Order F21-47

**MINISTRY OF HEALTH**

Jay Fedorak
Adjudicator

October 5, 2021

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**Summary:** A physician requested information relating to his billings with the Ministry of Health (Ministry). The Ministry refused to disclose most of the responsive record under s. 22(1) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) (disclosure would be an unreasonable invasion of third-party personal privacy). The adjudicator found that s. 22(1) applied to all the personal information. However, the adjudicator also found that some of the information did not constitute personal information and that the Ministry must disclose it.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(a), 22(2)(c), 22(2)(f), 22(3)(a), 22(3)(d), 22(4)(c), 22(4)(e), 22(4)(f).

## INTRODUCTION

[1] A physician (applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Ministry of Health (Ministry) for records related to his billings with the Medical Services Plan (MSP) during the period October 1, 2011 to December 31, 2016. The Ministry refused access to the information in its entirety under s. 22 (unreasonable invasion of third-party personal privacy).

[2] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the Ministry's decision to withhold the information under s. 22.

[3] Mediation by the OIPC did not resolve the matter and the applicant requested it proceed to an inquiry.

[4] During the inquiry, the Ministry reconsidered its decision and disclosed some information to the applicant. However, the Ministry continued to refuse to disclose most of the information under s. 22(1).

## ISSUE

[5] The matter at issue in this inquiry is whether s. 22(1) of FIPPA requires the Ministry to withhold information. Under s. 57(2) of FIPPA, the applicant has the burden of proving that disclosure of any personal information in dispute would not be an unreasonable invasion of a third party's personal privacy under s. 22(1) of FIPPA.

## DISCUSSION

[6] **Background -** This inquiry relates to one of multiple requests the applicant has made to the Ministry over many years. Order F20-12 dealt with a request for similar information.[1] That Order provides a detailed background of the relationship between the applicant and the Ministry regarding his billings with the MSP under the *Medicare Protection Act* (MPA).[2] I will not repeat that history here.

[7] **Information at Issue -** The responsive record (Record) is a report of 2605 pages that the Ministry generated from the MSP Claims Processing System. The Record provides detailed analysis related to the services the applicant provided to various patients between October 1, 2011 and December 31, 2016.

[8] The Record lists the names of individual patients, their unique personal health number (PHN), the service the applicant billed for on behalf of the patient, the service for which the applicant was actually paid, the amount paid and a diagnostic code that details the medical condition the service was required to address. The Record also shows the total number of patients the applicant saw and his total daily and monthly MSP billings. The Ministry provided a description of the fields of information in the Record, except for patient name, PHN, and practitioner. I will list only the fields that remain withheld from the applicant.

a) "PAYEE" indicates the facility where the patient received treatment.

b) "RFRNG PRAC" is the unique practitioner identification number the Ministry assigned to the medical practitioner who referred the patient to the treating practitioner.

[1] Order F20-12 2020 BCIPC (CanLII) 14.
[2] Order F20-12 paras 5-9.

c) "DATE OF SERVICE" is the date the patient went to see the medical practitioner or the date that a medical sample was taken from the patient by a laboratory.

e) "CLAIM NUMBER" is a unique identification number for an individual patient that the medical practitioner has assigned to them.

f) "BILLED F ITM" is the specific health care service the medical practitioner has provided to the patient, as submitted in the practitioner's billing to MSP.

g) "PDSC" is a code the Ministry created to reflect the type of service provided to the patient.

h) "PAID F ITM" is the specific health care service MSP has actually paid out under.

j) "PAID DATE" is the date the MSP paid the medical practitioner.

k) "PAID AMOUNT" is how much the medical practitioner received for the service.

n) "DIAG CODE" indicates the medical issue a patient is being treated for.

[9] The Ministry has disclosed the daily and monthly patient totals; daily and monthly paid amount totals; daily and monthly paid unit totals; plan referencing numbers; paid units; total adjustments; and explanatory codes. It has withheld all remaining information in the spreadsheet.

