Office of the Information & Privacy Commissioner for British Columbia

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Order F19-02

COLLEGE OF PHYSICIANS AND SURGEONS OF BRITISH COLUMBIA

Chelsea Lott
Adjudicator

January 10, 2019

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Summary: The applicant requested access to her personal information contained in records related to her complaint to the College of Physicians and Surgeons of BC. The applicant's personal information was intermingled with the personal information of several third parties. The adjudicator held that s. 22 of FIPPA did not apply to some of the information in dispute, specifically information already known to the applicant. However, the College was required to withhold the remainder of the applicant's personal information because disclosure would be an unreasonable invasion of third parties' personal privacy under s. 22.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22, 22(3)(b), 22(4)(b).

INTRODUCTION

[1] The applicant made a complaint to the College of Physicians and Surgeons of British Columbia (College)[1] about a physician's treatment of a third party (the patient). The complaint was dismissed by the College. Subsequently, the applicant asked the College for "a copy of any records of communication which include my name or otherwise reference me … and my course of action."[2]

[1] The College is designated as a governing body of a profession in Schedule 3, which makes it a "public body" under FIPPA by virtue of the definitions of "public body" and "local public body" in FIPPA.
[2] Applicant's March 3, 2017 access request.

[2] The College responded, granting partial access to the records, but withheld information under s. 22 (disclosure harmful to personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the College's decision.

[3] During mediation, the College disclosed further information to the applicant. Mediation did not resolve the matter and the applicant requested the OIPC conduct an inquiry. The OIPC gave notice of the inquiry to the physician who was the subject of the applicant's complaint to the College. The applicant, the College and the physician all provided written submissions.

ISSUES

[4] The sole issue in this inquiry is whether the College is required to withhold third party personal information under s. 22 of FIPPA. The applicant has the burden of proving that disclosure of this information would not be an unreasonable invasion of third party personal privacy.[3]

DISCUSSION

Background

[5] The applicant does not explain the nature of her relationship with the patient; however, at one time the patient granted the applicant a power of attorney. The applicant stopped communicating with the patient in July 2015 for unknown reasons. In September 2015, the patient revoked the applicant's power of attorney.

[6] About a year later, the applicant filed a complaint with the College about the patient's family physician.[4] The applicant was concerned about the care the patient was receiving from his physician. She also alleged the patient's care aides were abusing and taking advantage of the patient. The applicant believes the physician is condoning the care aides' continuing involvement in the patient's care.[5]

[7] The College's registrar investigated and dismissed the applicant's complaint.[6] The applicant appealed to the Health Professions Review Board.[7] In

[3] Section 57(2) of FIPPA.
[4] Affidavit of legal counsel for the College (Counsel Affidavit) at para. 5.
[5] The applicant's detailed allegations are set out in her submission.
[6] The registrar's decision is at pp. 493–498 of the records. She cites s. 32(3)(c) of the *Health Professions Act*, RSBC 1996, c 183.
[7] Counsel Affidavit at para. 19.

July 2017, the Health Professions Review Board confirmed the College's disposition of the complaint.[8]

Information and records in dispute

[8] The records in dispute total 222 pages. Some have been withheld in their entirety and others were disclosed with some information redacted.

[9] The applicant states in her inquiry submissions that she requests full disclosure of her personal information within the custody or control of the College.[9] The applicant believes that there is false and misleading information about her in the records and she seeks to correct the information.[10] I interpreted the applicant's submission to mean that she seeks access to personal information about herself only and is not seeking disclosure of personal information which is exclusively the personal information of any third parties.[11] The applicant has since confirmed with the registrar of inquiries that she is not seeking any personal information which is exclusively that of third parties.[12]

[10] I have reviewed the information in dispute and only eleven pages contain the applicant's personal information.[13] Therefore, I have limited my analysis to those eleven pages.

[11] The applicant's personal information is contained in the following records:

- Letters (2) from the physician's lawyer to the College;
- Letters (2) from the physician to the College addressing the applicant's allegations;
- The patient's medical records; and
- The College registrar's decision letter.

