



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F23-54

MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

Lisa Siew
Adjudicator

July 11, 2023

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Summary: An individual complained the Ministry of Children and Family Development (Ministry) improperly disclosed information about them contrary to the *Freedom of Information and Protection of Privacy Act* (FIPPA). The Ministry argued the disclosure was authorized under s. 79(a) of the *Child, Family and Community Services Act* (Act), which allows a director, without the consent of any person, to disclose information obtained under the Act if the disclosure is necessary to ensure the safety or well-being of a child. The adjudicator determined that the issue for consideration in the inquiry was whether the Ministry contravened the Act. After determining and applying the appropriate process to assess the disclosure complaint, the adjudicator concluded the Ministry had not contravened the Act since the disclosure was made in accordance with s. 79(a).

Statute Considered: *Child, Family and Community Service Act*, RSBC 1996, c. 46, ss. 1 (definition of “director”), 74, 74(2)(f)(ii), 75, 75(a.1), 79, 79(a), 92, 96(2.1) and 96(3).

INTRODUCTION

[1] This inquiry is about an individual’s complaint that the Ministry of Children and Family Development (Ministry) improperly disclosed information about them.¹ Among other things, the complainant alleges a Ministry employee inappropriately disclosed their information to unauthorized persons.

[2] In response to the complaint, the Ministry conducted a review and later informed the complainant that the disclosure was authorized under s. 79(a) of the *Child, Family and Community Service Act* (Act) since the disclosure was necessary to ensure the safety or well-being of a child.² It also advised the

¹ In its submission, the Ministry refers to more than one complainant, specifically the individual and their spouse. However, the OIPC investigator confirmed that the individual is the sole complainant in the inquiry. Therefore, the spouse is not a complainant and is only acting as the individual’s representative in the inquiry.

²² RSBC 1996, c. 46.

complainant that they could ask the Office of the Information and Privacy Commissioner (OIPC) to review the matter.

[3] The complainant was dissatisfied with the Ministry's response and requested the OIPC investigate the matter. The OIPC's investigation and mediation process did not resolve the dispute between the parties and it proceeded to this inquiry.

PRELIMINARY MATTERS

[4] Based on the parties' submissions, there are a few preliminary matters that I need to address. First, the parties raise additional issues in their submissions that are not included in the OIPC's fact report or the notice of inquiry. Second, the Ministry submits the Commissioner's authority to review the disclosure complaint at issue in this inquiry comes from the *Act* and not FIPPA. Finally, the parties disagree over whether a named individual's disclosure of information about the complainant falls within the scope of this inquiry. I will consider these three preliminary matters below.

Additional issues in the parties' submissions

[5] As noted, the parties' submissions raise other matters not set out in the OIPC investigator's fact report or the notice of inquiry. The complainant alleges their personal privacy was violated because the Ministry improperly collected and used information about them, failed to ensure the accuracy of that information, did not share or provide access to other information and did not seek their input when it made decisions that impacted them and their family.

[6] The complainant also alleges wrongdoing by Ministry employees and other named individuals. As well, the complainant references former investigations and reviews conducted by the Ministry in response to complaints they made about the Ministry's handling of certain matters related to them and their family. For the most part, those internal reviews were decided in favour of the complainant; however, the complainant argues more is needed to hold the Ministry accountable for its actions.

[7] The Ministry objects to the inclusion of these additional issues on the basis they are irrelevant to the issues to be determined at this inquiry and fall outside the scope of this inquiry. In particular, the Ministry notes that many of the additional issues raised in the complainant's submission have already been addressed through other internal review processes under the *Act* and that it is inappropriate to reconsider those issues at an OIPC inquiry.

[8] The Ministry also submits the Commissioner does not have the jurisdiction to consider some of those matters such as the collection and use of information under the *Act*. The Ministry asserts the *Act* is one of the few statutes that

overrides the generally applicable rules set out in FIPPA and limits the Commissioner's review powers. In accordance with ss. 74(1) and 74(2) of the *Act*, the Ministry argues the Commissioner in this case only has the jurisdiction to consider whether the complainant's personal information was disclosed in contravention of s. 75 of the *Act*.