### *Section 22 – harm to third-party personal privacy*

[10] The proper approach to the application of s. 22(1) of FIPPA has been the subject of analysis in previous orders. A clear and concise description of this approach is available in Order F15-03, where the adjudicator stated the following:

> This section only applies to "personal information" as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy.[3]

[3] Order F15-03, 2015 BCIPC 3 (CanLII), at para. 58.

I have taken the same approach in considering the application of s. 22(1) here.

Step 1: Is the information "personal information"?

[11] Under FIPPA, "personal information" is recorded information about an identifiable individual, other than contact information. "Contact information" is "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual."

[12] I will now assess each of the fields of information in dispute in the Record to determine whether it constitutes personal information. I do so with respect to the complete original record. This will include determining whether disclosure of a particular field in combination with the other fields would reveal personal information of individual patients. I will also consider whether the disclosure of a particular field, in combination with some, but not all, of the other fields would enable a knowledgeable reader to deduce or infer information about identifiable individuals.

Names

[13] No one disputes that the name of an individual constitutes personal information. It is the most direct means of identifying an individual. In any combination of fields and in isolation, a name is identifiable. I find that a name constitutes personal information.

PHNs

[14] PHNs are unique personal health numbers assigned to each individual patient for purposes of medical treatment and practitioner billing. As the inherent purpose of PHNs is for identifying individuals, they constitute personal information. In any combination of fields and in isolation, a PHN is identifiable. I find the PHNs constitute personal information.

Medical Facility (PAYEE)

[15] The Ministry acknowledges that the identification of a medical facility does not appear at face value to be personal information. It asserts, however, that this information, combined with other available information, could reveal information about an identifiable individual. It cites this phenomenon as the "mosaic effect", in which fields of seemingly unidentifiable information, when combined, can enable a knowledgeable reader to identify the individual to which the information relates. The onus is on the Ministry to demonstrate that the "mosaic effect" applies in this case with respect to the "PAYEE" information. The Ministry suggests that the

applicant may have copies of his own records that he could use to cross reference the identity of individual patients to passages in the Record.

[16] I have reviewed the records at issue. I note that there is a large volume of line items associated with each "PAYEE" number. Therefore, I find it difficult to accept that the disclosure of the "PAYEE" number alone would reveal the identity of a particular patient. The Ministry has not demonstrated how this could happen.

[17] The "mosaic effect" is a complex concept that requires careful application. When invoking the "mosaic effect" a public body must explain the logic that leads to the conclusion that it is reasonable to expect that it might apply. Mere speculation is insufficient to establish its application in a particular case.

[18] The Ministry has not provided sufficient justification for me to conclude that the "PAYEE" number constitutes personal information, either alone or in combination with the date fields. I note that there are so many entries on each date at each facility that it is improbable that even the applicant could identify the individual patient. For the mosaic effect to apply, it would be necessary for the applicant to have access to information about the diagnosis of the patient.

Referring medical practitioner

[19] The Ministry has persuaded me that the disclosure of the referring practitioner number is personal information. It is a unique number assigned to a particular medical professional. Therefore, it is the personal information of that professional. I note, however, that only a small percentage of the entries include a practitioner number. The majority show "00000", which indicates that there was no referring practitioner for that treatment for that patient. Disclosure of this field, however, may enable a knowledgeable reader to infer medical information about the patient through the mosaic effect, if one also had access to the patient's name or a combination of other fields, such as the medical facility, date and payment information. Even the disclosure of the 00000 entries alone would distinguish which of the small number of patients had referrals and enable a knowledgeable reader to identify the patient in combination with other fields.

Date of Service

[20] The date of treatment, on its own, does not constitute personal information. The Ministry asserts that the "mosaic effect" applies.

[21] I have reviewed the records at issue. I note that there is a large volume of line items associated with each date at each facility. Therefore, I do not accept that the disclosure of the date, even in combination with the medical facility would reveal the identity of a particular patient. The Ministry has not demonstrated how

this could happen. For the mosaic effect to apply, it would be necessary for the applicant to have access to information about the diagnosis of a patient.