[12] The information the College has withheld from these records is about: what the patient and other third parties told the physician, the nature of the applicant's relationship with the patient and her beliefs about the patient, the patient's legal affairs and the physician's impression of the applicant.

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[8] *Complainant v College of Physicians and Surgeons of British Columbia*, 2017 BCHPRB 63.
[9] Applicant submission at p. 1.
[10] Applicant submission at pp. 1 and 3.
[11] My conclusion is based on my review of the applicant's access request and her request for review, which suggests she is only seeking her personal information and not that of any third parties.
[12] Email dated November 30, 2018.
[13] Pages 159, 161, 182–184, 481–484, 495 and 497.

Section 22 – third party personal privacy

[13] Section 22 requires public bodies to refuse to disclose personal information if its disclosure would be an unreasonable invasion of a third party's personal privacy. The approach to applying s. 22 is well established.[14] I will follow the same approach.

Personal information

[14] The threshold question is whether the records contain personal information. "Personal information" is recorded information about an identifiable individual other than contact information. In turn, "contact information" is information which enables an individual at a place of business to be contacted.[15]

[15] I find all of the information in dispute is the personal information of identifiable third parties and is not contact information. A "third party" is defined in FIPPA as any person, other than the person who made the request (i.e. the applicant) or a public body. The information reveals conversations between the patient and physician, the patient's legal affairs and his medical care. It is the personal information of the patient, the physician and other third parties involved with the patient.

[16] Some of the information in dispute is about the applicant, so it is her personal information. The applicant's personal information is intermingled with the information of the third parties. Therefore, the applicant's personal information can only be disclosed to her if disclosure would not be an unreasonable invasion of the third parties' personal privacy.

Section 22(4) – not unreasonable invasion of privacy

[17] The next step in the s. 22 analysis is to determine if the personal information falls into any of the types of information listed in s. 22(4). If it does, then disclosure would not be an unreasonable invasion of personal privacy. The College and the physician submit that none of the subsections in s. 22(4) apply to the personal information in this case. The applicant argues that s. 22(4)(b) applies.

Section 22(4)(b) – compelling circumstances

[18] Section 22(4)(b) says that disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if there are "compelling circumstances affecting anyone's health or safety and notice of disclosure is mailed to the last known address of the third party."

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[14] See for example Order 01-53, 2001 CanLII 21607 (BCIPC) at paras. 22-24.
[15] See Schedule 1 of FIPPA for these definitions.

[19] The applicant argues that compelling circumstances exist because the patient "remains in harm's way."[16] The applicant alleges that the physician is complicit in the care aides continued abuse of the patient.[17] The College says that the applicant does not represent the patient and her argument on this point should be disregarded. The physician says that no compelling circumstances exist.

Analysis

[20] Section 22(4)(b) has been considered in a few of this Office's orders but has never been found to apply to the information in dispute.[18] Section 22(4)(b) is generally dismissed because of a lack of evidence regarding any "compelling circumstances affecting anyone's health or safety" as required by the opening wording of that section. Past orders have held that there must be a health or safety emergency requiring the disclosure.[19]

[21] In my view, s. 22(4)(b) is not relevant or applicable in a request for review of a public body's decision to *refuse* to disclose information. As I see it, s. 22(4)(b) is a relevant consideration in the context of a complaint about the public body's decision to *disclose* the disputed information under s. 22(4)(b). It is in that circumstance a public body might defend its decision to disclose the personal information by explaining that there were compelling circumstances affecting someone's health or safety and notice of disclosure was mailed to the last known address of the third party.

[22] I arrive at this position by virtue of the wording of s. 22(4)(b) and with reference to the legislative context. In order for s. 22(4)(b) to apply, "notice of disclosure" must be mailed to the third party's last known address. Public bodies are responsible for disclosure decisions under s. 8 of FIPPA. The requirement for "notice of disclosure" within s. 22(4)(b), implies that a public body has made a decision to *disclose* the information under s. 8 and has in fact disclosed the information to an applicant.

