

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 296-1999
February 26, 1999**

INQUIRY RE: Request for an applicant's medical records in the custody of Royal Columbian 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 January 29, 1999 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 a decision by Royal Columbian Hospital (the Hospital) to withhold medical records that the applicant had requested.

2. Documentation of the inquiry process

On September 8, 1998 the applicant submitted a request to the Hospital for her medical files. On September 11, 1998 the Hospital denied access under sections 19(1) and 19(2) of the Act.

On October 2, 1998 the applicant requested that this office review the Hospital's decision. The ninety-day period ended on December 24, 1998. During mediation, the Hospital released 51 pages of records, severing the names of staff under section 19(1)(a) of the Act. The applicant requested a review of the Hospital's decision to withhold the remaining 237 pages of records and of the decision to withhold the staff's names. The Hospital requested, and the applicant agreed, to extend the period of the inquiry. The Notice of Inquiry was sent to the parties on January 7, 1999 setting the inquiry for January 29, 1999.

3. Issue under review and the burden of proof

The issue in this inquiry is the Hospital's application of section 19 to the applicant's medical files. The applicant also requested that the review cover the section 6

issue. The applicant states in her letter requesting the review that she is looking for a psychiatrist's report. This report is mentioned in the Portfolio Officer's Report as "a report completed by a doctor and submitted to the Ministry of Human Resources." However, neither party has mentioned section 6 in its submissions. As I have no evidence or argument before me on this issue, it is not one that I am prepared to address.

The relevant parts of section 19 are 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.

Section 57 of the Act establishes the burden of proof on the parties in an inquiry. Under section 57(1), where access to information in the record has been refused under section 19, it is up to the public body to prove that the applicant has no right of access to the record or part of the record.

4. The records in dispute

The records in dispute are the applicant's medical files, dealing with a number of visits to the emergency room of the Hospital between 1992 and 1996, and with an admission to the psychiatric unit of the Hospital in 1996. The records that have not been released pertain to the latter episode.

5. The applicant's case

Since all of the applicant's submissions are on an *in camera* basis, I am not at liberty to disclose her views. I have considered them carefully.

6. Royal Columbian Hospital's case

Most of the submissions and supporting evidence of the Hospital are also, appropriately, on an *in camera* basis.

The Hospital released 51 pages, out of a total of 288, to the applicant, after originally deciding not to release any to her on the basis of section 19 of the Act:

As a result of her review of the records pertaining to the Applicant's admission to the Psychiatric Unit of the Hospital between March 7 and April 14, 1996, [the director of patient documentation and regional coordinator for Freedom of Information for the Simon Fraser Health Region] obtained a medical opinion and additional information with respect to the issue of whether the release of these records to the applicant could reasonably be expected to threaten anyone else's safety or mental and physical health. (Submission of the Hospital, para. 3)

The Hospital acknowledges that individuals have a significant interest in their own medical records, and that decisions to deny an applicant access should be based on evidence which meets a relatively high standard. I have previously adopted "a balance of probabilities" as the appropriate standard. In the submission of the Hospital, the opinion which it obtained from a medical practitioner and the other information which has been submitted on an *in camera* basis, meet this standard. In addition, the hospital notes, "the content of the records in dispute itself arguably demonstrates the actual threat of physical harm." (Submission of the Hospital, para. 7)

The Hospital has also reminded me of my earlier holdings to the effect that public bodies should act prudently when the health and safety of others is in issue. (See Order No. 18-1994, July 21, 1994, p. 4; Order No. 28-1994, November 8, 1994, p. 8; Order No. 58-1995, October 12, 1995, p. 6; Order No. 78-1996, January 18, 1996, p. 4; Order No. 89-1996, March 4, 1996, pp. 4-5)

7. Discussion

I have carefully reviewed all of the submissions and affidavits made available to me in this inquiry by the respective parties. I find that the Hospital has met its burden of proof in this matter and can legitimately refuse to disclose the applicant's personal information to her, since disclosure could reasonably be expected to threaten someone else's safety or mental or physical health.

The hospital has also relied on section 19(2) of the Act to deny the applicant access to the requested information. In light of my decision on the application of section 19(1) of the Act, it is unnecessary for me to determine whether the information sought by the applicant may also be withheld under section 19(2).

8. Order

I find that Royal Columbian Hospital was authorized under section 19(1) of the Act to refuse access to the records in dispute. Under section 58(2)(b) of the Act, I confirm the decision of Royal Columbian Hospital to refuse access to all records withheld on the basis of 19(1) of the Act.

David H. Flaherty
Commissioner

February 26, 1999