



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

Order 03-17

COLLEGE OF DENTAL SURGEONS OF BRITISH COLUMBIA

Mary Carlson, Adjudicator
April 30, 2003

Quicklaw Cite: [2003] B.C.I.P.C.D. No. 17
Document URL: <http://www.oipc.bc.ca/orders/Order03-17.pdf>
Office URL: <http://www.oipc.bc.ca>
ISSN 1198-6182

Summary: Applicant requested records relating to a complaint she made to the College about a dentist. The College properly withheld the personal information of third parties withheld under s. 22. The College performed its s. 6(1) duty to conduct an adequate search for records responsive to the request.

Key Words: adequate search – respond openly, accurately and completely – every reasonable effort – personal privacy – unreasonable invasion.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 6(1), 22(1), 22(3)(a), (b) and (g).

Authorities Considered: B.C.: Order 00-21, [2000] B.C.I.P.C.D. No. 24; Order 01-10, [2001] B.C.I.P.C.D. No. 11; Order 01-53, [2001] B.C.I.P.C.D. No. 56.

1.0 INTRODUCTION

[1] On October 26, 2001, the applicant, a certified dental assistant, made a request, under the *Freedom of Information and Protection of Privacy Act* (“Act”), to the College of Dental Surgeons of British Columbia (“College”) for “all my personal files, documentation, correspondence and meeting notes as well as documents created as a result of any investigation resulting from” a complaint she filed against a certain dentist. Specifically, the records in dispute relate to a College investigation into a complaint the applicant made to the College concerning the dental billing practices of her former employer.

[2] The College responded to this request on November 7, 2001. The College provided some records, but withheld certain records in their entirety and severed information from other records under s. 22(1) and ss. 22(3)(a) and (g) of the Act. In its response letter, the College clarified that the information that was withheld was the personal information of other people and included “evaluations or recommendations from third parties.”

[3] In its response, the College also stated that it was not providing copies of records “previously received by or sent to the College” by the applicant concerning the investigation.

[4] The applicant requested a review of this decision on November 15, 2001. Missing from the College’s response to her request was her “personal information” as well as four reports that she believed were referenced in records disclosed to her. She also requested a review of the information that had been withheld under s. 22.

[5] During mediation, further records pertaining to the investigation were released, as well as the applicant’s personal file with the College. The applicant requested that this matter proceed to an inquiry and a notice of written inquiry was issued on March 6, 2002.

[6] The applicant submitted a CD with her initial submission, which was not forwarded to the other parties. The CD contains tapes of phone conversations between the applicant and various people, which the applicant apparently recorded. I have listened to the tapes. Especially because they clearly are not relevant to the matter under review under the Act, this CD has not been provided to the other parties. Nor has its content formed part of my deliberations or findings in this case.

2.0 ISSUES

[7] There are two issues under review. The first is whether the College is obligated under s. 22 to withhold the information in dispute. Under s. 57(2) of the Act, the applicant has the burden of proof respecting access to a record containing personal information of a third party.

[8] The second issue under review is whether or not the College has met its duty to assist the applicant, as articulated in s. 6(1) of the Act, by conducting an adequate search for records responsive to the request. The Commissioner has decided in previous cases that the public body has the burden of proof in matters relating to the adequacy of the search.

3.0 DISCUSSION

[9] **3.1 Third-Party Personal Privacy** – With respect to s. 22, numerous previous decisions establish how that section is to be interpreted and applied. See, for

example, Order 01-53, [2001] B.C.I.P.C.D. No. 56. I have applied the approach to s. 22 taken in that case. The relevant portions of s. 22 in this case 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.

...

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,

(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that 20 disclosure is necessary to prosecute the violation or to continue the investigation,

...

(g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party,

....

[10] The information that has been withheld from the records includes the following:

- Medical and dental history of a patient
- The date of birth, MSP and chart number of a patient
- Personal recommendations and evaluations about one dentist by another dentist

[11] The applicant has stated she only seeks access to her own personal information. I have reviewed the records and it is clear that all of the information that has been withheld is the personal information of people other than the applicant. None of the information is the personal information of the applicant. It seems to me that, on this basis, the withheld third-party personal information is outside the scope of the applicant's access request. Since the College's decision regarding this information is before me, however, I propose to deal with it.