[23] In addition, s. 22(4)(b) contemplates the public body giving "notice of disclosure" and not notice of an *intention* to disclose the information. This is in contrast to s. 23, which requires a public body to give notice to a third party when it *intends* to give access to a record but has not yet made the decision to do so. The absence of the word "intention" in s. 22(4)(b) supports a conclusion that in order for s. 22(4)(b) to apply, a public body must have decided, rather than just planned or intended, to disclose a third party's personal information.

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[16] Applicant submission at p. 4.
[17] *Ibid.*
[18] Orders 54-1995, 116-1996, 190-1997, 261-1998, 01-37, 04-12, F05-02, F12-05 and F13-12.
[19] Order 04-12, 2004 CanLII 34268 at para. 22; Order No 54-1995 at p. 8 available on the OIPC website at: https://www.oipc.bc.ca/orders/382.

[24] The decision to disclose information that is in the custody and under the control of the public body and the obligation to give notice if required, belongs to the public body alone under FIPPA. In a request for review of the public body's refusal to disclose third party personal information, one knows for a fact that the public body did not give the requisite notice under s. 22(4)(b). Notice is only needed when the public body decides to disclose the information because the circumstances described in s. 22(4)(b) apply. Thus, an applicant who has been refused access to third party personal information will never be able to establish that s. 22(4)(b) applies. This point was confirmed in Order F12-05, in which adjudicator (now commissioner) McEvoy, found that s. 22(4)(b) did not apply in circumstances where the public body had refused to disclose the information on the basis that notice had not been mailed to the third party.[20]

[25] My understanding of s. 22(4)(b) is supported by Part 3 of FIPPA, which regulates when a public body is permitted to disclose personal information. Public bodies already have the power, in the absence of an access request, to disclose personal information when "compelling circumstances affecting anyone's health or safety" exist. Section 33.1(1)(m) provides this power and it contains almost identical wording to s. 22(4)(b). Section 33.1(1)(m) says that a public body is permitted to disclose personal information in its custody or under its control if the head of the public body determines that compelling circumstances exist that affect anyone's health or safety and notice of disclosure is mailed to the last known address of the individual the information is about, unless the head of the public body considers that giving this notice could harm someone's health or safety.

[26] Both ss. 22(4)(b) and 33.1(1)(m) are meant to authorize a public body to disclose information to prevent harm to a person's health or safety. Section 33.1(1)(m) permits a public body to disclose such information on its own initiative. Section 22(4)(b) simply authorizes a public body to disclose the same type of information to an individual requesting it under Part 2 of the Act. The purpose of s. 22(4)(b) is not to provide an applicant with an avenue to obtain personal information by requesting a review of a public body's decision under s. 52 of FIPPA.

[27] In summary, in order for s. 22(4)(b) to apply, a public body must have (a) decided to disclose third party personal information and (b) mailed a notice to the third party at his or her last known address, advising that his or her personal information has been disclosed. A public body relying on s. 22(4)(b) must also establish that there were compelling circumstances affecting someone's health or safety justifying the disclosure.

[20] 2012 BCIPC 6 at para. 31.

[28] In the present case, the College is refusing to disclose the information and has not given notice of disclosure to the third parties. Therefore, s. 22(4)(b) does not apply and it is not necessary to consider whether compelling circumstances affecting the patient's health or safety exist.

[29] The applicant has not made any other arguments about s. 22(4). I have considered the remaining categories of information in s. 22(4) and I am satisfied that none apply.

Section 22(3) - presumptions

[30] The third step in the s. 22 analysis is to determine whether any of the presumptions in s. 22(3) apply, in which case, disclosure is presumed to be an unreasonable invasion of third party privacy. However, this presumption may be rebutted by considering all the relevant circumstances.

Section 22(3)(a) – medical history, condition and treatment

[31] Section 22(3)(a) is relevant and applies to personal information that "relates to medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation." The College and the physician submit that the presumption in s. 22(3)(a) applies. The applicant says that she is not seeking the patient's medical information.

