OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order 00-28

INQUIRY REGARDING VANCOUVER COMMUNITY MENTAL HEALTH SERVICES RECORDS

David Loukidelis, Information and Privacy Commissioner
July 28, 2000

QL Cite: [2000] B.C.I.P.C.D. No. 31
Order URL: http://www.oipcbc.org/orders/Order00-28.html
Office URL: http://www.oipcbc.org
ISSN 1198-6182

Summary: Public body entitled under s. 19(1)(a) to withhold information from applicant's mental health records. Disclosure of the severed information would identify the individual or individuals who contacted the public body with concerns about the applicant's mental health. Evidence established a reasonable expectation that disclosure could threaten the mental or physical health or safety of the individual or individuals.

Key Words: Reasonable expectation of harm – threaten – mental or physical health – safety.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s.19(1)(a).

Authorities Considered: B.C.: Order No.323–1999; Order No. 00–01; Order 00–10.

1.0 INTRODUCTION

On January 17 of this year, the applicant asked what is now the Vancouver Community Mental Health Services of the Vancouver-Richmond Health Board ("Board") "for copies of my Health Record from 1996 to present". The Board treated this as an access to information request under the *Freedom of Information Protection of Privacy Act* ("Act") and, by a letter dated January 28, 2000, provided the applicant with a copy of her health record. The Board also provided the applicant with a copy of her "Mental Health Residential Services record". The Board declined to disclose some information, citing s. 19 of the Act as its reason for doing so. Although the Board released some further

information to the applicant during mediation by this Office, the applicant's wish to see the remaining lines of withheld information made it necessary for me to hold an inquiry under s. 56 of the Act. Roughly seven lines of handwritten notes are in issue in this inquiry.

I refer in this order to the third party or parties involved in this case as the "individuals", but this does not confirm or deny whether one individual, or more than one individual, is or are identified in the disputed information.

2.0 ISSUES

The only issue set out in the Notice of Written inquiry in this matter is whether s. 19(1) of the Act authorized the Board to withhold the disputed information from the applicant. Under s. 57(1) of the Act, the Board bears the burden of proving that s. 19(1) applies.

In its initial submission in this inquiry, the Board argued that s. 22(1) of the Act also applies, thus preventing the Board from disclosing personal information to the applicant. That section prohibits disclosure of personal information where disclosure would unreasonably invade third party personal privacy. Because I have decided that s. 19(1)(a) applies to the disputed information, it is not necessary to address s. 22(1). If I had addressed it, I would be inclined to find that, in light of the circumstances (including those found in ss. 22(2)(e) and (f)), the Board would be required by s. 22(1) to refuse to disclose the information to the applicant.

3.0 DISCUSSION

3.1 Description of the Disputed Information – The only record in dispute here is a one-page record of a telephone call made to the Board about the applicant's state of mind. A severed version of that record was disclosed to the applicant on March 23, 2000, but the Board withheld those portions of the record that would identify the caller or callers. To be clear, this inquiry does not deal with any other records. Similar to the case in Order 00-01, this applicant is after information that would identify to her the individuals who at some time telephoned the Board about the applicant. In essence, therefore, this case revolves around the question of whether the applicant is entitled to know the individuals' identity.

3.2 Is There A Threat of Harm to Others? – The Board must establish that there is a reasonable expectation of harm, as contemplated by s. 19(1)(a), from disclosure of the disputed information. That section authorizes a public body to refuse to disclose information if the "disclosure could reasonably be expected to … threaten anyone else's safety or mental or physical health".

Applicable Principles

As I have said in previous orders, a public body is entitled to, and should, act with deliberation and care in assessing – based on the evidence available to it – whether a reasonable expectation of harm exists as contemplated by the section. In an inquiry, a public body must provide evidence the clarity and cogency of which is commensurate with a reasonable person's expectation that disclosure of the information could threaten the safety, or mental or physical health, of anyone else. In determining whether the objective test created by s. 19(1)(a) has been met, evidence of speculative harm will not suffice. The threshold of whether disclosure could reasonably be expected to result in the harm identified in s. 19(1)(a) calls for the establishment of a rational connection between the feared harm and disclosure of the specific information in dispute.

It is not necessary to establish certainty of harm or a specific degree of probability of harm. The probability of the harm occurring is relevant to assessing whether there is a reasonable expectation of harm, but mathematical likelihood is not decisive where other contextual factors are at work. Section 19(1)(a), specifically, is aimed at protecting the health and safety of others. This consideration focusses on the reasonableness of an expectation of any threat to mental or physical health, or to safety, and not on mathematically or otherwise articulated probabilities of harm. See Order 00-10.

Is There A Reasonable Expectation of Harm Here?

The applicant acknowledges that she has a fairly lengthy history of clinical depression and that she has been diagnosed as having a bipolar disorder. She has received mental health care services from the Board and its predecessor over the years. There is also evidence of a fairly lengthy history of disputes between the applicant and others, including some of her former neighbours. As an example, an incident in which the applicant says she was assaulted by a neighbour led to an unsuccessful lawsuit by the applicant against that neighbour and an equally unsuccessful attempt by the applicant to have the neighbour charged criminally.