Claim Number

[22] The claim number is a unique identifier connected to a particular patient, like the PHN. In any combination of fields and in isolation, a claim number is about an identifiable individual. I find the claim numbers constitute personal information.

Medical Treatment Billing Code (BILLED F ITM)

[23] The medical treatment billing code refers to the specific medical treatment that an individual patient received, according to the medical practitioner. While this number is not unique to each patient, it does indicate the treatment that the practitioner reported the patient received. Disclosure of this field may enable a knowledgeable reader to infer medical information about the patient through the mosaic effect, if one also had access to the patient's name or a combination of other fields, such as the medical facility, date and payment information.

Ministry Medical Treatment Code (PDSC)

[24] The ministry treatment code is another code that, like the medical treatment billing code, reveals the medical treatment an individual received. While this number is not unique to each patient, it does indicate the treatment that they received. Disclosure of this field may enable a knowledgeable reader to infer medical information about the patient through the mosaic effect, if one also had access to the patient's name or a combination of other fields, such as the medical facility, date and payment information.

Medical Treatment Received Code (PAID F ITM)

[25] The medical treatment received code is specific to the medical treatment that the Ministry has determined that an individual patient received. It normally matches the medical treatment billing code. While this number is not unique to each patient, it does indicate the treatment that they received. Disclosure of this field may enable a knowledgeable reader to infer medical information about the patient through the mosaic effect, if one also had access to the patient's name or a combination of other fields, such as the medical facility, date and payment information.

Paid Date

[26] The date the medical practitioner received payment, on its own, does not constitute personal information about third parties. Nevertheless, the Ministry

asserts that the "mosaic effect" applies; disclosure of the payment date, combined with the other fields in the Record, could render entries to be identifiable.

[27] I have reviewed the records at issue. I note that there are many entries associated with each date of payment, usually more than 50. Therefore, I find it difficult to accept that the disclosure of the date the practitioner was paid, even in combination with the "PAYEE" number and date of service would reveal the identity of a particular patient. The Ministry has not demonstrated how this could happen. I note that the payment date does not correlate directly to the date of service. In fact, dates of payment are always on the fifteenth or last day of the month. I do not see how, in any combination of fields, the date of payment could render a patient identifiable.

Amount Paid

[28] The amount paid corresponds directly to the service that the medical practitioner provided. The Ministry pays different standard fees for different services. However, some services warrant the same fee as others. A knowledgeable reader could determine the service associated with the amount paid, and, therefore, the service that an individual patient received, if they also had access to the patient's name or a combination of other fields, such as the medical facility, and date.

Diagnostic Code

[29] The diagnostic code relates directly to the medical condition of the patient. It constitutes the patient's personal information when the patient is identifiable. Disclosure of this field may enable a knowledgeable reader to infer medical information about the patient through the mosaic effect, if one also had access to the patient's name or a combination of other fields, such as the medical facility, date and payment information.

[30] My conclusion with respect to whether the disclosure of certain fields would constitute personal information is as follows. I find that the names, PHNs, and claim number are explicit unique identifiers that constitute personal information, even in isolation from the other fields at issue.

[31] Further, I find that a patient's personal information could reasonably be expected to be revealed where there is a combination of diagnostic or treatment information with the identification of the medical facility and the date of treatment. It appears to me that this suite of information could enable a knowledgeable reader to identify individual patients, even in the absence of a name, PHN or claim number. This combination provides a level of specificity that, combined with information available from other sources to a knowledgeable reader, such as

anyone involved in the treatment or billing, could identify one or more individual patients in the Record.

[32] The identity of the facility reduces the number of patients, and the date reduces them further. For example, on the Record listing individual billings, there are 52 entries involving 40 patients on the first date at the same facility. Diagnostic information reduces the numbers further. There are diagnostic codes that relate to only one patient in the list. Of those patients, there is one for which the applicant is billing a fee of a unique amount. There is only one patient who was referred by another medical practitioner, and the applicant billed a unique amount. It would appear reasonable to me that this information, combined with other information, would identify these patients and their diagnoses.

