ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER P2009-009

February 22, 2009

DR. MARY MCCALLUM
(REGISTERED PSYCHOLOGIST)

Case File Number P0552

Office URL: www.oipc.ab.ca

Summary: An individual requested her personal information from her psychologist. The psychologist had earlier provided the applicant's treatment file, but refused to provide peer consultation notes, as well as the psychologist's response to the College of Psychologists to a complaint the Applicant had made about the psychologist, related correspondence, and correspondence between the psychologist and the federal Office of the Information and Privacy Commissioner.

The Adjudicator held that it was proper for the psychologist to withhold all the requested records which contained the Applicant's personal information. The peer consultation notes had to be withheld because they contained the personal information of the Applicant's child. Solicitor-client communications were properly withheld under section 24(2)(a). Disclosure of the remaining information would reveal the personal information of the psychologist, and for some of it, also of the child.

The Adjudicator also found that the psychologist had met her duty to assist the Applicant in accordance with the terms of section 27(1)(a).

Statutes Cited: **AB**: *Personal Information Protection Act* S.A. 2003, c. P-6.5, ss. 1(i), 1(k), 24, 24(2), 24(2)(a), 24(2)(c), 24(3), 24(3)(b), 24(3)(c), 24(4), 27(1)(a), 46(3), 50(5), 52, 61, 61(1)(b).

Orders Cited: **AB**: 96-019, P2006-002, P2006-004, H2007-006, P2009-008; **ON**: M-438, P-651.

Court Cases Cited: *S.D.K. v. Alberta* [2002] ABQB 61; *Kellogg Brown and Root v. Alberta (Information and Privacy Commissioner)* [2007] A.J. No. 896; *Canada (Privacy Commissioner) v. Blood Tribe Department of Health* [2008] S.C.J. No. 45.

Authorities Cited: McIsaac, *The Law of Privacy in Canada*, Thomson/ Carswell; Service Alberta, *Information Sheet 3*: *Personal Information* (Government of Alberta website: pipa.alberta.ca).

I. BACKGROUND

[para 1] On July 19, 2006, the Applicant requested "all [her] personal information in the records of [her psychologist] from April 6, 2004 to July 19, 2006". She specifically requested complete case notes, complete notes of consults with psychiatrists (also referred to herein as "peer review notes"), notes of telephone calls to two named public authorities, the psychologist's responses to the College of Psychologists to the Applicant's complaints, and any additional personal information.

[para 2] The psychologist responded by indicating that she had already provided the complete treatment file. She refused to provide the peer consultation notes, notes of telephone conversations (other than those that were contained in the treatment file and had already been provided), or her responses to the complaints. The Applicant brought a request for review of this response to this office by letter dated September 8, 2006.

[para 3] By letter dated November 6, 2006, the Commissioner informed the Applicant that he had authorized a portfolio officer to investigate and attempt to settle her request for review of the psychologist's response to the Applicant's access request for her personal information under PIPA.

[para 4] Mediation efforts were undertaken with respect to the requests for access to information from both organizations (the College and the psychologist), and continued for some time, but mediation was not successful, and the matters were both set for inquiry.

[para 5] On April 4, 2007, counsel for the Applicant wrote to the Commissioner to request an oral inquiry in both this matter and the related matter (file P0353, dealing with the information request to the College of Psychologists). The letter also asked that both matters be joined or held contemporaneously.

[para 6] On April 13, 2007, I wrote to counsel for the Applicant asking for information as to why it would be important to hold an oral hearing. In view of the fact that the two files were closely related, I also acceded to the request that they be joined or held contemporaneously.

[para 7] On December 17, 2007 I issued a decision on whether the inquiry would be held in written or oral form. I decided that I would ask the parties to provide written

submissions initially, and if an oral hearing appeared to be called for thereafter, I would hear additional evidence or arguments in oral form at a later time.

[para 8] The Notice of Inquiry in this matter was issued on April 14, 2008. On April 25, 2008, counsel for the Organization in the related matter (P0353) wrote to this office indicating that it was its position that the Commissioner had lost jurisdiction to proceed with this matter in light of the Commissioner's failure to comply with section 50(5) of the *Personal Information Protection Act (*"PIPA" or "the Act"), in accordance with the decision of the Alberta Court of Queen's Bench in *Kellogg Brown and Root v. Alberta (Information and Privacy Commissioner)* [2007] A.J. No. 896. Counsel asked that this issue be added as an additional issue in the present matter. As the two matters were to be heard contemporaneously, the present matter was put in abeyance until this issue could be decided.

[para 9] On December 17, 2008, I issued my decision that I had not lost jurisdiction in the companion case (P0353). The other Organization (the College) filed an application for judicial review of this decision, but agreed that it would not proceed on this application until the case had been decided on its merits. Accordingly, both matters proceeded. The decision in the related matter, Order P2009-008, is being issued at the same time as this one.

II. RECORDS AT ISSUE

[para 10] The records at issue are listed in the psychologist's submission as follows:

1. Notes from peer review ("Peer Review Notes");
2. Notes of telephone calls with specified public bodies […]
3. Responses to the Applicant's complaints about [the psychologist] to the College of Alberta Psychologists ("Complaint Responses"); and
4. Other records relating to the Applicant's complaints or case notes including correspondence between [the psychologist] and her solicitor regarding the complaints and access requests of the Applicant.

[para 11] Most of the records in this list were provided to me for my review as exhibits to the *in camera* affidavit of the psychologist that she included in her submissions. The submissions indicate that correspondence between the psychologist and her solicitor about the complaint made against the psychologist by the Applicant, and about the Applicant's access requests, were not included for my review; however, the psychologist provided evidence about these communications in her affidavit.

[para 12] With respect to the peer review notes, it is possible that these notes exist in the psychologist's files in two different contexts: one, as part of the file in which she keeps her consultations with peers relative to this and other cases; and two, as part of the information that the psychologist supplied to the College when it asked her to respond to the Applicant's complaints against her. As the outcome would differ depending on the

context, I will consider these notes both as standing alone, and as they might exist as constituting a part of the psychologist's response to the College.

[para 13] With respect to the notes of telephone calls with specified public bodies, I understand from the material before me that there are two categories of such records.

[para 14] First, such notes are contained in the treatment file, and as such, have already been disclosed to the Applicant. While the Applicant states in her reply submission that what she refers to as the 'clinical notes' (which I take to refer to the treatment file) do not contain notes of the Psychologist's telephone conversations with these authorities, the version of the treatment file that, according to the Psychologist's exchangeable affidavit, was provided to the Applicant and that is before me does contain such notes, with the names of the employees of these public authorities redacted. I understand that these notes have already been provided to the Applicant.

[para 15] Second, it appears that the Psychologist wrote a summary of these conversations after learning that the Applicant had made a complaint against her. She provided this summary about her contact with these public authorities to the College, in response to the Applicant's complaint. This summary is discussed further below.

[para 16] With respect to the treatment file, which forms part of the Applicant's request, the psychologist provided for my review what appears to be only part of this file, with dates from December 21, 2004 to February 4, 2005, as well as a chart clarifying ineligible words dated February 15, 2005. I understand that the Applicant has concerns that the version of this file that was provided to her may be incomplete, and I note that she asked for it again in her request for access that is at issue in this inquiry. However, she did not provide a copy to me of what she did receive, so that even if the psychologist had provided the complete file to me, I would be unable to compare the two files. I am not certain, therefore, whether she regards the question of completeness as an issue in this inquiry. In case she does, I will retain jurisdiction over this issue, and will deal with it, should the Applicant ask me to do so, by requesting a complete copy from both parties, so as to enable a comparison to ensure completeness.

