Order 02-60

CARIBOO COMMUNITY HEALTH SERVICES SOCIETY

Michael T. Skinner, Adjudicator
December 17, 2002

Quicklaw Cite: [2002] B.C.I.P.C.D. No. 62
Document URL: http://www.oipc.bc.ca/orders/Order02-60.pdf
Office URL: http://www.oipc.bc.ca
ISSN 1198-6182

Summary: Through her legal counsel, the applicant made a request to the public body for records regarding a complaint she had made respecting mental health services she received from the public body. The public body's limited severing of personal information from a consultant's report that had been prepared in response to the complaint is upheld under s. 22. The public body also discharged its duty to the applicant to conduct an adequate search for records.

Key Words: personal information – unreasonable invasion of personal privacy – other harm – adequate search.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 6(1), 22(2)(e) and (f), 22(3)(d) and (g).

Authorities Considered: B.C.: Order 00-03, [2000] B.C.I.P.C.D. No. 3; Order 00-26, [2000] B.C.I.P.C.D. No. 29; Order 01-53, [2001] B.C.I.P.C.D. No. 56.

1.0 INTRODUCTION

[1] The applicant seeks records under the *Freedom of Information and Protection of Privacy Act* ("Act") from the Cariboo Community Health Services Society ("CCHSS", or "public body") relating to the mental health services she received from that organization. In November 1997, the applicant lodged a complaint against a mental health centre ("MHC") operating under the jurisdiction of the CCHSS. In response to the complaint, the MHC retained the services of a consultant to independently interview both the applicant and MHC staff and prepare a report ("the report") addressing the substance of the applicant's concerns. The report was completed in February of 1998.

[2] On December 15, 2000, the applicant made a request under the Act for records relating to her that were held by the CCHSS, including the report. The CCHSS responded in June 2001 by providing access to some records, while severing some information under s. 22 of the Act.

[3] On June 29, 2001, the applicant requested a review of the CCHSS's decision. The CCHSS later disclosed further records during the mediation process conducted by this Office. However, some information remained undisclosed and the applicant requested that the review proceed to an inquiry under Part 5 of the Act.

[4] On July 1, 2001, the applicant also requested under the Act copies of her clinical file held by the CCHSS. As the public body previously disclosed the applicant's clinical file in March 1998, it responded to the request for further disclosure by providing all records that post-dated the 1998 release package.

[5] The applicant requested a review of this response in September 2001, stating that she did not have a copy of the 1998 package, and later asserted that she had not received records created by specific individuals. The CCHSS, during mediation by this Office, again released the records it had previously disclosed in 1998. The applicant continued to question the adequacy of the search for records by the CCHSS and asked for an inquiry under Part 5 of the Act.

[6] A consolidated written inquiry was held under Part 5 of the Act for both of the above requests for review. I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

2.0 ISSUES

[7] The first issue is whether the CCHSS has correctly applied s. 22 of the Act to the information severed from the report. The public body also claimed s. 19 of the Act in its initial response to the applicant, but did not argue this section in its submission to this inquiry. I have therefore not considered s. 19.

[8] The second issue is whether the CCHSS has met it s. 6(1) duty to the applicant to respond "openly, accurately and completely." In this case, the issue is whether the search for responsive records was adequate according to the standard established in previous decisions by the Commissioner.

[9] Section 57 of the Act provides that the applicant bears the burden to prove that disclosure of a third party's personal information would not unreasonably invade the privacy of that individual. The burden of proof is on the public body to show that it has conducted an adequate search for records.

[10] The public body supplied certain portions of its submissions in this inquiry – notably the unsevered records – on an *in camera* basis. I am satisfied that such evidence is properly before me in this inquiry on an *in camera* basis.

