury, the police are the appropriate body to investigate this allegation.

Section 22(2)(e): the third party will be exposed unfairly to financial or other harm,

The Ministry submits that disclosure of the record in dispute concerning one third party would unfairly expose him to financial or other harm, because the applicant appears to have concluded that the third party gave false evidence before the Supreme Court of British Columbia (Submission of the Ministry, paragraph 5.06) The applicant contends that there is no prospect of harm to the third parties. (Reply Submission of the Applicant, pp. 2, 3)

I agree that this subsection was a relevant circumstance for the Ministry to take account of in reaching its decision on the application of section 22. (See Reply Submission of the Ministry, paragraph 2) The applicant indicated that if the third parties came forward to “reveal the truth” before the end of this inquiry, he would not take any action against them personally in this matter. I agree with the Ministry’s submission that this statement supports a finding that disclosure may lead to harm. Leaving aside the propriety of the applicant’s statement to the third parties, the obvious inference is that the applicant intends to take action against the third parties personally, if they do not voluntarily come forward. Given the history of the litigation, I conclude that disclosure of the personal information may expose the third parties unfairly to financial harm.

Section 22(2)(f): the personal information has been supplied in confidence,

The Ministry submits that the information in the records in dispute must be kept confidential in accordance with section 49 of the *Medicare Protection Act*, R.S.B.C. 1996, c. 286, section 49 which provides as follows:

***Medicare Protection Act:
Confidentiality***

49. Each member or former member of the commission or the board, each employee or former employee of the ministry employed in the administration of this Act, each inspector or former inspector appointed under this Act, every member or former member of an advisory committee and any other person engaged or previously engaged in the administration of this Act must keep confidential matters that identify an individual beneficiary or practitioner that come to his or her knowledge in the course of their employment or duties, and must not communicate any of those matters except
- (a) in the course of the administration of this Act or another Act or program administered by the minister,
 - (b) in court proceeding,
 - (c) to a regulatory body that has authorized a practitioner or diagnostic facility to render services, or
 - (d) in accordance with section 35 of the *Freedom of Information and Protection of Privacy Act*.

On the basis of this provision, the Ministry submits that “it is only reasonable to conclude that the Third Parties supplied the information on the MSP Forms with an expectation that it would be kept confidential as provided by this provision, and would not be disclosed and used for the purpose for which the Applicant intends to use it.” (Submission of the Ministry, paragraph 5.07)

Section 49 indicates that MSP information is to remain confidential, although it sets out certain exceptions to the requirement for confidentiality. Subsection (a), which provides that confidential matters may be communicated in the course of the administration of the *Medicare Protection Act* or another Act or program administered by the Minister, does not apply. Subsection (b) provides that confidential matters may be communicated in court proceedings; however, there does not appear to be any current court proceeding at present, nor does it appear that the purpose for which the applicant seeks the personal information would justify this exception.

The issue that I must decide is whether the information was provided in confidence. The third parties have indicated that the MSP information was supplied in confidence. On this basis, I conclude that section 22(2)(f) is a relevant consideration, which also militates against disclosure of the personal information.

I find that the applicant has not met his burden of proof under the Act. I also find that disclosure of the records in dispute would be an unreasonable invasion of the third parties' personal privacy.

8. Order

I find that the Ministry of Health was required to withhold the records containing personal information about third parties under section 22 of the Act. Under section 58(2)(c) of the Act, I require the Ministry of Health to refuse access to the records withheld under section 22.

David H. Flaherty
Commissioner

May 27, 1998