[9] I can see how important the complainant finds the additional matters that they have raised in their submissions; however, I conclude those matters fall outside the scope of this inquiry. My role, as the Commissioner's delegate, is limited to determining the issues identified in the notice of inquiry. It is not within my jurisdiction under FIPPA or the *Act* to review or decide the complainant's other grievances involving the Ministry, its review processes and other named individuals. For instance, there is no provision in FIPPA or another statute that allows me to review whether Ministry employees were required to seek the complainant's input when it made decisions that impacted them and their family. The parties' submissions and evidence indicate there are other review mechanisms in the *Act* for those matters which the parties used to address those grievances.³

[10] I also conclude that it is outside the scope of this inquiry to address: (1) the Ministry's arguments about the Commissioner's lack of jurisdiction to review the collection and use of information under the *Act*, and (2) the complainant's allegation that information about them was improperly collected and used by Ministry employees or that the Ministry failed to correct or ensure the accuracy of that information. Those issues were not set out in the investigator's fact report or the notice of inquiry. The notice of inquiry received by the parties clearly states new or additional issues may not be added without the OIPC's prior consent.

[11] When parties attempt to introduce new issues at the inquiry stage it undermines the integrity and effectiveness of the investigation and mediation phase of the FIPPA review and complaint process.⁴ Those processes are designed to benefit the parties by clarifying and solidifying the issues and potentially resolving them and determining if they warrant proceeding to inquiry.⁵ It is also at this stage that the parties are given the opportunity to raise any additional issues for consideration at mediation or inquiry.⁶ That process and its intended benefits are bypassed when a party seeks to add a new issue at inquiry. Therefore, the OIPC's prior consent is required and there must be a valid reason to warrant introducing issues for the first time at the inquiry stage.⁷

³ For instance, information located in "Package #1" of the complainant's submission dated November 7, 2022.

⁴ Decision F08-02, 2008 CanLII 1647 (BCIPC) at para. 30.

⁵ Decision F08-02, 2008 CanLII 1647 (BCIPC) at para. 28, Order F21-21, 2021 BCIPC 26 at para. 10 and Order F20-38, 2020 BCIPC 44 at para. 7.

⁶ Decision F08-02, 2008 CanLII 1647 (BCIPC) at para. 29.

⁷ Order F20-38, 2020 BCIPC 44 at para. 7.

[12] The parties did not seek the OIPC's permission to add those additional issues to this inquiry or explain why they did not raise them earlier during mediation or why they should be permitted to add them at the inquiry stage. There is also no evidence the parties informed the OIPC investigator that the fact report should be amended to include any of those additional issues. There is also nothing in the parties' submissions that persuades me there is a valid reason for adding those new issues at this late stage and for circumventing the OIPC's investigation and mediation process and its intended benefits.

[13] For all those reasons, except for one issue raised by the Ministry which I will discuss directly below, I decline to consider the additional matters that were not in the fact report and the notice of inquiry, including whether the Commissioner has the jurisdiction to review a complaint about the collection and use of information under the *Act*. Although I have reviewed the parties' entire submissions, I will only refer to those submissions where it is relevant to the issues that I will decide in this inquiry.

Commissioner's authority to review a disclosure complaint under the Act

[14] Before I can consider the issues in this inquiry, I need to address the Ministry's argument about the Commissioner's jurisdiction to review a complaint about an alleged disclosure under the *Act*. Unlike the other additional matters raised by the parties, I find it appropriate to consider this matter since it is central to the disclosure complaint at issue in this inquiry. The issue of jurisdiction relates to where my authority comes from, as the Commissioner's delegate, to review this disclosure complaint. It is well-established that administrative tribunals, such as the OIPC, are creatures of statute and generally can only do something if given that authority by a statute.⁸ Therefore, it is important to clarify my statutory authority to review the disclosure complaint at issue in this inquiry.

[15] The fact report and the notice of inquiry identify the issue in this inquiry as "whether the public body was authorized to disclose the complainant's personal information under FIPPA." However, the Ministry submits the relevant legislative authority in this inquiry is the *Act*. It submits any alleged disclosure was authorized under s. 79(a) of the *Act* and the Commissioner's authority to review this matter is found in the *Act* instead of FIPPA.

[16] In support of its position, the Ministry cites the following sections from the *Act*:

⁸ *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, [2011] 3 SCR 471, 2011 SCC 53 (CanLII) at paras. 32-34.