[32] I find that s. 22(3)(a) applies to all of the information in dispute because it is about the patient's medical history, condition and treatment. It reveals the patient's mental or behavioural health, his instructions to care providers, other people's views on his condition and care, and legal representation matters. In all of these instances s. 22(3)(a) applies, even where the information is concurrently the personal information of the applicant or other third parties.[21]

Section 22(3)(b) – investigation

[33] Although not raised by the parties, in my view, s. 22(3)(b) applies to the information in dispute. In order for s. 22(3)(b) to apply, there must have been an investigation into a possible violation of law and the records were compiled and are identifiable as part of that investigation.

[34] In its inquiry submissions, the College explains the statutory scheme of the *Health Professions Act*, which governs the hearing and disposition of complaints against physicians.[22] The *Health Professions Act* authorizes the College to take a range of disciplinary actions against physicians including

[21] Order F15-36, 2015 BCIPC 39 at para. 21.
[22] College submission at paras. 5–9.

cancelling their registration with the College.[23] Previous orders have held that the College's complaint process was an investigation into a possible violation of the law. [24]

[35] The applicant's complaint was considered by the College pursuant to the *Health Professions Act* and could have led to disciplinary action under that Act. Therefore, I am satisfied that the College's review of the applicant's complaint was an investigation into a possible violation of the law under s. 22(3)(b).

[36] The second requirement for s. 22(3)(b) to apply is that the information was compiled and is identifiable as part of that investigation. The meaning of "compiled" has not been fully considered in past OIPC orders.[25] In the *Canadian Oxford Dictionary*, "compile" is defined as to "collect (material) into a list, volume, etc." and "make up (a volume etc.) from such material."

[37] Ontario orders interpret "compiled" to mean "to collect, gather or assemble together."[26] The BC government's *FOIPPA Policy & Procedures Manual* defines "compiled" to mean "that the information was drawn from several sources or extracted, extrapolated, calculated or in some other way manipulated."[27]

[38] I prefer Ontario's definition of "compiled" to that in the *FOIPPA Manual*. Ontario's definition is in keeping with the ordinary, grammatical meaning of "compiled." The *FOIPPA Manual's* interpretation of "compiled" as including information that was "extracted, extrapolated, calculated or in some other way manipulated" extends its meaning beyond the ordinary sense of the word.

[39] In my view, the act of compiling involves some exercise of judgment, knowledge or skill on behalf of the individual or public body doing the compiling, as opposed to just passively collecting information. Therefore, in my opinion, information will have been "compiled" within s. 22(3)(b), if it was gathered or assembled using judgment, knowledge or skill.

[40] Turning to the present case, the records are letters sent by the physician and her lawyer in response to the allegations, the College's disposition letter and the patient's medical records. All of these records were gathered in the course of the complaint investigation by the College. It is obvious that the College, in particular its registrar, was using judgment, knowledge and skill to conduct the

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[23] Section 39 of the *Health Professions Act*.
[24] Order F12-10, 2012 BCIPC 14 at para. 28; Order F11-10, 2011 BCIPC 13 at para. 39.
[25] See: Order 268-1998, 1998 CanLII 3461 at para. 5 and Order F18-38, 2018 BCIPC 41 at para. 75, which both considered the meaning of compiled, but did not arrive at a conclusion.
[26] Order P-666, 1994 CanLII 6588 (ON IPC); Order PO-2066, 2002 CanLII 46468 (ON IPC); Order MO-1323, 2000 CanLII 20962 (ON IPC).
[27] 1998 CanLII 3461 at para. 5. The manual can be found on the BC Government's website at https://www2.gov.bc.ca/gov/content/governments/services-for-government/policies-procedures/foippa-manual.

investigation and gather or assemble the records. On this basis I am satisfied that the information was "compiled" and that s. 22(3)(b) applies to all of the information in dispute.

Section 22(3)(d) – occupational history

[41] Section 22(3)(d) of FIPPA provides that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if it relates to employment, occupational or educational history.

[42] The physician argues that the College's consideration and disposition of the applicant's complaint forms part of the physician's occupational history pursuant to s. 22(3)(d). The applicant says that even if the information constitutes the physician's employment history, compelling circumstances outweigh this presumption.