[33] On the other hand, it seems reasonable to me to conclude that it is unlikely that anyone would be able to identify individual patients if the Record were severed so that the only information disclosed was the medical facility, the date of treatment and the date of payment. There are too many patients for each of these dates to discern with any certainty information about individual patients. For example, the date the applicant was paid for providing the service does not correspond to any specific diagnostic information.

[34] In conclusion, I find that all fields, except for the medical facility, the date of treatment and the date of payment constitute personal information. Therefore, s. 22(1) does not apply to the information in the columns of the Record labelled "DATE OF SERVICE" and "PAID DATE" or the "PAYEE" number at the top of each page.

[35] I will proceed with the analysis of the information I find is personal information.

Step 2: Does s. 22(4) apply?

[36] The applicant says that ss. 22(4)(c), 22(4)(e) and 22(4)(f) apply.

[37] Section 22(4)(c) says that it is not an unreasonable invasion of the personal privacy of third parties where an enactment of British Columbia or Canada authorizes the disclosure.

[38] The applicant argues that the terms of the *Medical Protection Act* authorize disclosure of the information at issue.[4] He does not cite a specific provision that explicitly authorizes the disclosure of information. I have reviewed the *Medical Protection Act*, and I am unable to identify any such provision. While there is a provision permitting disclosure of "proscribed information" to a practitioner subject to an audit, the applicant has failed to demonstrate that the

[4] Applicant's response submission, p. 12.

information at issue meets the criteria of proscribed information. It also is clear from *Medical Protection Act* that such disclosure occurs as part of a process authorized under that statute, in other words, as part of the audit. It does not explicitly permit disclosure generally, such as in response to a FIPPA request. Therefore, s. 22(4)(c) does not apply.

[39] Section 22(4)(e) says that it is not an unreasonable invasion of privacy to disclose the information about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff.

[40] The applicant says that this provision applies to "the functions or remuneration as an officer, employee, or *member of the public"* (my emphasis).[5] The Ministry rightly points out that s. 22(4)(e) applies to a member of a "public body" rather than a member of the public. Even though the applicant may receive funds from a public body, he is not an officer, employee or member of a public body. Therefore, s. 22(4)(e) does not apply.

[41] Section 22(4)(f) says that it is not an unreasonable invasion of privacy to disclose information if the disclosure reveals financial and other details of a contract to supply goods or services to a public body.

[42] The applicant argues that he is a contractor to a public body. He says:

> as a physician and subscribing to have patient duties paid under the Medical Services Plan, I am a private contractor. I duly supply services to the Ministry of Health for individual patient care. The relationship between me, my services, and the Ministry of Health is detailed in its contractual form through legislation that is palpable. I need the information to deliberate on the contractual relationships as they stand.[6]

Whether he is a contractor to the Ministry, the information at issue does not reveal the details of any contract.[7] Therefore, s. 22(4)(f) does not apply.

[43] The parties do not raise any other provision of s. 22(4) and none of them appear to me to apply. Therefore, I find that none of the information falls within s. 22(4).

Step 3. Does s. 22(3) apply?

[44] The relevant provisions read as follows:

[5] Applicant's response submission, p. 3.
[6] Applicant's response submission, p. 12.
[7] Ministry's reply submission, para 31.

> 22 (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
>
> (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,
> …
> (d) the personal information relates to employment, occupational or educational history,

[45] The Ministry asserts that disclosing the information at issue would reveal the medical information of the patients. The applicant did not dispute that the information is medical information of the patients.

[46] The personal information in dispute arises out of records of payments for medical treatment. It includes the names of patients in combination with their PHN and fields indicating medical diagnosis and treatment. This includes information that could reveal a diagnosis or treatment (such as the identity of the referring physician, the payment codes and payment amounts). I find that this personal information constitutes the medical information of the patients.

[47] Therefore, I am satisfied that disclosure of the personal information of patients in the Record in dispute is presumed to be an unreasonable invasion of privacy of third parties under s. 22(3)(a).