Freedom of Information and Protection of Privacy Act

74(1) Sections 74 to 79 apply despite the *Freedom of Information and Protection of Privacy Act*.

74(2) For the purpose of its application to this Act, the *Freedom of Information and Protection of Privacy Act* is deemed to be modified as follows:

...

(f) the powers of the commissioner apply to

...

(ii) a complaint by a person that information has been disclosed in contravention of section 75 of this Act, and

(iii) the exercise of a director's powers, duties and functions under the *Freedom of Information and Protection of Privacy Act*.

[17] The Ministry submits s. 74(2)(f)(ii) of the *Act* gives the Commissioner authority to review a complaint that information has been disclosed in contravention of s. 75. Section 75 of the *Act* reads:

Disclosure of information restricted

75 A person must not disclose information obtained under this Act, except in accordance with

...

(a.1) section 24 or 79 of this Act, or

(b) the *Freedom of Information and Protection of Privacy Act*, subject to section 74 of this Act.

[18] The Ministry argues any alleged disclosure was authorized under s. 79(a) of the *Act*. Section 79(a) allows a director, without the consent of any person, to disclose information obtained under the *Act* if the disclosure is necessary to ensure the safety or well-being of a child. Therefore, by operation of ss. 74(2)(f)(ii) and 79(a) of the *Act*, the Ministry submits the relevant legislative authority in this inquiry is the *Act* and not FIPPA.

[19] The BC Court of Appeal has considered the interplay between FIPPA and the *Act* and the review powers of the Commissioner. Based on a previous version of the *Act*, in 2009, the Court of Appeal determined the Commissioner did not have the authority to investigate a complaint about a disclosure made under s. 79(a) of the *Act*. As part of their decision, the Court of Appeal noted the Commissioner previously had the jurisdiction to review complaints regarding a director's decision about access to a record or complaints regarding disclosure

of information.⁹ However, in 2006, amendments were made to the *Act* that effectively changed the Commissioner's review authority. Those changes meant the Commissioner no longer had the power to review complaints about a director's decision to disclose information under s. 79 of the *Act*.¹⁰ I note that, in 2013, the *Act* was amended to restore the Commissioner's authority to review a complaint about a director's decision regarding access and disclosure of information under the *Act*.¹¹

[20] The interrelationship between FIPPA and the *Act* as it relates to the Commissioner's jurisdiction to review a disclosure complaint was also considered in Order F15-57. In that order, former Commissioner Denham determined that her power to review a person's complaint that information has been disclosed in contravention of s. 75 comes from s. 74(2)(f)(ii) of the *Act*.¹² Former Commissioner Denham clarified that ss. 74 and 79 of the *Act* apply when the disclosure complaint involves the actions of a director.¹³

[21] Taking all of this into account, I conclude the Commissioner's statutory authority to review a disclosure complaint related to s. 79(a) of the *Act* comes from ss. 74(2)(f)(ii) of the *Act*. Therefore, I agree with the Ministry that the issue in this inquiry is whether the Ministry was authorized to disclose the complainant's information under the *Act*, not under FIPPA. I find there is no prejudice to the parties in making this revision to the issue under consideration since the Ministry has, from its first response to the complaint, consistently cited the *Act* as the authority for the disclosures. Furthermore, I find the parties' submissions and evidence focus on or are equally applicable to the provisions under the *Act*, even though some parts are couched in the language of FIPPA (e.g., the Ministry's affidavit evidence).

Disclosures by the Grandparent

[22] The complainant and another individual (Parent) are the biological parents of a child. One of the child's grandparents (Grandparent) is related to the Parent and employed by the Ministry as a social worker.¹⁴ The complainant alleges the Grandparent breached their privacy by disclosing information about the complainant in communications with Ministry employees and others in the community such as the child's daycare provider.¹⁵

⁹ *Harrison v. British Columbia (Information and Privacy Commissioner)*, 2009 BCCA 203 (CanLII) at para. 50.

¹⁰ *Ibid* at para. 58.

¹¹ Bill 8 - *Miscellaneous Statutes Amendment Act, 2013*, <<https://www.leg.bc.ca/documents-data/debate-transcripts/39th-parliament/5th-session/20130313pm-Hansard-v44n5>>.