[43] The information in the medical records formed the body of knowledge upon which the physician based her medical care of the patient. While the applicant's personal information appears in the records, it is in the context of the physician recording it, in order to fulfill her professional and ethical duties. The withheld personal information is not, as suspected by the applicant, a "plethora of statements" made by the physician about her.

[44] The College's disposition letter assesses whether the physician's medical care and professional conduct was appropriate based on this information. The personal information is coloured by the context of a disciplinary investigation by the College about the physician's practice. Disclosing the personal information in the records would reveal the matters which were relevant to the College's investigation of the complaint. In my opinion, such information is the physician's occupational history within s. 22(3)(d). My conclusion is consistent with past orders which have held that investigations of professionals, including a regulatory body's review of medical care provided by a physician, comprise that professional's "occupational history."[28]

Section 22(2) – relevant circumstances

[45] The next step in a s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those listed in s. 22(2). It is at this step, after considering all relevant circumstances, that any presumptions under s. 22(3) may be rebutted.

[28] Order 00-11, 2000 CanLII 10554 (BC IPC) at p. 11; Order 02-01, 2002 CanLII 42426 (BC IPC) at paras. 121-122; Order F05-18, 2005 CanLII 24734 (BC IPC) at paras. 45–46.

[46] I have considered the following circumstances described in s. 22(2):

> (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,
>
> (c) the personal information is relevant to a fair determination of the applicant's rights,
> …
>
> (e) the third party will be exposed unfairly to financial or other harm,
>
> (f) the personal information has been supplied in confidence,
> …
>
> (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant,

Section 22(2)(a) – public scrutiny

[47] Section 22(2)(a) supports disclosure where it is desirable for the purpose of subjecting the activities of a public body to public scrutiny. The purpose of s. 22(2)(a) is to foster accountability of a public body.[29]

[48] The applicant believes that the College mishandled her legitimate, serious, complaint by allowing it to turn into a character assassination against her "behind closed doors."[30] The applicant has submitted evidence which she says proves that some of the information about her in the records is not true. She also argues that the College's processes subjugated her privacy to that of the third parties involved.

[49] The College argues that the review of the College's handling of the complaint by the Health Professions Review Board has already sufficiently subjected the College to public scrutiny.

[50] I am not convinced that disclosing the information at issue would subject the College's activities to public scrutiny. There is no apparent connection between disclosing such information and the public accountability of the College under s. 22(2)(a).

[51] The College's mandate in the circumstances was to investigate professional misconduct allegations against the physician. It did not include, as the applicant suggests, ensuring that her reputation was upheld in its investigative records.

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[29] Order F05-18, 2005 CanLII 24734 (BC IPC) at para. 49.
[30] Applicant submission at p. 3.

[52] I have also reviewed the College Registrar's decision letter and find that any information about the applicant/complainant had no bearing on the College's investigation or disposition of the complaint. Thus, the accuracy of the applicant's personal information would have had no bearing on the College's public interest mandate.

[53] I also agree with the College that the Health Professions Review Board process has already subjected the College's activities to public scrutiny.

[54] In my opinion, what the applicant is actually seeking is accountability of the physician, for the physician's statements about her, which is a private law matter. Section 22(2)(a) is about the accountability of public bodies, not private citizens. Therefore, I am not satisfied that s. 22(2)(a) weighs in favour of disclosure in this case.

Section 22(2)(c) – fair determination of the applicant's rights

[55] The applicant argues that disclosure of the information is necessary in order for her to correct her personal information in the records. She submits that correction and retraction of what she says is the rampant false and inflammatory information, is at the heart of this inquiry. I interpret this as an argument that s. 22(2)(c) applies.

[56] The third party argues that there is no evidence to support the applicant's assertion that the records contain factual errors about her. The College denies that s. 22(2)(c) is a circumstance favouring disclosure.

[57] Section 22(2)(c) supports disclosure where the information is relevant to a fair determination of the applicant's rights. Previous orders have held that s. 22(2)(c) applies if all of the following circumstances are met:

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds.

2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed.

3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question.