The applicant steadfastly contends she is not a violent person and that she would not in any way harm the individuals whose identity she seeks. But it is clear from her own words that she harbours resentment towards those she perceives as her enemies or those she believes have done her wrong. In her own words, the applicant has established that she is, at the very least, likely to sue the individuals whose identities she seeks if she learns their identity. It is not clear what she would sue them for. This can be summed up by the following passage from page 4 of the applicant's February 1, 2000 request for review of the Board's decision:

> Whatever has been excepted from disclosure I would like to know. I believe I should be able to know all that concerns me. I have no history of violence

> against others. But I am verbally skilled and know that this can intimidate others. The RCMP claim that everyone I have come in contact with in 1998 is terrified of me, fearful I will harm them.
>
> I believe they may be concerned because they know me as a very tenacious individual and that I bear a grudge when anyone tells lies about me and causes me distress. Those persons and the RCMP and the Vancouver City Police are engaged in calumny and have used my "mental illness" as a way to stop me from seeking legal redress.

In part of her initial submission, the applicant provides an eight-page, single-spaced chronology of her relations with various neighbours and other individuals (as well as her dealings over the years with the RCMP, the Board and the Board's predecessor agencies). In another portion of her initial submission, the applicant responds in detail to the parts of the one-page record in dispute that were disclosed to her by the Board. She intimates in this part of her argument that the RCMP are responsible for harrassing her and have embarked on a campaign against her. As she puts it, at page 10 of her initial submission, neighbours and the RCMP have used information previously disclosed by the applicant as "ammunition to harrass me on a continuous basis". She also says the RCMP have used her psychiatric history against her. She alleges the Board's mental health services staff "are not without blame either" and, lumping them in with the RCMP and her former neighbours, says they have all been "wicked and vengeful, malicious and spiteful", with the mental health services staff having been "gullible".

In her reply submission, the applicant says "the only fear the third party has from me is my legal action, should I decide to pursue legal redress against the third party". She also says the following:

> If the VCMHS has provided evidence which shows that I have ever threatened the safety of the third party, this information is false and is based on reports from the third party to the police, and/or to the MHES Richmond Team.

The applicant goes on to repeat that "the only fear anyone has who has libeled me in this record – and all other records – is the fear of legal action". She also says that she possesses "documents in which the third party alleges I drove my car at third party [*sic*] and neighbour with the intent to run them down", but says that if she had wanted to harm them, she could "have pinned those three nosey and conniving bastards to the … [neighbour's] back gate!" She characterizes this alleged incident as "some 'fun' to help me feel better about the harassment and persecution the third party and their friends (the neighbours) were subjecting me to".

In her reply submission, the applicant indicates that she is currently under the care of a psychiatrist at what she describes as the Adult Forensic Clinic, although she says that she is "not experiencing a serious mental illness and/or behavioural disorder". To the

contrary, she says that she is “presently stable in my illness of depression”. The following passages also appear in the applicant’s reply submission:

> I have made it known to the Richmond Hospital and Vancouver General Hospital representatives that I am appalled and shocked by the reporting I have seen on my health record.
>
> …
>
> VCMHS fears are well founded regarding my reaction to my health record. They fear that disclosure will open a Pandora’s Box.
>
> I believe that my psychiatric health records and reports on the record that are not surgery procedures need to be reviewed. I will demand it and, if you don’t help me by providing the disclosure of everything there is about me on my health record - then I will merely have to find another route to obtain this information. One way or another I will get what I want.

It bears repeating here that this inquiry is not concerned with the applicant’s medical records, which have been disclosed to her. This inquiry concerns only small portions of one record, which would identify individuals who telephoned the Board with concerns about the applicant’s mental health.

The Board (properly, in this case) submitted much of its argument and evidence *in camera*. Having acknowledged that s. 19(1)(a) applies only where there is “something more than mere speculation”, the Board said that it acknowledges the individuals’ “fear of retaliation” and said that it reasonably believed that the individuals “may be at risk by releasing the severed information to the applicant”. It is not possible to discuss the Board’s *in camera* evidence in more detail than this.

The individuals whose identity is sought made a detailed *in camera* submission giving reasons for their concern that disclosure of the requested information would threaten their health and safety. That material — which I cannot discuss in any detail here — speaks to a history of what the individuals characterize as harrassment by the applicant and concerns about her possible resort to physical aggression.

Even accepting the applicant’s consistent denial of any propensity on her part to violence, it is clear from her own submissions and the evidence before me that she harbours ill-will towards a wide variety of individuals and institutions. It is also clear from her submissions that she intends to seek redress for what she perceives to be numerous acts of wrongdoing against her. Coupled with the *in camera* evidence as to the nature of the many dealings the applicant has had with a wide variety of mental health services, the RCMP and others, I conclude that the Board has produced sufficient evidence to establish a reasonable expectation of a threat to the mental or physical health, or safety, of others

within the meaning of s. 19(1)(a). The material provided by the individuals strengthens my conclusion that the Board has properly applied s. 19(1)(a) to the information in dispute.

3 4.0 CONCLUSION

For the reasons given above, under s. 58(2)(b) of the Act, I confirm the decision of the Board to refuse, under s. 19(1)(a) of the Act, to give the applicant access to the disputed information.

July 28, 2000

ORIGINAL SIGNED BY

____

David Loukidelis
Information and Privacy Commissioner
for British Columbia