



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

Order F09-16

**VANCOUVER COASTAL HEALTH AUTHORITY**

Jay Fedorak, Adjudicator

October 27, 2009

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**Summary:** An applicant requested all records related to her application for, and denial of, employment as a nurse, including complete information related to references. VCHA refused access under s. 22(1) to references on the grounds that the third parties supplied them in confidence in accordance with s. 22(3)(h). VCHA's decision to refuse access under s. 22(1) is confirmed.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, s. 22(3)(h) and 22(5).

**Authorities Considered: B.C.:** Order No. 327-1999, B.C.I.P.C.D. No. 40; Order 00-48, [2000] B.C.I.P.C.D. No. 52; Order 01-07, [2001] B.C.I.P.C.D. No. 7; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 01-54, [2001] B.C.I.P.C.D. No. 57; Order 02-02, [2002] B.C.I.P.C.D. No. 2; Order F05-31, [2005] B.C.I.P.C.D. No. 42; Order F06-13, [2006] B.C.I.P.C.D. No. 20.

## **1.0 INTRODUCTION**

[1] This order arises from a request by an applicant to the Vancouver Coastal Health Authority ("VCHA") for all records related to her application for, and denial of, employment as a nurse, including complete information related to references.

[2] VCHA made a decision to withhold all of the requested records under s. 22(3)(h) of the *Freedom of Information and Protection of Privacy Act* ("FIPPA"). The applicant requested a review of VCHA's decision to withhold the records.

[3] During mediation, VCHA agreed to provide the applicant with a severed version of the records, which consisted solely of completed reference check forms. VCHA continued to withhold the identities of the three referees and the information that they provided in response to questions that VCHA staff posed. VCHA attempted to obtain the consent of the three referees to disclose the information that they had provided. Two of the three consented, but the other (“third party”) did not. As a result, VCHA did not disclose any of the information the referees provided, on the grounds that such disclosure could, through the process of elimination, reveal the identity of the third party who did not consent to the disclosure of the information the third party provided.

[4] Mediation did not resolve the matter and an inquiry was held under Part 5 of FIPPA. This Office provided notice of this inquiry to the applicant, VCHA and the third party.

## 2.0 ISSUE

[5] The issue in this inquiry is whether VCHA is required to refuse access to personal information under s. 22(3)(h) of FIPPA.

[6] Under s. 57(2) of FIPPA, the applicant has the burden of proving that release of the requested information would not be an unreasonable invasion of the third party’s personal privacy.

## 3.0 DISCUSSION

[7] **3.1 Records in Dispute**—The records consist of three copies of a standard “Vancouver Coastal Health Reference Check Form”. The two-page form includes sections for the names of the referee and of the VCHA staff member requesting the reference. There is a section for description of the previous and current positions held, the length of employment and the current status of the individual’s employment. The form includes a series of questions intended for referees to answer, some of which fall under the headings of “Position Information”, “Organizational Skills”, “Interpersonal/Communication Skills”, “Areas for Improvement” and “Areas of Strength”. As noted above, the applicant received severed copies of the form that disclosed all of the questions and the information about VCHA. The disputed information includes comments that VCHA wrote on each of the forms in response to the feedback that three individuals, including the third party, provided when interviewed by telephone.

[8] **3.2 Harm to Personal Privacy**—The relevant provisions of s. 22 in this case are 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 ...
- (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 ...
- (h) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation.
- ...
- (5) On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the public body must give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information.

[9] The Commissioner has considered the application of s. 22 in numerous orders and the principles for its application are well established.<sup>1</sup> I have applied those principles here without repeating them.

***Submission of the applicant***

[10] The applicant's submission does not refer to any specific provision of FIPPA; instead, she outlines general reasons why she wants the information. She asserts VCHA denied her employment because of an unfavourable reference and believes this reference came from an unauthorized source. She states that her resume contained contact information for two referees, and she specifically instructed VCHA not to contact her current employer or another hospital for which she worked previously.<sup>2</sup> She states that she sent a registered letter to that particular hospital, forbidding anyone to supply a reference for her without her permission.<sup>3</sup>

[11] She says that VCHA told her that it contacted three referees. Therefore, she concludes VCHA must have contacted a referee that she had not authorized,

<sup>1</sup> See for example, Order 01-53, [2001] B.C.I.P.C.D. No. 56.

<sup>2</sup> Applicant's initial submission, pp. 1-2.

<sup>3</sup> Applicant's initial submission, appendix p. 3.

because she had only authorized two. She also alleges that this unauthorized reference was the reason that VCHA did not hire her:

I have been slandered and unfairly dealt with by VCH in their soliciting a reference which they had no right to solicit and by [the] Hospital for providing false information in order to obtain vengeance for stating clearly to them why I would not take part in the dangerous situation which [the Hospital] was and probably still is, wrought with mismanagement and patronage.<sup>4</sup>

[12] She states that she needs to know the identities of the third parties, and what they said about her, in order to address these perceived injustices.<sup>5</sup>

### ***Submission of VCHA***

[13] VCHA submits that disclosure of the requested information is presumed to be an unreasonable invasion of third-party privacy under s. 22(3)(h) of FIPPA because it could reasonably be expected to reveal that the third party supplied the reference in confidence. It also submits that s. 22(2)(f) is a relevant circumstance weighing against release of the information because it was supplied in confidence.