4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.[31]

[31] Order 01-07, 2001 CanLII 21561 (BC IPC) at para. 31 citing Ontario Order P-651, [1994] OIPC No. 104. More recently, Order F16-46, 2016 BCIPC 51 at para. 43.

[58] Past orders have established that an applicant's desire to exercise her rights under s. 29 satisfy the requirements of s. 22(2)(c).[32] Section 29 of FIPPA states that an applicant who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or control to correct the information.

[59] As noted previously, the applicant's personal information is intermingled with third party personal information. As a result, the records in dispute contain the applicant's personal information and I accept that the applicant may have a legal right under s. 29 of FIPPA to request correction of her personal information. I also accept that the applicant intends to exercise that right, meaning that a proceeding is contemplated as required by the second part of the s. 22(2)(c) test.

[60] I am also satisfied the information has a bearing on that right, because without it she will not know whether she wants or needs to exercise her right under s. 29 to correct the information. In this way, the information is necessary for her to prepare to exercise her legal right. Section 22(2)(c) is therefore a factor in support of disclosing the applicant's personal information, even though that personal information is intermingled with third party personal information.

Section 22(2)(e) – unfair exposure to financial or other harm

[61] The College says that if the information is disclosed the third parties could be exposed unfairly to harm. Section 22(2)(e) addresses whether disclosure would expose a third party "unfairly to financial or other harm." "Other harm" has been interpreted as serious mental distress, anguish or harassment.[33]

[62] The College's entire submission on this point is that the third parties "could be exposed unfairly to harm, noting that disclosure in the absence of the patient's prescribed consent would represent an unreasonable invasion of the patient's privacy."[34] I understand the College's argument to be that the patient (rather than other third parties) could be exposed unfairly to harm.

[63] It may be upsetting to have one's medical and other personal information disclosed. However, without further explanation, I am not satisfied that disclosure would cause the patient serious mental distress, anguish or harassment. The information is sensitive as it reveals his medical and legal affairs, but it is not obvious how disclosing this information could harm the patient in the way contemplated by s. 22(2)(e). Therefore, s. 22(2)(e) is not a relevant circumstance.

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[32] Order F14-47, 2014 BCIPC 51 at paras. 24–27; Order F15-30, 2015 BCIPC 33 at paras. 86–88.
[33] Order 01-37, 2001 CanLII 21591 (BC IPC) at para. 42.
[34] College submission at para. 40.

Section 22(2)(f) – supplied in confidence

[64] I have also considered s. 22(2)(f) which weighs against disclosure where the personal information was supplied in confidence.

[65] The College says the personal information "undoubtedly was supplied in confidence about the patient, and other referenced parties."[35] The applicant has not addressed this provision.

[66] The physician says that she provided the records to the College during the investigation of the applicant's complaint under the *Health Professions Act*, and she did so on the express understanding they would not be forwarded to the applicant. The physician's evidence on this point is supported by information withheld in the records. It is also supported by s. 53(1) of the *Health Professions Act* which provides:

> 53(1) Subject to the *Ombudsperson Act*, a person must preserve confidentiality with respect to all matters or things that come to the person's knowledge while exercising a power or performing a duty under this Act unless the disclosure is
>
> (a) necessary to exercise the power or to perform the duty, or
>
> (b) authorized as being in the public interest by the board of the college in relation to which the power or duty is exercised or performed.

[67] Section 53 is persuasive evidence of the physician's and the College's expectations and understanding about the confidentiality of the records the physician provided during the *Health Professions Act* complaint process.

[68] The nature of the information, which pertains to discipline proceedings, medical care and legal affairs is highly sensitive. All of the information in dispute arose in the context of the College's complaint processes or in the context of a physician/patient relationship. I have no difficulty accepting that in either context, the objective expectations of the parties was that the information would be received and treated confidentially. I find that s. 22(2)(f) is a factor that weighs against disclosure.

Section 22(2)(h) – unfair damage to reputation

[69] Section 22(2)(h) requires a public body to consider whether disclosure of personal information may unfairly damage the reputation of any person referred to in the record requested by the applicant. It has two requirements; first

[35] *Ibid.*

the information must damage an individual's reputation. Second, the damage to an individual's reputation must be unfair.