[48] The Ministry also argues that s. 22(3)(d) applies, as the medical practitioner field reveals the employment history of the medical professional.[8] Former Commissioner Loukidelis found in Order 02-45 that, for information to constitute employment history under s. 22(3)(d), it must consist of more than just the fact that an individual held a certain employment position. To be employment history, the information must consist of "work history, performance reviews or evaluations, disciplinary actions taken, reasons for leaving a job, leave transactions and so on."[9] The personal information about the medical practitioners is solely a code assigned to them. It does not reveal anything else about the employment of the medical practitioner. It does not meet the definition of employment history. Therefore, I find that s. 22(3)(d) does not apply.

[49] Nevertheless, I have already found that the disclosure of the medical practitioner field would reveal the medical information of the patient referred. Therefore, disclosure of information about the medical practitioner would still be an unreasonable invasion of privacy of the patients under s. 22(3)(a).

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[8] Ministry's initial submission, paras 77-79.
[9] Order 02-45 2002 BCIPC (CanLII) 42479, para. 21.

Step 4: Do the relevant circumstances in s. 22(2) rebut the presumption of invasion of privacy?

[50] The relevant provisions are these:

> 22 (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
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> > (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia to public scrutiny.
> > …
> > (c) the personal information is relevant to a fair determination of the applicant's rights,
> > …
> > (f) the personal information has been supplied in confidence

[51] **S. 22(a) public scrutiny** - The adjudicator in Order F05-18 described the purpose of this provision:

> What lies behind s. 22(2)(a) of the Act is the notion that, where disclosure of records would foster accountability of a public body, this may in some circumstances provide the foundation for a finding that the release of third party personal information would not constitute an unreasonable invasion of personal privacy. [10]

[52] The applicant cites s. 22(2)(a) as a relevant circumstance in this case. He asserts, as I understand him to say, that he is subjecting MSP's audit and payment processes to scrutiny to see whether they comply with statute law and the Master Agreement between the government and Doctors of BC.[11]

[53] Nevertheless, he does not explain how disclosing all fields in the Record to him would foster accountability of the MSP. His arguments focus on his rights of access as a practicing physician entitled to reimbursement through the plan. He has concerns about the actions of the public body towards him personally. He has not suggested how disclosure of the information would provide accountability to the benefit of the public.

[54] For s. 22(2)(a) to apply, the disclosure must have the potential to serve the public purpose of scrutiny of the activities of the public body. In this case, the applicant has only identified how disclosure will advance his own private purposes in his personal dispute. The applicant has not demonstrated how disclosure to him would promote public scrutiny of the Ministry. I cannot identify

[10] Order F05-18 2005 BCIPC (CanLII) 24734, para. 49
[11] Applicant's response submission, p. 3.

how disclosing the third parties' personal information in the Record would promote the accountability of the public body.

[55] Therefore, I find that s. 22(2)(a) does not weigh in favour of disclosure in this case.

[56] **S. 22(c) fair determination of an applicant's rights** - The applicant asserts that the information is necessary for him to protect his interests while managing his disputes with the Ministry. He says:

> Furthermore, it is evident that the seeking of information is in large part related to the right that the information sought is relating to proceedings which may be underway or is contemplated. … It is clearly evident that the information sought bears a significance to current and imminent determinations. The personal information is necessary in regards to preparation for any future proceeding and to allow for fair hearing and indeed accounting. As the other party knows, it has access to all such information already. For whatever is missing, it has the power of the *Medicare Protection Act* to mandate access to literally anything of the records. The balance to that power is that it must at least allow me access to materials that the other party has and which are being used in any such discourse.[12]

[57] The Ministry submits that, while the applicant did have a right of access to information relevant to the hearing regarding the audit of his billing practices, it is not relevant to this inquiry. First, the applicant received full disclosure during the hearing process. Second, the hearing process is now complete. The Ministry contends that if the applicant was dissatisfied with the information disclosure for the hearing, he should have filed for judicial review of that aspect of the hearing.