[14] VCHA asserts that it conducts reference checks in a confidential manner. It explains that it first obtains the names of the referees from the applicant and then contacts them to answer a list of questions respecting the applicant's employment history, character and personal recommendations. VCHA submits that it informs referees that

their information is provided in confidence and will be protected under the guidelines of the legislation and not shared with the applicant. This is written on the reference check form (see appendix b), it is also verbally communicated to those references that are done over the telephone.<sup>6</sup>

[15] As part of the mediation this Office conducted, VCHA tried but failed to obtain the consent of all referees to permit disclosure of the records. As a result, it decided that releasing any information, even in a summarized form, would reveal the identity of the references who were assured of confidentiality. VCHA further argues that, in addition to breaching its confidential agreements with the referees, disclosure of the requested information would impact its future ability to obtain reference material.<sup>7</sup>

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<sup>4</sup> Applicant's initial submission, p. 2.

<sup>5</sup> Applicant's initial submission, p. 2.

<sup>6</sup> VCHA's initial submission, p. 2.

<sup>7</sup> VCHA's initial submission, pp. 2-3.

[16] Finally, VCHA states it will not address the allegation that it collected reference material without appropriate consent or authorization because that is not the focus of this inquiry.<sup>8</sup> I agree and will not be addressing that issue as part of this inquiry.

### ***Submission of the third party***

[17] The third party submission was received *in camera* because its disclosure would reveal the third party's identity, which is in dispute.

[18] While I am unable to describe the specific contents of the third party's submission, I can state that the third party provided arguments in support of VCHA's position that the reference was supplied in confidence. The submission also provided reasons why the reference should remain confidential.

### ***Analysis***

[19] The references at issue are the opinions of third parties about the applicant and I find that they constitute the applicant's personal information.

[20] The key issue in applying s. 22(3)(h) to the records at issue is whether the third party supplied the reference in confidence and whether disclosure of the information would reveal the third party's identity. In general, evidence of confidential supply might include an established policy of the public body to receive references in confidence or documentation attesting to its confidentiality. In Order No. 327-1999,<sup>9</sup> the Commissioner stated a preference for public bodies to establish policies concerning references and, in the absence of such a policy, to base decisions on the circumstances of the case.

[21] VCHA's evidence in this case establishes that referees are assured confidentiality when they provide a reference. The second page of the reference check form states that "References are Confidential: They will not be shared with the applicant."<sup>10</sup> This is a clear statement that VCHA receives all references in confidence. The third party's evidence also supports this finding.

[22] Therefore, I am satisfied that the reference, in this case, was supplied in confidence. I am also satisfied that disclosure of the content of the reference, would enable the applicant to infer the identity of the third party and therefore conclude that the requirements of s. 22(3)(h) are met.

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<sup>8</sup> VCHA's reply submission, p. 1.

<sup>9</sup> [1999] B.C.I.P.C.D. No. 40.

<sup>10</sup> VCHA's initial submission, p. 2.

[23] This means that the information must be withheld unless relevant circumstances rebut the presumption that disclosure would be an unreasonable invasion of privacy.

[24] VCHA argues that s. 22(2)(f) is a relevant circumstance here because, consistent with other evidence it provides, it is evident the personal information was supplied in confidence. The applicant does not contest this point. I agree and am of the view that this circumstance favours a finding that disclosure of the requested information would be an unreasonable invasion of personal privacy.

[25] The applicant does not specify any specific circumstances listed in s. 22(2) but instead focuses on her need to address a perceived injustice. She believes that VCHA denied her employment solely because of one of the three references it received about her. She suspects that this reference is from a hospital that she specifically prohibited from providing a reference on her behalf. She alleges that VCHA inappropriately contacted this hospital and that the hospital provided a false assessment of her work performance out of spite.

[26] I am not in a position to determine the truth respecting all of the applicant's allegations, nor are these relevant circumstances requiring my determination. Previous orders have held that an applicant seeking a third party's personal information to assist in a dispute or grievance with a public body is not a relevant circumstance under s. 22(2) of FIPPA.<sup>11</sup> For the same reasons, I find that the applicant's perception of injustice concerning VCHA's human resources processes is not a relevant circumstance in this case. As a result, there are no relevant circumstances to rebut the presumption of unreasonable invasion of privacy.

[27] Therefore, I find that s. 22(3)(h) applies to this information, and that the only relevant circumstance under s. 22(2)(f) favours withholding the information. The applicant has not met her burden of proof that disclosure would not be an unreasonable invasion of the third party's personal privacy.

[28] Finally, I note that none of the parties raised the requirement in s. 22(5) of FIPPA, for a public body to provide a summary of the applicant's personal information that a third party has supplied in confidence, unless a summary cannot be prepared without disclosing the identity of the third party. I have reviewed the comments of the referees who provided information about the applicant. The information provided by each referee is specific and completely different in nature. I cannot conceive any way that the information could be summarized, or blended that would prevent the applicant from deducing the

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<sup>11</sup> See for example, Order 01-07, [2001] B.C.I.P.C.D. No. 7; Order 01-54, [2001] B.C.I.P.C.D. No. 57; Order 02-02, [2002] B.C.I.P.C.D. No. 2; Order F05-31, [2005] B.C.I.P.C.D. No. 42 and Order F06-13, [2006] B.C.I.P.C.D. No. 20.

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identity of the third party and the information that he or she provided. Therefore, I find that VCHA is not required to provide a summary.

#### **4.0 CONCLUSION**

[29] For the reasons given above, I require the VCHA to withhold the requested information under s. 22(1) of FIPPA.

October 27, 2009

#### **ORIGINAL SIGNED BY**

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Jay Fedorak  
Adjudicator

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