[70] The physician argues that disclosure of the patient's medical and other information could "unfairly damage the reputation" of the patient.[36]

[71] The applicant argues that the physician's reputation would not be unfairly damaged as long as her statements were made in good faith.

[72] I have considered the information in dispute and none of it is the sort of information which if disclosed would unfairly damage the reputation of the patient, physician or any other third party. Although it is sensitive information, it is not clear how its disclosure would cause reputational harm, unfair or otherwise.

Other circumstance - applicant's existing knowledge

[73] Previous orders have found that a relevant circumstance in favour of disclosure under s. 22(2) is the fact an applicant is aware of or already knows the third party personal information in dispute.[37] Some of the personal information is about circumstances involving the applicant or her interactions with third parties. The applicant would be aware of these circumstances and interactions, and I find this factor weighs in favour of disclosure.

Conclusion on section 22(1)

[74] I have concluded that disclosure of any of the information is presumed to be an unreasonable invasion of privacy under s. 22(3)(a) because it relates to the patient's medical history and treatment. In addition, s. 22(3)(b) applies because the information was compiled and is identifiable as part of an investigation into a possible violation of the law under the *Health Professions Act*. The presumption in s. 22(3)(d) also applies because the information is the physician's occupational history. I have also found that the information was supplied in confidence by the physician to the College under s. 22(2)(f).

[75] On the other hand, s. 22(2)(c) weighs in favour of disclosure, because the information is relevant to the applicant's right to correct her personal information under s. 29 of FIPPA. I've also concluded that the applicant has knowledge of some of the information, and it is her personal information, both of which weigh in favour of disclosure.

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[36] Third party submission at para. 51.
[37] See for example Order F17-02, 2017 BCIPC 2 at paras. 28–30; Order F18-19, 2018 BCIPC 22 at paras. 74-77.

[76] Balancing the factors under s. 22(2) against the presumptions against disclosure under s. 22(3), I find disclosing the personal information which the applicant already has knowledge of would not unreasonably invade the personal privacy of any third parties. As discussed at the outset, I am considering the applicant's personal information. Giving an applicant her own personal information would only unreasonably invade third-party personal privacy in exceptional circumstances.[38] The applicant's knowledge of this particular information rebuts any presumption against its disclosure. I find that s. 22 does not apply to this specific information.

[77] On the other hand, I find that s. 22 requires the College to withhold the remaining information. I would characterize the remaining information as the third parties' opinions or judgments about the applicant. The fact that this information includes (or is simultaneously) the applicant's personal information does not outweigh the privacy interests of the third parties.

[78] I will also add that although the applicant wants to exercise her rights under s. 29 of FIPPA to correct misinformation about her in the records, s. 29 only addresses factual errors or omissions in personal information. The section does not require a public body to correct opinions or expressions of judgment.[39] The information which I have found must be withheld under s. 22 is not the type of information which is susceptible to correction under s. 29.

[79] Although not raised by the parties, I have also considered s. 22(5), which requires a public body to give an applicant a summary of her personal information if it cannot be disclosed under s. 22, unless the summary would disclose the identity of a third party who supplied the personal information. The applicant knows the identities of the third parties. The College could not prepare a meaningful summary without a connection being made between the information and the third parties. Accordingly, I find that s. 22(5) does not require the College to prepare a summary of the applicant's personal information which has been withheld under s. 22.

CONCLUSION

[80] For the reasons given above, under s. 58 of FIPPA, the College is required to refuse to disclose the information under s. 22, except for the information highlighted in yellow in a copy of the records provided to the College with this order.

[81] I require the College to give the applicant access to the highlighted information by February 22, 2019. The College must concurrently copy the OIPC

[38] Order 01-54, 2001 CanLII 21608 (BC IPC) at para. 26.
[39] Order 02-16, 2002 CanLII 42441 (BC IPC) at para. 7.

Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

January 10, 2019

ORIGINAL SIGNED BY

Chelsea Lott, Adjudicator

OIPC File No.: F17-71179