III. ISSUES

[para 17] The Issues as stated in the Notice of inquiry were as follows:

Issue A: Should the Adjudicator take jurisdiction in this inquiry over issues relating to the records (peer review notes) that the Office of the Privacy Commissioner of Canada is currently dealing with or has already dealt with?

Issue B: Must the Organization disclose to the Applicant the information that it withheld?

i. **Is the information in the records withheld by the Organization, or any of it, the Applicant's personal information?**
ii. **If the Organization withheld the Applicant's personal information, was this information in the Organization's custody or control?**
iii. **If the Organization withheld the Applicant's personal information in its custody or control, did it do so in accordance with section 24(2) (discretionary grounds for refusal) or with section 24(3) (mandatory grounds for refusal)? In particular,**
    A. **Did the Organization properly apply section 24(2)(a) (legal privilege) to the information or parts of it?**
    B. **Did the Organization properly apply section 24(2)(c) (information collected for an investigation or legal proceeding) to the information or parts of it?**
    C. **Does section 24(3)(b) (information revealing personal information about another individual) apply to the information or parts of it?**
    D. **Does section 24(3)(c) (information revealing identity of a person who provided opinion in confidence) apply to the information or parts of it?**
iv. **If section 24(3)(b) or 24(3)(c) apply to the information or parts of it, is the Organization reasonably able to sever the information to which these sections apply, and provide the remaining personal information of the Applicant, as required by section 24(4)?**

Issue C: Did the Organization respond to the Applicant's request for personal information in accordance with section 27(1)(a) (duty to assist and respond as accurately and completely as reasonably possible)?

[para 18] The Applicant also raises a number of additional issues in her submission (at paras 70 to 74), for example, that the psychologist refused to correct her personal information, and that the psychologist collected, used and disclosed the Applicant's personal information without her consent. I have not considered these issues, as they were not part of the request for review as outlined above, and were not listed as issues in the Notice of Inquiry. The Act empowers me to conduct inquiries relative only to matters under review that have not been resolved.

IV. DISCUSSION OF THE ISSUES

[para 19] Before turning to the issues outlined above, I will address the status of the psychologist as an "organization" within the terms of section 1(i) of PIPA. All parties to this inquiry have proceeded on the basis that the psychologist is an organization within the terms of the Act. In the psychologist's submission, she refers to herself as "the Organization", and does not contest that she has the status of an organization. At paras. 17 and 18 of her submission she refers to herself as acting as a psychologist for commercial purposes. On this basis, I will conclude that the psychologist charges fees for

her services, and is thus an individual acting in a commercial capacity. She is thus an "organization" within the terms of section 1(i) of PIPA, and is required to comply with its terms. I will, however, refer to her as "the Psychologist" in the remainder of this order, as it is awkward to refer to an individual, albeit acting in a commercial capacity, as an "organization". I will use the same term to refer to her when discussing whether any of the information at issue in this case is the Psychologist's personal information

Issue A: Should the Adjudicator take jurisdiction in this inquiry over issues relating to the records (peer review notes) that the Office of the Privacy Commissioner of Canada is currently dealing with or has already dealt with?

[para 20] I understand from the materials before me that the question of access to one of the categories of records in this inquiry – the peer review notes – has already been addressed under the federal PIPEDA, that the Assistant Commissioner has recommended that the Psychologist disclose the peer review notes, and that further proceedings have been taken. I presume that the reason that the federal office assumed jurisdiction over the Applicant's access request for these records was because the Applicant's initial request for access to the Psychologist (for a copy of her file) was, according to the Applicant's affidavit, made on January 19, 2005. At that time, PIPEDA was in force relative to access requests for health information from privately-funded health care providers. (The *Health Information Act* did not apply to that health information. On June 2, 2005, amendments to PIPA to include this information took effect.)

[para 21] However, the Applicant made subsequent requests to the Psychologist for her "confidential personal information", both by way of material that she sent to the College on August 22, 2005 (which she believed would be forwarded by the College to the Psychologist, and which she says the College confirmed had been done in a letter dated October 27, 2005), and by a subsequent request dated July 19, 2006, directly to the Psychologist, for "all [the Applicant's] personal information in her [the Psychologist's] records". The Applicant says in her affidavit that the Psychologist never responded to the August 22, 2005 access request. However, she responded to the July 19, 2006 request on August 18, 2006. At the time of these latter requests and of the response, PIPA was in effect relative to requests for personal information from private individuals, including privately-funded health care providers.

[para 22] The Psychologist argues (without explaining) that records pertaining to her discussions with psychiatrists in Alberta may fall under the federal Commissioner's jurisdiction. However, she does not argue that the *Personal Information Protection Act* does not apply, or that I do not have jurisdiction. Rather, she says that I should exercise my discretion under section 46(3) of the Act to require the Applicant to exhaust other processes that may resolve the Applicant's issues before proceeding to hear her request.

[para 23] However, as the earlier request was made when PIPEDA was the governing legislation, and the latter requests were made when PIPA was the governing legislation, I believe it is more appropriate for me to decide the issues for the final

request, rather than deferring to the federal office's review of the earliest one.[1] I do not believe that the two sets of governing provisions can be said to conflict (and that the federal legislation therefore has paramountcy) when the federal legislation was no longer the governing legislation at the time of the subsequent requests. I also think it is important to decide this question under the Alberta legislation, as that is the legislation that now governs the request. Thus I will deal with the peer review notes at the same time as I am dealing with the other records.

Issue B: Must the Organization disclose to the Applicant the information that it withheld?

i. Is the information in the records withheld by the Organization, or any of it, the Applicant's personal information?

[para 24] "Personal information" is defined in section 1(k) of the Act as "information about an identifiable individual".

[para 25] I will answer question (i) first with respect to the Applicant's treatment file. (In this section I consider this file standing alone, rather than as a part of the Psychologist's response to the college to the Applicant's complaint about her.) This file has already been provided to the Applicant (though as noted above, there may be an outstanding issue as to its completeness). However, in order to help explain my reasoning in relation to the withheld records, I will also comment upon this part of the information in the hands of the Psychologist.

[para 26] Much of the information in a psychologist's treatment file is, in my view, the personal information of the person being treated. I recognize that parts of such a file consist of information related to the psychologist – their thoughts and actions relating to the therapeutic relationship with the person being treated. However, I do not regard this as information "about" the psychologist. In the context of the Applicant's treatment file, which records the Psychologist acting in her professional capacity, this information is not the Psychologist's personal information. Numerous decisions of this office have held that records of a person's "work product" are not "personal information" about them (unless there is something about the context which gives the information a personal dimension). Work product will often reflect the thought processes of its creator, yet in the present context it is more properly regarded as about the work than about the person doing it. In my view, the records in the treatment file form part of the "work product" of the Psychologist. The history of the therapy that they record is an important part of the therapy itself.

