NBRIOR- 2006-15

**IN THE MATTER OF A REFERRAL UNDER PARAGRAPH 7(1)b)
OF THE *RIGHT TO INFORMATION ACT*, R.S.N.B. 1973, c. R-10.3**

Between: **B.C.**
the petitioner

And:

Atlantic Health Sciences Corporation
Respondent

RECOMMENDATION

1. This referral, dated May 1st, 2006, arises from a *Right to Information Act* request dated March 19, 2006 filed by the petitioner, with her former employer the Atlantic Health Sciences Corporation (AHSC). The petitioner, B.C. was a long-standing employee of the respondent AHSC in 1995 when she filed a harassment complaint against another member of the professional staff of the AHSC.

2. B.C. was a nurse and her family physician was a married man who had hospital privileges at the hospital where she worked. He ended the doctor patient relationship with her and formally advised her and his employer, through his lawyer, in late 1994, that he would cease all contact with B.C. altogether as she had indicated to him verbally that she believed there were sexual feelings between them and had, in his view, refused to stop seeking his attention.

3. The petitioner found this conduct on the part of her former physician was harassing and claimed that it interfered with her job duties as he would refuse to speak with her even regarding matters concerning patient care. She filed a formal harassment complaint on January 2nd, 1995 with her employer. Mediation attempts were refused by the physician in question. A formal investigation was conducted and recommended, in April 1995, that the employer encourage the petitioner's former physician to renew a professional working relationship with his former patient.

4. On May 3rd 1995, the physician in question filed his own workplace harassment against the petitioner. This was investigated and the petitioner was placed on leave with pay during the course of the second investigation. This investigation found that the petitioner's conduct in seeking to contact her former physician regarding patient care, in late January and Mid-March 1995, when other options were available to her, constituted harassment. It also concluded that her course of conduct in late April 1995, in trespassing on the property of her former physician's residence, being asked to leave by his son, confronting his wife on a public sidewalk, writing to his parents and then to his lawyer and to his family's pastor and ultimately to a friend of his wife's asking them to intercede on her behalf with the physician in question, constituted harassment.

5. The investigation report into this second harassment complaint was completed on October 12, 1995. The investigators concluded their report and findings of harassment with recommendations to the petitioner's employer as to how to resolve the conflict.

6. On March 10, 2006, the petitioner wrote to the Chairman of the Board of Directors AHSC asking, under the *Right to Information Act*, for documents from files regarding her January 1995 harassment complaint. On March 19th, 2006 she followed up with a second letter asking more specifically for five documents:

    - A December 1, 1994 letter addressed by the lawyer of her former physician to the hospital staff requesting that his client have no interaction with the petitioner;
    - A November 28, 1994 letter from a colleague of her former physician which sought to corroborate the physician's version of events;
    - The April 1995 report of the investigation into her complaint along with all supporting documents referenced in it's bibliography;
    - The October 1995 report of the investigation into the second harassment complaint filed in retaliation to hers along with all pertinent documentation related to this complaint as well; and
    - A report or letter from another named colleague of her former physician which is alleged to have corroborated his version of events.

7. On April 12, 2006, AHSC's Chairman responded to the right to information request, indicating that the respondent had no record or the last item requested and no knowledge of any department where such a record could be found. He also indicated that none of the other items requested would be disclosed as the documents "contain personal information about other individuals as well as personal information about yourself which was provided in confidence". The respondent relies upon exemptions 6(b) and 6b.1) of the *Right to Information Act* to ground its refusal.

8. I have in a recommendation released earlier this year considered very fully the proper interpretation of the 6 b) and b.1) exemptions, particularly as they apply to the context of requests for harassment investigation reports and supporting investigation materials[1]. I recommended there that the exemptions with respect to the protection of personal information, and personal information of a petitioner supplied in confidence by others had to be interpreted restrictively so as not to defeat an individual's right to know what the state knows about them.

9. The approach preferred under the New Brunswick *Right to Information Act*, as with similar legislation in other provinces in Canada, is to balance the interests of the state in protecting confidential personal information against the rights of citizens to be fully informed about what public records are held concerning them.

10. In this matter, I see no reason to intervene with the decision of the respondent AHSC to refuse access. Generally, a complainant's interest in reaching a fair result through the harassment investigation process and achieving closure through an impartial and transparent investigation will favour disclosure, even in circumstances where witnesses to an investigation would prefer to remain anonymous or offer their testimony in confidence. The rules of natural justice require more transparency, even when rights are not finally or judicially determined. However, as the petitioner in this case lodged her complaint over ten years ago and as any opportunities for review or appeal were exhausted long ago, her rights or interests in accessing the information weigh very little in the balance as compared to the rights of witnesses and other individuals involved with the complaint to keep confidential what was disclosed so long ago.

11. Indeed this latter category or class of rights will only strengthen in significance with time. As the years pass, a person's reasonable expectation of privacy with respect to matters investigated and conclusions drawn increases. Most people come to terms with the results and move on. It is regrettable that ten years after the fact, the petitioner and her family remain considerably troubled by the events of 1994-95 and the related harassment investigations.

---

[1] *D. M. v. Minister of Training and Employment Development* NBRIOR-2006-01, January 24, 2006.

12. **The *Right to Information Act* however provides an exemption for the release of such personal information at this stage and, for these reasons, I recommend that the decision of the AHSC to refuse disclosure stand**.

Dated at Fredericton, this 2nd day of June, 2006.

_____

Bernard Richard, Ombudsman