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**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 272-1998
November 19, 1998**

INQUIRY RE: A request for access to personal information in a complaint record held by the College of Physicians and Surgeons of B.C.

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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 July 15, 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 a decision by the College of Physicians and Surgeons of British Columbia (the College) to refuse access to personal information in a record concerning a complaint made against a College member (the third party) by the applicant.

2. Documentation of the inquiry process

On March 3, 1998 the applicant submitted a request under the Act to the College for a copy of the third party's letter (the record) to the College in response to a complaint about the third party made by the applicant. The applicant was formerly a patient of the third party.

The College responded to the request on March 31, 1998 by disclosing all but two sentences in the record. These sentences were withheld under sections 22(1), (2)(e), (f), and (3)(g) of the Act.

On April 6, 1998 the applicant made a request for review to my Office, since he did not accept the College's decision to withhold any information in the third party's letter.

The matter was not resolved through mediation. On June 10, 1998 the applicant confirmed that he wished to proceed to an inquiry.

3. Issue under review and the burden of proof

In this inquiry, the issue under review is the College's application of sections 22(1), (2)(e) and (f), and (3)(g) of the Act to the third party's letter to the College in response to a complaint made by the applicant.

The relevant sections of the Act are:

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.
- (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
- ...
- (e) the third party will be exposed unfairly to financial or other harm,
- (f) the personal information has been supplied in confidence,
-
- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
- ...
- (g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party,
-

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(2), 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 of the information would not be an unreasonable invasion of the third party's personal privacy.

4. The record in dispute

The record in dispute is a five-page letter, dated February 9, 1998, written by the third party to the College in response to a complaint made by the applicant about that third party. Only two sentences in the record were withheld by the College in response to the applicant's access request under the Act. Those two sentences form the focus of this inquiry.

5. The applicant's case

The applicant does not believe that disclosure of the withheld information would constitute an unreasonable invasion of the third party's personal privacy. He argues that it should be disclosed because the record:

... is meant to explain the Doctor's interactions with me and there is no reason to believe that such information would expose him unfairly to financial loss, unreasonable invasion of his personal privacy or any other harm ...

... I have a very real concern with the treatment that I have received under [the] Doctor's care. It is extremely important that the remaining information in [the] Doctor's letter be disclosed since it is relevant to my complaint with the College of Physicians and Surgeons. The information that has been omitted is in the context of [the] Doctor's description of how he interacts with his patients. (Applicant's Submission, p. 1)

6. The College of Physicians and Surgeons' case

The College has made both open and *in camera* submissions. The College also filed an *in camera* affidavit. I have discussed the College's *in camera* material below.

In its open submission, the College reviewed in some detail its mandate and peer review policies and practices under the *Medical Practitioners Act*, R.S.B.C. 1996, c. 285. These policies and procedures were fully outlined by me in an earlier Order involving the College, so I will not review them again in this Order. (See Order No. 221-1998, April 16, 1998)

7. The Submission of the Third Party

The third party agreed to the release of the record, but only in its severed form. He also provided me with a lengthy description of the complaint-handling procedures of the College, viewed from the perspective of a participating physician.

The third party also provided me with an *in camera* affidavit and submission, which I have reviewed. I agree that both documents should be kept *in camera*.

8. Discussion

The appropriateness of the in camera material submitted by the College

On reviewing the *in camera* submissions and affidavit submitted by the College in this inquiry, I formed the view that some of this material was not appropriately submitted on an *in camera* basis. As a result, I wrote to the College (with a copy to the applicant and the third party) advising the College of my opinion and notifying it of my intention to

exercise my discretion in favour of accepting only certain of the paragraphs in the material, which I identified, on an *in camera* basis. I also invited the College to reassess whether it wished to continue to rely on the material I intended to disclose in support of its position in the inquiry. The College informed me that it intended to continue to rely on that material, agreed to disclose some of this information and, as a result, it was disclosed to the applicant and to the third party. The College identified three paragraphs which I agreed should remain *in camera*.

I would remind parties to an inquiry that I have a discretion to accept or not accept submissions and/or affidavits on an *in camera* basis. The Act contemplates that *in camera* submissions may be received by me, to the exclusion of other parties to an inquiry, in appropriate circumstances. My discretion to receive *in camera* material must be considered in light of my obligation to withhold from disclosure in an inquiry any information the head of a public body would be required or authorized to refuse to disclose, if it were contained in a record requested under section 5 of the Act, or the existence of information, if the head of the public body in refusing to provide access does not indicate whether the information exists.

Consistent with these obligations, the Notice of Written Inquiry which is provided to the parties to an inquiry provides in part that:

A party may request that information in a written submission, either in whole or in part, be filed on an *in camera* basis where it may disclose the contents of the records in dispute or where it contains information which may be subject to an exemption under the Act. A party making an *in camera* submission must give reasons to the Commissioner as to why its submission should be received *in camera*.

...

If the Commissioner questions whether a submission, in whole or in part, should be received *in camera*, the party affected will be given an opportunity to make further representations on the issue before the Commissioner decides if another party is entitled to have access to the submission. The Commissioner will decide whether or not to accept *in camera* material, having considered all representations and all of the circumstances.

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

I have reviewed the withheld information in the record. I am satisfied that this information is personal information and is properly withheld by the College under section 22(1) of the Act, because its disclosure would result in an unreasonable invasion of a third party's personal privacy. I am also satisfied that the College considered all of the relevant circumstances in making its determination to withhold this information, including the fact that the personal information was supplied in confidence and that its release could expose the third party unfairly to either financial or other harm.

9. Order

I find that the College of Physicians and Surgeons of British Columbia was required to refuse access to the withheld personal information in the record in dispute under section 22(1) of the Act. Accordingly, under section 58(2)(c) of the Act, I require the College to refuse access to the withheld personal information in the record in dispute.

David H. Flaherty
Commissioner

November 19, 1998