[para 27] I note that a significant part of the treatment file contains information relating to the Applicant's relationship with her child. To a lesser extent, the file also mentions the Applicant's husband. I considered whether this part of the information in the treatment file was the personal information of the child and of the husband (and whether, consequently, it would fall within the terms of the provision of the Act that prohibits disclosure to an applicant of the personal information of individuals other than

[1] The August 22, 2005 request was the subject of a separate file that has been closed.

the Applicant.) The information is of two types – information provided by the Applicant to the Psychologist, and information consisting of the Psychologist's recorded thoughts about the information the Applicant provided. It is necessary for me to decide whether such information referring to the child and husband is personal information under the Act.

[para 28] In deciding this question I recognize that in other cases decided by this office, both under the *Freedom of Information and Protection of Privacy Act* and under PIPA, not only statements of fact but also opinions expressed by one person about another have been held to be personal information of the person about whom they are expressed. Arguably the same reasoning should be applied to such statements concerning third parties made to a psychologist, in the context of a treatment relationship, by the person being treated, as well as to the psychologist's recorded responses to or opinions about what they are told.

[para 29] However, I believe that in the limited context of a treatment or counseling relationship, this is not an appropriate way to characterize such information relating to third parties. This is because, in this context, the purpose for which such information is conveyed or recorded is to enable treatment. Both the information being conveyed, and the psychologist's responses, focus, essentially, on the person being treated, rather than on other individuals who are discussed in the course of therapy. Thus, a person who provides information relating to a third person, for example a spouse, in order to enlighten the psychologist about their relationship with that person so as to obtain guidance relative to that relationship, is essentially talking about their own ideas and concerns about *their* relationship. Similarly, the psychologist's recorded responses to this information are also about the treated person's relationship, rather than about the third party.

[para 30] I am strengthened in this conclusion by analogy to the characterization of information in Order P2006-004, in which the Commissioner held that not all information that relates to a person is necessarily about them. In that case, the Commissioner held that while certain records referred to an individual who had made a complaint about other persons to their professional disciplinary body, the information was not *about* the complainant, but rather was about the persons about whom the complaint had been made. The Commissioner said, at para 12:

> The Act defines "personal information" as "information about an identifiable individual". In my view, "about" in the context of this phrase is a highly significant restrictive modifier. "About an applicant" is a much narrower idea than "related to an Applicant". Information that is generated or collected in consequence of a complaint or some other action on the part of or associated with an applicant - and that is therefore connected to them in some way - is not necessarily "about" that person.

[para 31] I recognize that in a treatment relationship, third persons or their actions may be described at length and in great detail. Nevertheless, in my view, given the purpose of supplying it, this information is essentially about the person who is conveying it; the focus of the discussion is the person seeking therapy or guidance. Similarly, the

psychologist's thoughts about and responses to this information are about, or provide background to, how the treated person might deal with or resolve their relationship or other concerns. They are not about the other persons.

[para 32] Possibly an even closer analogy can be drawn with health information under the *Health Information Act.* Under that act, "diagnostic, treatment and care information" includes "any information that is collected when a health services is provided to an individual". In an earlier order of this office (Order H2007-006) the Commissioner held that family history information provided by a patient was not the health information of other family members. The Commissioner said:

> 122 It may also seem odd that information *about* the Applicant and *about* other family members would not be their own "health information" under HIA. The Family History pertains to all family members insofar as they share the same history. In that sense, the information is *about* the Applicant as well as *about* the Applicant's daughter and *abou*t all other family members. However, Family History must be considered in the context of the purpose for which the information is collected, which is to provide a "health service" to the Applicant's daughter. Therefore, the Family History is *about* a "health service" provided to the Applicant's daughter, not to the Applicant.
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> …
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> 126 In my view, all of the Family History is *about* the Applicant's daughter and in particular is *about* a health service that is being provided to the Applicant's daughter. The sole reason the information is recorded in the Applicant's daughter's hospital record is because the information is relevant to providing a "health service" to the Applicant's daughter. … .

[para 33] Similarly, in psychological treatment relationships, recorded details about facts and opinions relating to, and interactions with, family members or other third parties that arise in the context of provision of psychological therapy are best characterized as the information of the treated person.

[para 34] Thus, in my view, the parts of the treatment file that record the Applicant's issues or concerns regarding which she was seeking therapy, even when they mention her child and husband, are about the Applicant and are her personal information, and are not the personal information of the child and husband. Similarly, the Psychologist's views about the Applicant's situation relative to these other persons are either about the Applicant or about how to address her situation. They are, again, not "about" the child or the husband.

[para 35] However, this characterization does not apply, in my view, when the focus of the file shifts away from the Applicant to the child. To the extent that the file discusses how the Psychologist should counsel the Applicant relative to her relationship with the child, the information in the file relates primarily to the Applicant. However, given the Psychologist's particular opinions about the child's situation in this case, even these parts of the notes are also, in my view, "about" the child. Furthermore, the notes in the treatment file are not limited to what advice or counseling the Psychologist should give to

the Applicant as to her relationship with the child. Rather, they record the fact that the Psychologist was also considering how she ought to act, independently of her counseling relationship with the Applicant, to address the situation of the child, and how she ultimately did act to try to address it, independently of the Applicant. These parts of the treatment file do not, in my view, record the personal information of the Applicant exclusively. Arguably, some parts of the notes record the information of the child only. In the very least, these parts of the notes record information concerning both the Applicant and her child at the same time.

[para 36] I note finally with respect to the treatment file that parts of it are not anyone's personal information. This comment applies to the parts of the file that record the Psychologist's thoughts, even though relating in some way to particular persons associated with the file, where these thoughts are not about any particular person or their situation.

[para 37] I turn next to the Psychologist's response to the Applicant's complaint about her which the Psychologist provided to the College of Psychologists.

[para 38] Because the complaint related to the Psychologist's treatment of the Applicant, the Psychologist's response contains personal information about the Applicant (as well as about other members of her family, as mentioned above). Much of this information is about the Applicant's treatment issues and about events that ensued relating to or arising from her treatment, and is thus the Applicant's personal information within the terms of the Act (as well as the information of the child). As well, the Psychologist's opinions about the Applicant are the personal information of the Applicant.

[para 39] Much of the information in the Psychologist's response to the College also relates to the Psychologist – it recounts her interactions with the Applicant and her consideration of and explanations for the choices she made and actions she took in the context of the relationship.

[para 40] As discussed above, in the context of the Applicant's treatment file (standing alone), the personal information of the Applicant that is contained in the file, including the Psychologist's thoughts and opinions about the Applicant, is not the Psychologist's personal information. However, in the context of a response to a challenge to her professional competency, which potentially could have adverse consequences to her, the information that describes the Psychologist's thoughts and opinions about the Applicant has the requisite "personal aspect" discussed in para 26 above. In my view, information in the Psychologist's response, including her opinions and views about the Applicant and her child, her treatment and other decisions relating to the Applicant and the child, and her standard practices and information relating to her personal work experience, are the personal information of the Psychologist. Much of the information in this context was generated for the purpose of providing an account of her actions in relation to the Applicant and her child. The same observations also apply to the treatment file and the peer review notes insofar as these records are part of what the Psychologist

provided as further explanation or background to her treatment decisions and related actions. The College's assessment of all these matters would form the basis for its conclusions about her relative to the complaint against her.