[58] I note that previous orders have set out the following test for determining whether s. 22(2)(c) applies in a particular case:

> 1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
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> 2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
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> 3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
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> 4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing. [13]

[12] Applicant's response submission, p. 4.
[13] See for example Order F01-07, 2001 BCIPC 21561 (CanLII) para. 31.

I take the same approach here.

[59] The applicant claims that he requires access for other possible proceedings that may be in train or in contemplation. The Ministry counters that the criteria that previous orders set out clearly requires the proceedings at issue to be in process or contemplated. The Ministry asserts that the only relevant proceeding was the billing audit, which is now complete. Even if there were outstanding proceedings, the Ministry submits, disclosure now is not necessary for the applicant to prepare because he already received full disclosure as part of the audit process.[14]

[60] I find the fact that the applicant speculates that there might be other proceedings under way or contemplated, of which he is currently unaware, is insufficient to trigger the application of s. 22(2)(c). It is necessary for the applicant to identify a specific proceeding in process or one that it is reasonable to expect will commence. This he has not done. Moreover, the applicant has not established that the information that he has already received through the audit process was insufficient for his purpose.

[61] For these reasons, the applicant has failed to establish that the information in dispute is necessary or relevant to a fair determination of any legal rights the applicant may have. I find that s. 22(2)(c) does not apply here.

[62] **S.22(2)(f) personal information was supplied in confidence –** The Ministry asserts that the patients would have supplied their personal information to the applicant in confidence, and it provides reasons why both the applicant and the Ministry should treat the information confidentially. These assertions are valid, but they do not address whether the patients supplied, in confidence, the information in the Record. The Ministry has not demonstrated that the patients themselves supplied the information at issue. It is certainly information about the patients, but it is not clear, for example, that they supplied their actual diagnoses.

[63] If the Ministry means that the applicant himself supplied the personal information in confidence, then it is another matter. It would seem on the surface that when one party provided information in confidence to a second party, that the second party could return the information to the first party without undermining confidentiality. Nevertheless, this would overlook the fact that the applicant in this case is operating in two different capacities: his professional capacity and his personal capacity. He submitted the billing information in his professional capacity, in which he is bound by professional undertakings to keep the information confidential. He submitted the FIPPA request in his personal capacity, in which he is not bound by confidentiality undertakings. Disclosure under FIPPA is different from disclosure as part of the billing process. While it would not violate confidentiality to disclose the information to him in his

[14] Ministry's initial submission, Hart Affidavit para.11; Ministry's reply submission, paras. 51-58.

professional capacity through the billing process, it would violate confidentiality to disclose the information to him in his personal capacity through a FIPPA request.

[64] Therefore, I find that this provision applies in this case.

[65] **Privacy "waiver" –** The applicant asserts that by having previously disclosed some of the personal information at issue, the Ministry has "waived" the privacy of those individuals in a way that prevents the Ministry from refusing to disclose that information under a FIPPA request. He states that "once a certain point of disclosure occurs, the fairness principle requires that the privilege of secrecy shall cease whether intended or not."[15]

[66] The applicant appears to be drawing an analogy between previous disclosure of personal information and the waiving of solicitor-client privilege. The Ministry correctly asserts that it has no authority to waive the privacy rights of third-party patients.[16] The third parties in this case have not been involved in any disclosures. Therefore, I find that no one has waived their privacy. The concept of a waiver of privacy does not apply in this case because there has been no waiver.

[67] **Applicant already aware of personal information –** While there has been no "waiver" of privacy in this case, that fact that the applicant may have had access to information at issue is relevant. There is a subtle distinction between these two concepts. A waiver would constitute a complete and definitive end to privacy protection. This has not occurred. Nevertheless, previous orders have found that the fact that an applicant knows or is aware of personal information in issue is a relevant circumstance under s. 22(2), which, depending on the case, may or may not favour disclosure.[17] This factor requires analysis in combination with other factors.