¹² Order F15-57, 2015 BCIPC 60 (CanLII) at paras. 27 and 32.

¹³ Order F15-57, 2015 BCIPC 60 (CanLII) at para. 29.

¹⁴ Ministry's submission dated December 7, 2022 at para. 2.

¹⁵ Complainant's submission dated January 6, 2023 at pp. 12-13, 16-17 and 23-24. The complainant's submissions and evidence were not numbered; therefore, any references to a page

[23] The Ministry acknowledges the Grandparent disclosed information about the complainant to other Ministry employees and to other individuals.¹⁶ However, the Ministry submits the Grandparent was acting in a personal capacity as a relative of the child and the Parent and not as a Ministry employee when they shared information about the complainant.¹⁷ Therefore, the Ministry submits the Grandparent's actions cannot be attributed to the Ministry.

[24] The complainant submits the Grandparent was not acting in a personal capacity. They allege the Grandparent misused their position and disregarded the boundaries between their professional and personal life.¹⁸ In particular, the complainant notes the Grandparent communicated with others, including people in the community, using their Ministry credentials such as their work email, signature, phone number and business card.

[25] The parties' submissions about the Grandparent raises the question of whether the actions of the Grandparent fall within the scope of this inquiry. The issue in this inquiry is whether the *Ministry* was authorized to disclose the complainant's information under the *Act*. The Ministry can only act through its employees and delegated officials. Therefore, I conclude the Grandparent's actions are reviewable as part of this inquiry if the Grandparent was acting in a professional capacity as a Ministry social worker when they disclosed the complainant's information.

[26] The parties identify some of the following instances where the Grandparent disclosed information about the complainant to others:

- A conversation between the Grandparent and a Ministry employee through an internal Ministry messaging system.¹⁹
- The Grandparent told a Ministry employee that the complainant was "violent" and a risk to both the Parent and the child.²⁰
- The Grandparent contacted the Ministry about support for the Parent and disclosed information about the complainant.²¹

number in this order regarding that information refers to the pages of the pdf file provided by the complainant.

¹⁶ Ministry's submission dated December 7, 2022 at para. 16 and submission dated May 19, 2023 at p. 5.

¹⁷ Ministry's submission dated May 19, 2023 at p. 5.

¹⁸ Complainant's submission dated January 6, 2023 at pp. 8, 24.

¹⁹ "Package #2" of the complainant's submission dated November 7, 2022 at pp. 2-4, 5-6 and 29-30, cited by the Ministry at para. 16 of submission dated December 7, 2022.

²⁰ Complainant's submission dated January 6, 2023 at pp. 6-8.

²¹ Complainant's submission dated January 6, 2023 at pp. 12-13.

- A conversation between the Grandparent and the social worker regarding safety concerns related to the child.²²
- The Grandparent distributed information about the complainant to the child's daycare provider.²³

[27] Based on my review of these incidents, I am not satisfied the Grandparent was providing this information about the complainant to others in their professional role as a Ministry social worker. Instead, I find the Grandparent was sharing information with Ministry employees to seek assistance for their family or to arrange childcare for their grandchild. There is no evidence the Grandparent was assigned in a professional capacity to deal with those concerns or requests. Instead, the evidence indicates those tasks and responsibilities fell to other Ministry social workers.²⁴ Therefore, I find the Grandparent was acting in their personal capacity as a relative of the child and the Parent when it disclosed this information about the complainant to others.²⁵

[28] The complainant alleges the Grandparent misused their position, credentials, government resources and improperly influenced other Ministry employees to make decisions in their favour.²⁶ I agree with the complainant that the evidence shows the Grandparent did communicate with others using their Ministry contact information such as their work email, signature and phone number and even provided their business card to the child's daycare provider.²⁷ However, I find those issues such as whether the Grandparent misused their position or improperly influenced other Ministry employees are separate from this inquiry and outside my jurisdiction to review. There is nothing in the *Act* or FIPPA that allows the Commissioner or their delegate to review such a complaint. I understand the Ministry has conducted its own internal review into those matters.²⁸

[29] To conclude, for the reasons given, I find the Grandparent was acting in their personal capacity and not in their role as a Ministry social worker when they disclosed information about the complainant to others. As a result, I find it is outside the scope of this inquiry to address the complainant's submissions about the disclosures made by the Grandparent in their personal capacity.