[para 41] The Applicant cited *S.D.K. v. Alberta* [2002] ABQB 61, in support of the idea that information generated by a psychologist with respect to professional services or the professional relationship should not be regarded as the confidential information of the psychologist. In that case, the Court was applying the provisions of the Code of Conduct for psychologists, which was a schedule to the *Psychology Profession Regulation*. The Code (which is no longer in force) contained a provision (section 23) that required a psychologist to provide a client's 'confidential information' (defined as "information disclosed by the client to the psychologist") to a client. The Court stated, relative to the Code requirement, that "all information *provided by* a recipient of professional services to a psychologist is to be provided to that person at his or her request [unless certain specified conditions were met]". The Court also referred to the requirement to produce "source documentation". While the Court also spoke of a requirement that the psychologist "produce her entire file", it did not indicate that it included in this phrase the opinions of the psychologist about the client, and the Code itself did not suggest that this was included. Neither did the Code contain any provisions suggesting that information created by a psychologist for the purpose of responding to a complaint was "confidential information" of the client, nor did it address the information of third parties. The Court did not say, nor would I agree, that section 34, which required that "assessment results or interpretation" be treated as confidential, had the effect of making a psychologist's opinions "confidential information" of the client within the terms of section 23.

[para 42] Furthermore, my task is to determine whether PIPA, not the Code of Conduct, requires access to the information requested by the Applicant. Even if the Code had been another route for access to the psychologist's opinions, I cannot base my decision under PIPA on the terms of the provisions of another statute, nor do I see how such provisions could affect my interpretation of what constitutes personal information under PIPA. Even if (which I do not find) there had been a conflict between the Code's access provisions and the restrictions on disclosure in PIPA, the latter would have prevailed by reference to section 4(6) of the Act

[para 43] Thus, in my view, the information in the Psychologist's response contains information of both the Psychologist, and of the Applicant and her child – the latter consisting of information that the Psychologist described or extracted from the treatment file and peer review notes, or that she appended or otherwise provided,[2] for the purpose

[2] It is not clear from the materials before me whether the Psychologist provided the treatment file to the College so as to provide background for her explanation of her treatment decisions and related actions, or whether she provided it because the College asked for it separately (at an earlier time) for the purpose of dealing with the complaints that had been made against the Psychologist, or whether both these things are true. In her affidavit, the Applicant indicates that the College "seized" the treatment file in April, 2005 (which she bases on conversations she reports she had with College officials), but there is also an indication in the materials provided to me by the Psychologist that she provided the file to the College at her own instance together with the first of her responses to the complaints dated May 26, 2005. Regardless which of these is accurate, the information is nonetheless, in that context, information which relates to and explains

of providing background or a fuller account to the College. There are, in my view, two ways of characterizing this combined information, both of which have the same result for the purposes of the determinations I must make under the Act. One is to say that the personal information of both the Applicant and the Psychologist (and, for some parts of the information, also of the child) are inextricably intertwined in this material, as the opinions and explanations of the Psychologist are directly referable to and depend on the described behaviour of the Applicant and the situation of the child, and the two kinds of information cannot be separated. The other is to say that the information is at the same time the personal information of both the Psychologist (insofar as it describes and explains her reactions and decisions relative to particular matters), and of the Applicant and her child (insofar as it describes their behaviour or situation respectively, and the Psychologist's opinions about these matters). Another basis for characterizing all the information in the response as the personal information of the Psychologist is that all of it constitutes what she thought it would be relevant for the College to know about her treatment relationship with the Applicant.[3]

[para 44] Regardless which of these characterizations is the most appropriate, the result is that it is not possible to segregate from the Psychologist's response to the College information that is only the personal information of the Applicant.

[para 45] I characterize the information in the psychologist's response as her personal information despite the fact that the psychologist, when acting in her professional capacity, has the status of an organization. In my view this fact does not preclude information that has the requisite personal aspect, albeit created while she was acting as a professional (and thus as an organization), being her "personal information". In other cases in which information of persons acting in professional capacities (for example, police officers) has been held to be personal information, the persons were also acting on behalf of private or public organizations.

[para 46] I turn to the peer review notes, which the Psychologist says she did not file in her records as part of the Applicant's treatment file. (In this section I am considering these notes as 'standing alone', rather than as part of the Psychologist's response to the College.) These notes are of conversations the Psychologist had with her peers about information given to her by the Applicant, and about how she ought to respond to that information. According to the Psychologist, she did not disclose the name of the Applicant to her peers for the purposes of these discussions, and the notes of the discussions refer to the Applicant using descriptive nouns or pronouns rather than her

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the manner in which the Psychologist dealt with the Applicant and her child (which was the subject of the complaint), and in the hands of the College, it is thus the Psychologist's personal information.

[3] In concluding that the information in the response in this case is that of both the Applicant and the Psychologist, I do not preclude the possibility that in other circumstances, a response to a complaint about the way a professional dealt with a person may be personal information only of the professional and not of the person making the complaint. As in this case the professional's activities involved treating the complainant at a personal level, the information about the treatment is also the personal information of the person being treated.

name. (As well, the names of the professionals with whom she consulted have been redacted in the copy of these notes that was provided to me.)

[para 47] The Psychologist appears to concede that the Applicant would be able to recognize that the peer review notes contain her personal information. However, she argues that the test for deciding whether information is personal is an objective one, and is based on whether third parties – rather than the access requestor – can identify the subject of the information. Thus the Psychologist says that information in the peer review notes which is about the Applicant - but that is not associated with her name in such a manner that third persons unfamiliar with the present circumstances would be unable to identify her – is not the Applicant's personal information.

[para 48] I reject this argument for a number of reasons.

[para 49] First, the cases cited by the Psychologist do discuss 'identifiability' by third parties as the criterion for determining whether information is personal. However, in those cases, the person requesting the information was not the subject of the information; the phrase 'third party' was not used to refer to someone other than the requestor, it was used to refer to someone other than the subject of the information. It was important to determine if the persons whose information was contained in records was identifiable by third parties because it was only if the subjects of the information could be so identified – whether by the requestor or by others who might by virtue of the disclosure to the requestor come into possession of the records – that the privacy of these subjects would be compromised. The same considerations would apply when considering complaints of improper disclosure of information: again, privacy is compromised only when the subjects of the information are identifiable, and information can be considered as "personal" in the context of such a complaint only where that is the case. However, there are no parallel concerns in a situation in which a person is requesting their own personal information.

[para 50] Thus, since the authorities cited by the Psychologist do not deal with situations in which a person is requesting access to their own personal information, I am doubtful that they have any relevance in this case.

[para 51] Second, I do not believe that the cases the Psychologist cited stand for the proposition that the test is an "objective" one that is not dependant on whether the requestor can identify the subject of the information. The Ontario case cited by the Psychologist, Order M-438 – in particular the highlighted portions – seems, in fact, to say the contrary – that the information was properly designated as personal information in that case because the requestor could identify the person about whom the information was by applying knowledge she would have.[4] The same is true of Order P-651, cited in the

4 The Order states:

> Following a careful review of the facts of this appeal, I find that, should the overtime information be disclosed to the appellant [the requestor], there would exist a reasonable expectation that she could link this information to the police officer to whom it pertains. Based on the test outlined in

footnote to the excerpt from the text, McIsaac, *The Law of Privacy in Canada*, on which the Psychologist relies. The latter order states:

> "Personal information" is defined in section 2(1) of the Act, in part, as "recorded information about an identifiable individual ...". I agree with the position of the Ministry that the record contains the personal information of the appellant, the primary affected person and the other affected persons. Although the other affected persons are identified in the report by witness number only, in my view, they are readily identifiable by those individuals, including the appellant [the requestor], who are familiar with the circumstances surrounding the incidents described in the records.