[12] Section 22 is a mandatory exception to the public's right of access to records, and requires a public body to withhold personal information of third parties if the disclosure of that information would constitute an unreasonable invasion of the third party's privacy. Under s. 22(3), certain information, if disclosed, is presumed to constitute an unreasonable invasion of the privacy of third parties. Included in this category is information relating to medical history, diagnosis and treatment of a third party

(s. 22(3)(a)), personal recommendations or evaluations about a third party (s. 22(3)(g)) or personal information of a third party compiled as part of an investigation into a possible violation of law (s. 22(3)(b)).

[13] I am satisfied that the information severed under s. 22 is the personal information of third parties and that the disclosure of this information is presumed to be an unreasonable invasion of personal privacy of those third parties under ss. 22(3)(a), (b) and (g). I find that s. 22(1) requires the College to refuse disclosure of the personal information it has withheld under that section.

[14] **3.2 Adequacy of Search** – Section 6(1) of the Act requires a public body to make every reasonable effort to assist an applicant, including by making reasonable efforts to find records that respond to an applicant’s request. The standards public bodies must meet in searching for records have been discussed in many cases. See, for example, Order 01-10, [2001] B.C.I.P.C.D. No. 11. I have applied the approach taken in Order 01-10.

[15] In her initial submission, the applicant states that the College did not release her personal file, which she describes as her “membership” information “prior to” her request to this Office for a review of the College’s response. She states that, although the College disclosed “some” of her personal file, because that disclosure occurred during the mediation process, she considered it “outside the time limitations set by your office” and therefore in violation of several sections of the Act.

[16] In her original request for review, the applicant stated she did not receive her “personal file” from the College. The College initially responded to the applicant by providing records that pertained only to the complaint she had filed. In its initial submission, the College stated, “there was simply a misunderstanding of the Applicant’s request, not a denial of access.” During the mediation period, the College stated it was “alerted to the oversight” and copies of the “applicant’s personal file were released in their entirety.”

[17] The applicant’s original request for information to the College is sufficiently ambiguous that I accept the College’s explanation that the delay in providing a copy of the applicant’s personal information was due to a reasonable misunderstanding of what the applicant was seeking.

[18] Some of the records the applicant contends are missing include all of the items the College did not provide to her on the grounds that she already had copies of those records. I note in her original request for review the applicant did not take issue with the fact that the College was not providing copies of records she had previously provided to the College. However, in her initial submission the applicant states that she now wants access to these records. Recognizing that public resources are stretched, it appears reasonable that the College did not supply the applicant with records she provided to them. I note that the applicant in her original request for review did not raise this issue and I am not in a position to make a finding in this regard. However, I do not see any reason why the College could not now provide the applicant with copies of these records.

[19] The applicant, in her submission, also makes what appears to be a new request for copies of a letter of support she wrote concerning a co-worker and various patient records she provided to the College during the investigation of her complaint, including a document with “just numbers and codes” in the applicant’s “own handwriting.” None of it constitutes the applicant’s personal information, meaning it falls outside the scope of her original request and is not properly before me.

[20] Finally, the applicant, in her request for review, identifies four items listed in a printout titled “Complaint Listing – Details”. This printout is a log of activities, and on this log sheet there are four references that state “Reports Complete – File to Dep-Regl”. The applicant believes these references show that other records exist; I am unable, based on this evidence, to come to the same conclusion. The document is a running record of activities that have taken place and it appears to be documenting who has looked at the file and where the file travelled to next. Simply because a record makes a notation of an action that has or will take place does not mean corresponding records exist. I am supported in this by Order 00-21, [2000] B.C.I.C.P.D. No. 24, in which the Commissioner concluded as follows, at p. 5:

... I cannot agree, on the material before me, with the applicant’s contention that other records must exist which have not been produced. The fact that the special investigator acknowledged making some inquiries does not mean further records must exist in relation to those inquiries. The special investigator may or may not have documented his activities fully. The fact inquiries were made does not, in other words, mean records respecting those inquiries exist. ...

[21] Having regard to all of the material before me, I am satisfied that the College has performed its s. 6(1) duty to assist the applicant by making reasonable efforts to search for records.

5.0 CONCLUSION

[22] For the reasons given above, I make the following orders under s. 58 of the Act:

1. I require the College of Dental Surgeons to refuse to disclose the information that it has withheld under s. 22 of the Act; and
2. I confirm that the College of Dental Surgeons has performed its duty under s. 6(1) of the Act in searching for records responsive to the applicant’s request.

April 30, 2003

ORIGINAL SIGNED BY

Mary Carlson
Adjudicator