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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 265-1998
October 2, 1998

INQUIRY RE: The withholding of an applicant's medical and psychiatric records by the Dawson Creek & District Hospital

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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 June 26, 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 whether the Dawson Creek & District Hospital (the hospital) was correct in withholding an applicant's medical and psychiatric records from him.

2. Documentation of the inquiry process

On March 31, 1998 the applicant requested copies of all of his medical records in the hospital's possession. On April 16, 1998 the hospital responded and withheld all records on the basis of section 19 of the Act.

The applicant requested a review of this decision on April 27, 1998. The inquiry was set for June 26, 1998.

3. Issue under review and the burden of proof

The issue under review is the hospital's application of section 19 of the Act to the requested records. Under section 57(1), at an inquiry into a decision to refuse an applicant access to all or part of a record, it is up to the public body, in this case the hospital, to prove that the applicant has no right of access to the record or part. The relevant section under review reads as follows:

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.

(2) The head of a public body may refuse to disclose to an applicant personal information about the applicant if the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's safety or mental or physical health.

4. The records in dispute

The records in dispute consist of all of the medical records relating to the applicant.

There are several hundred pages of records that primarily relate to the applicant's admission to hospital for psychiatric issues. They indicate the history of this applicant's relationship with the hospital and several psychiatrists. They include records of his medications and copies of forms that he filled out himself for purposes of self-diagnosis. The psychiatrists' own notes of interviews with the applicant are in the standard format for such interactions with medical specialists.

5. The applicant's case

The applicant wants access to all his medical records in the custody and control of the hospital, including psychiatric assessments and other records pertaining to his commitment to the hospital. He contests the diagnosis of himself by the hospital, claiming that he has been wrongly stigmatized. He is obviously angry about the refusal, to date, to give him access to his records, which is often the case when requests for review reach the inquiry stage.

6. The Dawson Creek & District Hospital's case

I have reviewed the one-page submission from the hospital. It includes one *in camera* paragraph which expresses the reason behind the hospital's application of section 19 of the Act. The hospital concludes that "the risk potential of the current situation may worsen if [the applicant] is allowed access to his records. He tends to misconstrue information and does not use good judgment." The hospital did not make a reply submission.

7. Discussion

As noted in Order No. 108A-1996, July 10, 1996, p. 3:

> My basic approach to section 19 is to require the Ministry to act prudently where the health and safety of others or the applicant are at issue in connection with the possible disclosure of records. The Act intends that public bodies should take very seriously the prospect of disclosure harmful to individuals or to public safety. Having said that, under section 19 the burden of proof is upon the Ministry, and evidence is required to meet the statutory thresholds. The threshold in subsection (1) is a reasonable expectation that disclosure could threaten another person's safety or mental or physical health or interfere with public safety. The threshold in subsection (2) is a reasonable expectation that disclosure could result in immediate and grave harm to the applicant's safety or mental or physical health.

This case differs substantially from the circumstances present in Order No. 108A-1996 in that there is no past history of behaviors or situations where the applicant has presented a threat to others or himself.

The hospital's *in camera* paragraph is a vague opinion about two particular interactions with the applicant. The evidence before me of those interactions, and the applicant's submissions themselves, indicate that the applicant is angry and suspicious about the hospital's diagnosis of his medical condition and about not being permitted access to his medical records. I interpret the phrase "could reasonably be expected to" in section 19 as requiring a sufficient and rational basis for a reasonable expectation of the described harms. There are elements of the irrational in the materials concerning and from the applicant. The evidence, including the hospital's *in camera* paragraph, fails however to present any sufficient or rational basis for concluding that, if the applicant is granted access to his medical records, there is a reasonable expectation of any of the harms in section 19.

The applicant objected to the hospital making an *in camera* submission in this inquiry. In view of my conclusion that, in any event, the hospital has not met its burden of proof with respect to the application of section 19 to the disputed records, it is unnecessary for me to deal with this question.

8. The Canadian Medical Association's Health Information Privacy Code

The Council of the Canadian Medical Association approved a Health Information Privacy Code in August 1998. Because of the importance of the participation of physicians in public debates on data protection, and its relevance to the present inquiry, I quote as follows from Principle 6, Individual Access:

> *Patients have the right of access to their health information. In rare and limited circumstances, health information may be withheld from a patient if there is a significant likelihood of a substantial adverse effect on the*

physical, mental or emotional health of the patient or substantial harm to a third party. The onus lies on the provider to justify a denial of access.

6.1 The patient is entitled to know about, and subject to 6.5 to have access to, any information about himself or herself under the custody of the health information custodian.

...

6.3 Providers may, in rare and limited circumstances, withhold health information from a patient if there is a significant likelihood of a substantial adverse effect on the physical, mental or emotional health of the patient or substantial harm to a third party. The onus is on the provider to justify a denial of access.

....

Although my role in inquiries is to apply the Act, I am of the view that my decision in this inquiry is also in compliance with the important standards set by the Canadian Medical Association.

9. Order

I find that the Dawson Creek & District Hospital is not authorized to refuse access to the records in dispute under sections 19(1) and 19(2) of the Act. Under section 58(2)(a) of the Act, I require the Dawson Creek & District Hospital to disclose the records requested by the applicant.

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David H. Flaherty October 2, 1998
Commissioner