While the McIsaac text does make the assertion, quoted by the Psychologist, that "whether or not the particular requestor could attribute the information to a particular individual is not determinative", the cases cited by the authors as supporting this proposition (M-438 and P-651) do not in fact appear to do so.[5] As well, again contrary to the Psychologist's assertion, neither of the orders cited in the footnote to the text describe the appropriate test for deciding if a person is identifiable as an 'objective' one. Rather, the question is whether the information makes the person identifiable to the person or persons to whom it is disclosed, by reference to knowledge subjectively in their possession or available to them.

[para 52] Service Alberta's *Information Sheet 3*: *Personal Information*[6], on which the Psychologist relies, supports this view. The example it provides is as follows:

> The contents of the information and the context in which it is disclosed may be factors that make it identifying information. For example, a disclosure of information to a small group of people may be a disclosure of personal information if the group can determine whom the information is about.

This conforms with the idea that to be identifiable within the terms of the Act, the subject of information need be identifiable to a particular group to whom the information will be disclosed.

[para 53] I note further that even if identifiability by third parties (other than the requestor) were a requirement in these cases, in the present case there are presumably other people who are familiar with the Applicant's situation who could identify her as the subject of the records.

[para 54] The Applicant is the requestor of the information, and clearly she could identify herself. I believe that is sufficient to make this "personal information" in the case of an access request by a person for their own personal information – that is, where a

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> Order P-230, therefore, I find that the records contain recorded information about an identifiable individual and, hence, personal information for the purposes of section 2(1) of the Act.

[5] Footnote 522 of the McIsaac text seems to incorrectly cite the order number for Order M-438 (*Re Town of Amherstburg Police Services Board*) as P-705.

[6] This resource is available on the Government of Alberta website, pipa.alberta.ca, under Resource Centre / PIPA Guide for Businesses.

person is the requestor, there is no requirement that they be recognizable to third parties. (Furthermore, it is not clear that the ability of applicants themselves to recognize that information is about them is a necessary precondition for triggering a right to their own personal information, as long as the representatives of the respondent organization can identify the applicants as the subjects of the information.)

[para 55] In assessing the psychologist's position that the peer review notes do not contain the Applicant's personal information, I also considered the possible argument that the psychologist's consultation with her peers was about a particular kind of behaviour, which, since the Applicant was not named, was presented as an abstract question unassociated with any individual. However, on reviewing the notes themselves, I rejected this possibility. The notes indicate that the matters that were the subject of the consultation were not framed as hypothetical ones, but clearly related to an existing, if anonymous person. Further, even if they had been framed as though they were hypothetical, both the Psychologist and the Applicant would have been able to recognize the subject of the psychologist's statements and the statements of the peers who were consulted.

[para 56] Thus I reject the argument that the information in the peer review notes is not the Applicant's personal information because she is not named in it. There is, however, another potential basis for the finding that the information is not the Applicant's personal information. This is based on an analogy to the discussion above, concerning whether information relating to third parties that is given by the person being treated is the personal information of the third parties, or whether it is more properly regarded as being the personal information of the person being treated. I concluded above that the latter is the preferable characterization of information provided in the context of a treatment relationship. There is a parallel between this and the situation in which a psychologist seeks advice from peers and provides the information about which they are seeking advice. It is equally arguable that the information and the advice that is sought and given is about the issue regarding which the consultation is done – even though the issue pertains to particular individuals – rather than about the person being treated.

[para 57] The interpretation just suggested would have the advantage of protecting the peer consultation process against such scrutiny as might have a chilling effect on free and open discussion about the topic of the consultation. On the other hand, it would mean that the person involved would be denied access to discussions of which they are, at least indirectly, the subject.

[para 58] I do not need to decide in this case whether information concerning the Applicant that is contained in the peer review notes, standing alone, is best characterized as her personal information or not. This is because, as with the treatment file, a large part of the information in the peer review notes relates to the Applicant's child, and that fact, as discussed below, is determinative of the outcome for these records in this case. In my view, the information relating to the child in these records is about the child and is the child's personal information. The reason for characterizing information as the Applicant's personal information that was discussed at paras 29 to 34 above – that information is not

about persons with whom the person being treated has a relationship – would not apply to much of this information: although some of it relates to therapy of the Applicant, much of it does not. I cannot fully discuss my reasons for this conclusion without revealing the contents of the notes, which in my view may not be disclosed. It must suffice for me to say that while some parts of the notes relate to the Applicant, these parts at the same time contain information and opinions about the child's situation and its effects on the child, and how these matters should be addressed. In my view this information is about the child and is the child's personal information.

[para 59] In addition, some parts of the notes are records of thoughts and suggested courses of action which, though arising from the situation of the Applicant or her child, are not "about" either the Applicant or her child. Rather, some of them are thoughts or positions of the Psychologist about matters other than the Applicant or her child. (Since these parts of the notes are nonetheless records of the Psychologist's work product, they are not the Psychologists personal information either, but this fact does not make the matters being recorded the personal information of the Applicant – rather, they are not anyone's personal information.) Other parts of the notes record courses of action suggested by the Psychologist's peers, and the reasons therefore, which are also not "about' anyone. Finally, some parts of the notes are the personal information of the Psychologist – for example, a statement of where she was when a particular event happened.

[para 60] I turn next to the notes of telephone calls with specified public authorities, which were listed separately in the Psychologist's list of records. I understand from the material before me that there are two categories of such records.

[para 61] As discussed under the heading "Records at Issue", some such notes are contained in the treatment file, and as such, have already been disclosed to the Applicant.

[para 62] As well, the materials provided by the Psychologist indicate that she wrote a summary of these conversations after learning that the Applicant had made a complaint against her. She provided this summary about her contact with these public authorities to the College, in response to the Applicant's complaint. It is not clear from the materials provided by the Psychologist whether she wrote the summary as part of her narrative response to the College about the complaint, or whether it was written separately and was provided as an attachment to the narrative. In any event, I was unable to locate this document amongst the materials that the Psychologist provided for my review. However, I find that any record that describes the conversations of the Psychologist with these public authorities consists of personal information of both the Applicant and her child. In my view, this is so regardless of whether the Applicant and her child were identified to the public authorities in the conversations, because the Applicant as well as other persons would recognize that the information is about the Applicant and the child. As will be discussed further below, the fact that information is the personal information of the child is determinative in this case: as this is the personal information of another individual, it cannot be provided to the Applicant in an access request for her own personal information. As well, depending upon the purpose for which it was written, it may also be

appropriate to characterize such a summary as consisting of personal information of the Psychologist, by virtue of the context (the fact she was preparing to respond, or responding, to a complaint when she wrote it).