[68] The Ministry points out that the information at issue is not publicly available. The applicant has only had access to some of the information through his status as a medical practitioner or through the audit. The Ministry says that the privacy rights of the third parties are not diminished by the fact that their personal information "had to be released, for administrative fairness reasons, during the previous audit process".[18]

[69] I agree with the Ministry on this point. A FIPPA request is often just one of multiple avenues of access to the same or similar information, each with its own rules and procedures. It is often the case that different avenues of access to the

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[15] Applicant's response submission p. 12-13.
[16] Ministry's reply submission para. 45.
[17] See, for example, Order 20-12, Order 03-24, 2005 BCIPC (CanLII) 11964, and Order F10-41, 2010 BCIPC (CanLII) 61.
[18] Ministry's reply submission, para. 45.

same record can result in different information being disclosed. There are no restrictions in FIPPA with respect to what an applicant may do with the information they obtain in response to a request under FIPPA.

[70] The applicant asserts that, if disclosed to him, no one need be concerned about the security of the personal information because medical ethics and his professional undertakings would prevent him from disclosing the information further.[19] The Ministry counters that this affords protection only to personal information that the applicant has received in the course of his duties as a physician or as a party to a proceeding. There are mechanisms in place for enforcing such undertakings. The Ministry argues that any records that the applicant receives in response to a FIPPA request would not be subject to these undertakings. The applicant would be free to disclose such records to anyone. This is what the Ministry means when it asserts that disclosure in this case would be a "disclosure to the world at large".[20]

[71] For these reasons, I find the fact that an applicant knows or is aware of personal information in issue is a relevant circumstance under s. 22(2). However, I find that in this case, it does not weigh in favour of disclosure. The applicant received information in his capacity as a physician subject to an audit of his billings. The process involved specific controls on the information that do not apply with respect to a FIPPA request. This means that other individuals could obtain access to the information if the Ministry disclosed it.

*Conclusion on s. 22(1)*

[72] I found above that, the patients names, PHNs and all the other fields in the Record, except for "PAYEE", "DATE OF SERVICE" and "PAID DATE", constitute personal information. I have found that none of the provisions in s. 22(4) apply that would have excluded the application of s. 22(1).

[73] I find that all the personal information also constitutes the personal medical information of the third parties. In accordance with s. 22(3)(a), its disclosure is presumed to be an unreasonable invasion of third-party personal privacy under s. 22(3)(a).

[74] I find that none of the factors in s. 22(2) rebut the presumption that disclosure would be an unreasonable invasion of privacy. I find that s. 22(c) does not apply and that there was no "waiver" of privacy when the applicant obtained access to the information through other avenues. While it is relevant that the applicant may have received information as part of the audit process, this consideration does not carry sufficient weight to rebut the presumption that disclosure would be an unreasonable invasion of the patients' personal privacy. I

[19] Applicant's response submission, p. 4.
[20] Ministry's initial submission, para 94; Ministry's reply submission para. 65.

also find that any existing undertaking in other contexts with respect to the confidentiality of the information at issue does not support the disclosure of the information here. In fact, s. 22(2)(f) favours withholding the information, as it was supplied in confidence. On balance, I find the factors in s. 22(2) weigh in favour of withholding the information.

[75] In conclusion, I find that s. 22(1) applies to the personal information in dispute and the Ministry must withhold it.

[76] As I find that the information in the fields "PAYEE", "DATE OF SERVICE" and "PAID DATE", either separately or in combination, do not constitute personal information, s. 22(1) does not apply to them. Therefore, the Ministry must disclose the information in those fields.

## CONCLUSION

[77] For the reasons given above, under s. 58(2) of FIPPA, I make the following order:

1. Subject to item 2 below, I confirm the Ministry's decision that it is required to refuse to disclose the information in dispute under s. 22(1).

2. The Ministry is not required by s. 22(1) to refuse to disclose the "PAYEE", "DATE OF SERVICE" and "PAID DATE" information, and it must disclose that information to the applicant.

3. The Ministry must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records it provides to the applicant in compliance with this Order.

[78] Pursuant to s. 59(1) of FIPPA, the Ministry must comply with this order by November 18, 2021.

October 5, 2021.

**ORIGINAL SIGNED BY**

Jay Fedorak, Adjudicator

OIPC File No.: F19-78879