3.0 DISCUSSION

[11] **3.1 Application of Section 22 to the Report** – The Commissioner has discussed the approach to s. 22 analysis in a number of cases, *e.g.*, Order 01-53, [2001] B.C.I.P.C.D. No. 56. I will not repeat the discussion of that approach here but have applied it in this case. The relevant parts of s. 22 of the Act read as follows:

> **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
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,
>
> …
>
> (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
>
> …
>
> (d) the personal information relates to employment, occupational or educational history,
>
> …
>
> (g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party, …

[12] The report is in the nature of a management consulting exercise. The consultant looked in detail at the applicant's complaint against the MHC and examined the operating structures and procedures in place at the MHC during the time services were rendered to the applicant. The consultant made a number of observations in that regard and some constructively critical recommendations. The observations include several involving specific MHC staff (the "third parties"); these are the portions of the report the CCHSS severed. Because these observations relate directly and specifically to job-related

conduct and performance, I have no difficulty in concluding that the observations severed from pp. 7, 8 and 11 of the report constitute the employment history of specific individuals employed in the MHC (s. 22(3)(d)) and, given the nature of the consultant's mandate and the nature of the report, personnel evaluations that can be linked to specific individuals (s. 22(3)(g)). As such, disclosure of this type of personal information is presumed under s. 22(3) to be an unreasonable invasion of third party personal privacy.

Relevant circumstances

[13] Section 22 of the Act requires a public body to consider all relevant circumstances, including those listed in s. 22(2), in considering whether or not disclosure would be an unreasonable invasion of a third party's personal privacy. Having carefully considered the parties' submissions and the report itself, I do not consider that there are any relevant factors, including those in s. 22(2), that favour disclosure of the information. The portions of the report in dispute, as noted above, contain personal information of third parties that is covered by aspects of s. 22(3). Further, the disputed information has been disclosed elsewhere in the report in a more general, non-specific format, such that the applicant lacks nothing in terms of information necessary to hold the public body accountable (s. 22(2)(a)). This non-specific information does not link to any identifiable individuals. Section 22(2)(a) does not favour disclosure of the third parties' personal information.

[14] I also consider that, given the detailed information about the applicant's personal history and conduct contained in her clinical records, s. 22(2)(e) is applicable. The evidence clearly establishes that the applicant has a demonstrated propensity to engage in intimidating behaviour directed toward any individual who questions, challenges or otherwise fails to fulfill the applicant's desires. It is reasonable to conclude that the third parties may be exposed unfairly to "other harm" if they are identified to the applicant. The Commissioner has previously held that "other harm" can be non-financial. See, for example, Order 00-03, [2000] B.C.I.P.C.D. No. 3.

[15] I conclude that the CCHSS has correctly applied s. 22 of the Act in severing the identified portions of pp. 7, 8 and 11 of the report.

[16] **3.2 Application of Section 6 of the Act** – The applicant alleges the possibility of the existence of additional records created by several staff during the period that the applicant received services. The majority of the applicant's initial submission (she was entitled to submit a reply in the inquiry process, but did not), however, makes inflammatory allegations concerning conflicts of interest and various forms of professional misconduct, with only passing reference to the substantive issue in this inquiry. To the extent that these assertions relate directly to the existence of records which have not been disclosed by the public body, they are, to all appearances, purely speculative. I can give little weight to them.

[17] In contrast, the public body has submitted affidavits from the Director of Health Services for the District of 100 Mile House, Allison Ruault, who at the time material to this inquiry was the Executive Director of the CCHSS. These affidavits address directly

the issue of the scope of records responsive to the applicant's requests, the efforts made by the CCHSS to ensure the clinical records and related notes were complete and the various disclosures made to the applicant.

[18] In Order 00-26, [2000] B.C.I.P.C.D. No. 29, at p. 2, Commissioner Loukidelis stated that:

> Section 6(1) of the Act requires [the public body] to "make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely." As I confirmed in Order 00-15, this requires a public body, in searching for records, to make such effort as a fair and rational person would find to be acceptable in all the circumstances. While s. 6(1) does not impose a standard of perfection, a public body's efforts must be thorough and comprehensive.

[19] Having reviewed the CCHSS's affidavit evidence and argument, I am satisfied that its efforts in searching for records were thorough and comprehensive. I find that the CCHSS has met its duty to the applicant under s. 6(1) of the Act.

4.0 CONCLUSION

[20] For the reasons given above, under s. 58 of the Act, I require the CCHSS to refuse to disclose the information that it has withheld under s. 22 of the Act.

[21] Under s. 58 of the Act, I confirm that the CCHSS has met its duty to the applicant under s. 6(1) of the Act.

December 17, 2002

ORIGINAL SIGNED BY

Michael T. Skinner
Adjudicator