[para 63] The remaining information provided to me by the College as "records at issue" consists of correspondence between the Psychologist or her lawyer and the College of Psychologists concerning process matters relating to the complaint, or correspondence between the Psychologist and the Office of the Privacy Commissioner of Canada. Though some of these letters refer to the Applicant and in a couple of instances briefly describe positions or actions she has taken, this information is for the most part the personal information of the Psychologist, or is not anyone's personal information. The fact that the Applicant is mentioned in much of this correspondence because she was the complainant does not make most of this information "about her". In Order P2006-004 (already quoted above), the Commissioner stated, at para 12, that "[i]nformation that is generated or collected in consequence of a complaint or some other action on the part of or associated with an applicant - and that is therefore connected to them in some way - is not necessarily "about" that person". Most of this information is not, accordingly, properly the subject of the Applicant's access request, which must be limited to a request for her own personal information.

[para 64] In a few instances, however, there is information in the 'process' correspondence that would properly be characterized as being "about" the Applicant. However, in each case where that is so, the information is at the same time also the personal information of the Psychologist.

ii. If the Organization withheld the Applicant's personal information, was this information in the Organization's custody or control?

[para 65] The Psychologist acknowledged that all of the records at issue were in her custody or control. I accept her position on this question.

iii. If the Organization withheld the Applicant's personal information in its custody or control, did it do so in accordance with section 24(2) (discretionary grounds for refusal) or with section 24(3) (mandatory grounds for refusal)?

[para 66] I will set out the relevant portions of section 24 for ease of reference:

> *24(1) Subject to subsections (2) to (4), on the request of an individual for access to personal information about the individual and taking into consideration what is reasonable, an organization must provide the individual with access to the following:*
>
> *(a) individual's personal information where that information is contained in a record that is in the custody or under the control of the organization;*
>
> *(2) An organization may refuse to provide access to personal information under subsection (1) if*
>
> *(a) information is protected by any legal privilege;*

…

(c) the information was collected for an investigation or legal proceeding;…

(3) An organization shall not provide access to personal information under subsection (1) if…

(b) information would reveal personal information about another individual;

(c) the information would reveal the identity of an individual who has in confidence provided an opinion about another individual and the individual providing the opinion does not consent to disclosure of his or her identity.

(4) If, in respect of a record, an organization is reasonably able to sever the information referred to in subsection (2)(b) or (3)(a), (b) or (c) from a copy of the record that contains personal information about the individual who requested it, the organization must provide the individual with access to the record after the information referred to in subsection (2)(b) or (3)(a), (b) or (c) has been severed.

A. Did the Organization properly apply section 24(2)(c) (information collected for an investigation or legal proceeding) to the information or parts of it?

[para 67] I have found that most of the records for which this exception was claimed which were provided for my review (which consist of what I have termed 'process' correspondence) do not contain the personal information of the Applicant, and that for the few parts that could be so characterized, the information is at the same time the personal information of the Psychologist (thus, as discussed below, it is to be withheld under section 24(3)(b)). Therefore, it is not necessary for me to address this exception for these records.

[para 68] However, the Psychologist did not provide records for my review consisting of correspondence between herself and her lawyer regarding the complaint. Possibly this was on the basis that, by reference to the decision of the Supreme Court of Canada in *Canada (Privacy Commissioner) v. Blood Tribe Department of Health* [2008] S.C.J. No. 45, the Psychologist takes the view that I do not have the power to compel solicitor-client communications.

[para 69] As I have not seen these records, I will assume, for the present purpose, that they contain personal information about the Applicant, and as such, that at least some parts of them are properly the subject of an access request under PIPA.

[para 70] As the Psychologist states in her submission, the criteria that must be met for solicitor-client privilege to apply, as set out in Order 96-019, are as follows:

1. it is a communication between solicitor and client;
2. which entails the seeking or giving of legal advice; and
3. which is intended to be confidential by the parties.

[para 71] I accept the submission, supported by the Psychologist's affidavit, that any such records were communications between the psychologist and her lawyer, that they

entailed the seeking or giving of legal advice relating either to the disciplinary complaint or to the access requests made by the Applicant, and that their confidential nature can be assumed based on the fact they entailed legal advice.

[para 72] However, I draw the attention of the Psychologist to the Solicitor-Client Protocol of this Office, which can be found on the office website. This protocol applies if a party chooses not to provide for review records for which it is claiming solicitor-client privilege. The protocol requires the party claiming the privilege to advise the Commissioner of the number of such records in its possession and a date and description thereof, and to clearly assert for each one the basis for the belief that each of the three criteria for the privilege are met. This was not done in the present case, and should be done in future by any party who wishes to rely on solicitor-client privilege under section 24(2)(a).

[para 73] Before leaving this section I note that the information at issue in this inquiry that relates at the same time to the Applicant and the child is arguably subject to statutory legal privilege. The findings I make on other grounds are consistent with the outcome that would follow from a conclusion that such a privilege applied to this information. However, this issue was not raised in these proceedings, and I do not base my decision on it.

B. Did the Organization properly apply section 24(2)(c) (information collected for an investigation or legal proceeding) to the information or parts of it?

[para 74] The Psychologist relies on this provision to withhold all of the information in her possession that she created or compiled and provided to the College in consequence of the complaint against her by the Applicant.

[para 75] As will be seen below, the fact that I regard all of the information in the Psychologist's response to the College as either all her personal information, or as consisting of information about the Applicant, her child, and the Psychologist that is inextricably interwoven, leads me to conclude that none of it is to be disclosed by reference to section 24(3)(b) of the Act. It is not, therefore, necessary for me to decide the questions that are raised by the Psychologist's reliance on section 24(2)(c) in this case.

[para 76] However, I note that the submissions that the parties made on this point give rise to a number of intriguing questions of interpretation. For example, it is not clear whether "collected" in the context of the provision embraces collection by an entity other than the organization to which the access request is made. Similarly, it is not clear whether when an organization compiles information it already has, or creates new information, for the purpose of a legal proceeding, these activities are captured by the term "collected". These questions may require answers in subsequent cases dealing with similar information.

C. Does section 24(3)(b) (information revealing personal information about another individual) apply to the information or parts of it?

[para 77] The material before me indicates that the treatment file has already been disclosed to the Applicant, and (with the caveat that there may be an issue as to its completeness) whether it is disclosable is not at issue in this inquiry. Thus I do not need to make a decision about it. However, as noted at several points above, that file also contains the personal information of the Applicant's child. Thus the comments I make below with respect to similar records that remain at issue in this inquiry are applicable as well, albeit now in only a theoretical way, to the question of access under PIPA to the treatment file.

[para 78] I turn to the peer review notes, which I will address first as standing alone (in contrast to any copies thereof which form part of the Psychologist's response to the College). While the Applicant was herself the source of the factual information about which the peers were consulted, much of the information in the notes relates to the opinions of the Psychologist and of her peers about these facts, and is not known to the Applicant. I have concluded above that given the focus of the peer review discussion, much of the information is about the Applicant's child. Thus I must consider the significance of the fact that the information includes the personal information of the child, as well as of the fact that the Applicant did not specifically request the personal information of her child.

[para 79] I note that under section 61 of the Act, the guardian of a minor child may exercise the rights of the child under particular circumstances. The relevant parts of section 61 of the Act provide:

> *61(1) Any right or power conferred on an individual by this Act may be exercised*
> *(a) if the individual is 18 years of age or older, by the individual;*
> *(b) if the individual is under 18 years of age and understands the nature of the right or power and the consequences of exercising the right or power, by the individual;*
> *(c) if the individual is under 18 years of age but does not meet the criterion in clause (b), by the guardian of the individual;…*

[para 80] By reference to this section, the Applicant could have requested access under PIPA to her child's personal information at the same time as she requested her own. (Indeed, it is possible that she may still request it if he remains a minor). However, if the request is made in such a manner that it is appropriate to treat it as, or as also, a request for a minor's personal information, the organization to whom it is made must make a determination as to whether the criterion in the Act is met that the minor does not understand the nature of the right or power that is being exercised, and the consequences of exercising it. I acknowledge that the age of the child at the time of the request was such that it seems likely the criterion would have been met had this question been addressed. Nonetheless, I do not believe that it is possible, long after the fact, to somehow attribute this decision to the Psychologist so as to have the consequence that it is now

possible to treat the Psychologist's response as having been to a request, which met the criterion of section 61(1)(b), for the personal information of both the child and the Applicant (with the result that section 24(3)(b) can be regarded as inapplicable).

[para 81] Furthermore, while the Applicant asked for records that necessarily contained personal information about her child, she also worded her request as one for her own personal information. This suggests she did not regard the information in the records relating to the child as the child's information; rather, she regarded what I have found to be her child's personal information as her own. This is a significant impediment to treating the request as having been made, at the same time, for her child's personal information under section 61.

[para 82] Turning to the Psychologist's response to the request, it appears either that she held a similar view, or that she did not consider the possibility that the information was also the child's information. She disclosed the entire treatment file and indicated in her submission that she thought this was in conformity with her obligations under PIPA; she made no objection to disclosure of the peer review notes on the basis that the child's personal information was contained therein. If the Psychologist also regarded information relating to the child as that of the mother, this, again, argues against treating her response to the request as having involved some sort of implied determination, by reference to the fact of the child's age at the time, that the conditions of section 61 were met.

[para 83] There is a final point, in my view a decisive one, relating to the presence of the child's information in the peer review notes. Even if I could treat the access request and the Psychologist's response as having related to the personal information of both individuals, I cannot now treat the Applicant as having requested and participated in this inquiry – which involves the exercise of rights under the Act distinct from the initial request for access – on behalf of the child. Much time has elapsed since the initial events and the inception of the related proceedings. At the time the Applicant decided to request and to participate in this inquiry, the child was considerably older, and was possibly capable of appreciating the significance of the exercise of these rights. Moreover, no determination has been made about this question by this office. Thus, I do not see that I can conduct this inquiry on the basis that the Applicant was implicitly acting on her minor child's behalf in initiating and participating in this inquiry, as well as on her own behalf.

[para 84] In view of these factors, I find that section 24(3)(b) applies to the information in the peer review notes that is about the child. In my view, any information in these notes that is about the Applicant is at the same time information that is about her child. Thus the Psychologist may not, in response to an access request under PIPA, disclose the parts of the peer review notes (standing alone) that contain the child's personal information because in doing so, she would be revealing the personal information of another individual.

[para 85] With respect to the parts of the peer review notes that do not contain the Applicant's or the child's personal information or the personal information of anyone

else, the Psychologist may disclose these at her option, but is not obliged to do so under PIPA.

[para 86] I turn to the records that comprise the Psychologist's response to the College.

[para 87] Earlier in this decision (at para 43), I explained my view that all of the information in the Psychologist's response is either all the Psychologist's personal information, or is inextricably interwoven with the personal information of the Psychologist. This includes the information of the Applicant that is mentioned in the Psychologist's explanations to the College about her thoughts and opinions that lay behind her decisions as to how to treat the Applicant, and any material supplied as background for these explanations, as well as her reasons for and descriptions of her subsequent actions. It includes the peer review notes as they might be found in the context of her response, and any notes of conversations with specified public authorities that the Psychologist created for the purpose of responding to the complaint against her.

[para 88] In addition, much of the personal information of the Applicant that is contained in the Psychologist's response to the College is inextricably interwoven with information about the child. This includes, again, the peer review notes, and any records of conversations that the Psychologist had with certain public authorities regarding the Applicant and the child.

[para 89] Thus, section 24(3)(c) applies to all the personal information of the Applicant described in the preceding two paragraphs.

[para 90] With respect to the remaining information that was provided for my review by the Psychologist (the 'process' correspondence), I found above that most of this information, even though containing references to the Applicant insofar as she instituted and provided information about her complaints, is not "about" the Applicant. While there are some parts of this correspondence that could be described as being "about" the Applicant, in each case where that is so, the information is at the same time also the personal information of the Psychologist, and section 24(3)(b) applies to this information.

D. Does section 24(3)(c) (information revealing identity of a person who provided opinion in confidence) apply to the information or parts of it?

[para 91] The Psychologist relied on this provision in order to withhold information in the peer review notes that consists of opinions provided by psychiatrists. In accordance with my findings under section C above, the opinions cannot be provided on the basis that they contain the personal information of a third person (the child). Therefore, I do not need to decide if this provision applies in this case.

iv) If section 24(3)(b) or 24(3)(c) apply to the information or parts of it, is the Organization reasonably able to sever the information to which these sections apply, and provide the remaining personal information of the Applicant, as required by section 24(4)?

[para 92] With respect to the peer review notes (standing alone), any personal information of the Applicant that is contained therein either also consists of, or is inextricably intertwined with, the personal information of her child. Thus section 24(4) cannot be applied to the peer review notes. As well, some relatively minor parts of the notes contain non-personal information, and thus the Applicant is not entitled to them under the Act.

[para 93] The same observations and conclusion apply to any notes that record telephone conversations that the Psychologist had with specified public authorities.

[para 94] With respect to the Psychologist's response to the College, I have concluded that all of the Applicant's personal information contained therein is either also the personal information of the Psychologist, or is inextricably intertwined with the personal information of the Psychologist. Thus section 24(4) cannot be applied to this information.

[para 95] With respect to the 'process' correspondence, only part of which contained information "about" the Applicant, I have found that all such personal information of the Applicant was at the same time the personal information of the Psychologist, and thus cannot be severed as contemplated by section 24(4).

Issue C: Did the Organization respond to the Applicant's request for personal information in accordance with section 27(1)(a) (duty to assist and respond as accurately and completely as reasonably possible)?

[para 96] Section 27(1)(a) provides:

> *27(1) An organization must*
> *(a) every reasonable effort to assist applicants, and*
> *(ii) to respond to each applicant as accurately and completely as reasonably possible,…*

[para 97] The Applicant argues that the Psychologist was "contemptuous of her access and privacy rights" and that she "actively attempted to dissuade [the Applicant] from obtaining access to her information", citing portions of her affidavit in which she quotes or describes communications between herself and the Psychologist about her access to the treatment file. I have reviewed these portions of the affidavit, and find that, regardless of any comments the Psychologist may have made about the access request, since she made a copy of the treatment file available for the Applicant on the day following the request for access, the Psychologist met her duty to assist with regard to this part of the information. As well, the Psychologist provided copies of the treatment

file on subsequent occasions, and clarifications of certain portions, and she also offered to review the file with the Applicant. I note from the Applicant's affidavit that a copy of the treatment file that was subsequently provided (on February 8, 2005) contained additional pages (and that one page was missing). The Psychologist explains the additional pages as containing entries to the file made subsequent to the initial access request, and the missing page had presumably been provided earlier. Thus I draw no conclusions adverse to the Psychologist from the observations the Applicant made in her affidavit about the Psychologist's approach to providing this information.

[para 98] As well, there was a considerable period of time before the Applicant could obtain a confirmation (which apparently was given via the College on August 10, 2005) that the records provided constituted the entire treatment file. Nonetheless, assuming the entire treatment file had in fact been provided by February 8, 2005, I do not regard confirmation that this was the case as critical.

[para 99] However, as noted above, the Applicant seems to continue to have a concern about the completeness of the treatment file. I will address this point further in the concluding part of this decision.

[para 100] I turn to the peer review notes. The Applicant says with respect to these notes that the Psychologist "denied the existence of information that subsequently came to light", referring to the fact that when she initially asked the psychologist about why there were no notes in her "chart" of the peer consultations, the Psychologist said that she did not "chart" her "supervision things". The Applicant states that she further asked the Psychologist if she had any "letters, back-up, or any notes to support her claim that the psychiatrists she had consulted with had agreed with her professional opinion", and that the Psychologist had answered in the negative to all three. On this basis, the Applicant alleges that either the Psychologist initially lied about the existence of the peer consultation notes (which record nine consultations), or that she fabricated them subsequently "to justify her actions".

[para 101] I do not see how the contention that the Psychologist may have fabricated the peer review notes at some point later than when the Applicant first asked for her personal information supports the idea that she failed to assist the Applicant in accordance with section 27(1). If the notes did not exist at that time, the Psychologist could not have provided them.

[para 102] I turn to the Applicant's contention that the Psychologist lied to the Applicant when she said that the peer review notes did not exist. As well, the Applicant says that the Psychologist has used "semantics and irrational labels in an attempt to make a distinction between different categories of records that contain [the Applicant's] personal information". I will assume, for the purpose of the discussion under the present heading, that the Applicant precisely recalled the answers the Psychologist gave her about the existence of the peer review notes.

[para 103] As I have explained above, I do not agree that because a peer consultation does not disclose the identity of the person about whom the consultation is done, the notes do not contain the person's personal information, and, on this account, that the person has no entitlement to such notes under PIPA. On the contrary, in my view, when a person is asking for their own personal information it is enough that they (or possibly that only the organization that holds the information) can recognize it as such.

[para 104] Despite this, I do not agree that there is no rational distinction between a file that records a psychologist's interactions with the person being treated, and a file that records peer consultations. The latter is distinct in that it records the seeking of advice by the psychologist and the advice that is received, which, though concerning the person being treated, is done for the edification of the psychologist, to assist them in their practice. I see some merit in the idea that in the appropriate case, peer consultation information is more properly regarded as about the consultation question (albeit related to a particular person being treated) than about that person. On this basis, I am minded to accept that the Psychologist earnestly held the opinion that the latter type of notes did not belong in a treatment file because they were outside the scope of the treatment relationship, and thus were not subject to her professional duty to provide treatment file information. As well, in her affidavit, the Psychologist attests that she believes the fact that the notes do not identify the Applicant means that they belong in her peer supervision file rather than in the Applicant's treatment file.

[para 105] The Psychologist's answers to questions about the existence of these records were consistent with her practice of not keeping such notes in her treatment files. Because the treatment file was apparently referred to as a 'chart', this seems very likely to be true of her statement that she does not "chart" peer supervision notes. As well, because her answers were given in the context of a discussion about what records she was under a duty to provide to the Applicant, her replies can be understood as having been confined to the notes that she thought she was obliged to provide. I find, therefore, that there is an insufficient basis for characterizing her answers to the Applicant's questions about the existence of the notes as deliberate attempts on her part to thwart the Applicant's exercise of her right to obtain access to her personal information.

[para 106] Thus I conclude that though the Psychologist misapprehended to some extent the nature of her duty to provide records under PIPA, she did respond in accordance with what she believed her duty to be.

[para 107] Furthermore, I have found the notes were not disclosable under PIPA because they contain the information of the Applicant's child. Refusal to provide information should not normally ground a finding that section 27(1)(a) was breached in a situation in which there is no duty to provide the information in fact.

[para 108] Thus I find that the Psychologist did not fail in her duty to make every reasonable effort to assist the Applicant and to respond as accurately and completely as was reasonably possible.

[para 109] I note finally that in her affidavit, at paras 159 to 164, the Applicant states her belief that the Psychologist was in possession of records containing the Applicant's personal information that she (the Psychologist) never produced to either the federal Office of the Information and Privacy Commissioner, or to this office. She appears to base this belief on information that was contained in the investigation report of the College concerning the complaint, which, if I understand her correctly, mentioned information about the Applicant that was not contained in the records that the Applicant had already received.

[para 110] I do not have a copy of this investigation report and am unable to draw the conclusion reached by the Applicant based only on what the Applicant has said about it.

[para 111] However, I note that in her rebuttal submission, the Applicant says that when she received copies of the report of the College investigator, it mentioned a separate set of notes of the telephone conversations the Psychologist had with public authorities. This reference may be to the same records described in para 109.

[para 112] Based on these concerns, the Applicant asks that for the purpose of the present proceeding, the Psychologist be required to produce all relevant records in her possession, as well as records provided by the Psychologist to the federal Office of the Information and Privacy Commissioner and those she provided to the College.

[para 113] The Psychologist provided what she described as the "records in question" to this office for my review, and in her rebuttal she provided a sworn statement that she has not withheld any information or records from this office that contain or may contain the personal information of the Applicant (she did except solicitor-client communications, but indicated that she had done this). She included what she described in her affidavit as her "Complaint Responses", the related 'process' correspondence, as well as her communications with the federal Office of the Information and Privacy Commissioner.

[para 114] Despite this, I could not locate, among the records provided by the Psychologist for my review, an attachment to the Psychologist's response to the College which could be described as a summary of the telephone conversations. I considered asking the Psychologist to provide this summary.

[para 115] However, I decided not to delay these proceedings by taking this step, because it would not help me in making a determination about any such record. In my view, all records that describe these telephone conversations consist of or contain the personal information of the Applicant's child, and on this basis, even though they also consist of or contain the intertwined personal information of the Applicant, they are not to be disclosed to her by reference to section 24(3)(b) of the Act.

[para 116] I remind the Psychologist that it is important to be thorough in providing records at issue, so that the adjudicator can be confident that they are reviewing all relevant records.

V. DECISION AND ORDER

[para 117] I make this order under section 52 of the Act.

[para 118] I will deal with the treatment file separately.

[para 119] Leaving aside the treatment file, I find that the Psychologist properly withheld all of the records requested by the Applicant that consist of the Applicant's personal information under section 24(3)(b).

[para 120] I find that she properly withheld records consisting of solicitor-client communications under section 24(2)(a).

[para 121] The Applicant has no entitlement under the Act to any information that fell within her request that is not her personal information.

[para 122] With respect to the treatment file, if the Applicant continues to be concerned as to whether the copy of the file provided to her by the Psychologist was complete, I ask her to notify me that this is the case by March 5, 2010, and to provide a copy of the file that has already been given to her by the Psychologist. In the event she does so, I will ask the Psychologist to provide a complete copy of her file to me so that I may make a comparison, and I will make any necessary rulings at that time.

Christina Gauk, Ph.D.
Director of Adjudication