²² "Package #2" at pp. 47-53, cited in complainant's submission dated January 6, 2023 at pp. 16-17.

²³ Complainant's submission dated January 6, 2023 at p. 23.

²⁴ For example, "Package #2" at pp. 2-3, 32 and 47.

²⁵ The parties did not clearly identify any other disclosure incidents for consideration related to the Grandparent and it is not apparent from the parties' materials.

²⁶ Complainant's submission dated January 6, 2023 at pp. 8, 20, 22 and 24.

²⁷ "Package #3" of the complainant's submission dated November 7, 2022 at pp. 13-17.

²⁸ Complainant's submission dated November 7, 2022 at "Package #1" on pp. 8-9, 15-16, 43.

ISSUE AND BURDEN OF PROOF

[30] The issue that I must decide in this inquiry is whether the Ministry disclosed information about the complainant in contravention of s. 75 of the *Act*. The Ministry submits any alleged disclosure was made in accordance with s. 79(a). Therefore, to resolve that issue, I must answer the following questions:

1. Did a director disclose information obtained under the *Act*?
2. If so, was the director authorized to make the disclosure under s. 79(a)?

[31] There is no provision in the *Act* or another statute that sets out which party has the burden to prove the issue in this inquiry. However, previous OIPC orders have determined that in the absence of a statutory burden of proof, it is up to each party at an inquiry to provide evidence and argument to support their position.²⁹ I adopt that approach here because a complainant is in the best position to provide evidence to support their allegations and the Ministry is in the best position to provide evidence of its compliance with the *Act*.

DISCUSSION

Background

[32] Under the *Act*, the Ministry provides services to assist families in caring for their children.³⁰ The Ministry also has the legislative authority to provide child protection services. The *Act* requires any person who believes a child needs protection to make a report to a director or their delegate. On receiving a child protection report, the director must promptly assess the information in the report or refer the report to another director for assessment. The assessment determines, among other things, whether a protection response is required.

[33] When a protection response is required, the director has the option to conduct a family development response. A family development response is a collaborative process to ensure the child's safety and to provide support services and assistance to the family in their care of the child. As a part of that process, the director or their delegate may assess the safety of the child and develop a safety plan with the family if there are concerns about the child's immediate safety. A safety plan will describe the responsibilities of the involved parties and the interventions put in place to address any safety concerns.

²⁹ Order F07-10, 2007 CanLII 30395 (BCIPC) at para. 11; Order F14-26, 2014 BCIPC 29 (CanLII) at para. 6; Decision F10-03, 2010 BCIPC 15 (CanLII) at para. 6.

³⁰ The information in this background section is compiled from the parties' submissions and evidence.

[34] As noted, the complainant and the Parent are the biological parents of the child. At some point in their relationship, the complainant was charged and pled guilty to assaulting the Parent. They eventually separated and ended up in a legal dispute over custody of the child. The custody dispute resulted in a court order granting the Parent full parenting time and day-to-day responsibilities for the child. The complainant was granted visitation rights which included supervised visits until certain conditions were met such as the completion of an anger management course.

[35] Sometime near or at the end of their relationship with the complainant, the Parent relocated to BC with the child and lived in the Grandparent's house. To exercise their visitation rights, the complainant would video conference with the child and periodically travelled to BC for supervised visits with the child. The complainant later relocated to BC.

[36] Through a court-ordered disclosure, the complainant learned the Ministry had safety concerns about the Parent's care of the child. The complainant also discovered the Ministry had signed several safety plans with the Parent without contacting or involving the complainant in that process as required by Ministry policy. At least one of those safety plans concluded the child was safe with intervention by the Grandparent to mitigate safety risks identified by Ministry employees.

Process for reviewing a disclosure complaint under ss. 75 and 79(a)

[37] Section 75 of the *Act* prohibits a person from disclosing information obtained under the *Act* and specifies when disclosure is appropriate. Section 75 is not limited to personal information, as is the case with Part 3 of FIPPA, but applies to any information obtained by a person under the *Act*.

[38] Under s. 75(a.1), a person can only disclose information obtained under the *Act* in the circumstances set out under ss. 24 and 79 of the *Act*. While s. 24 applies to any person, s. 79 only applies to a director and it permits a director, without the consent of any person, to disclose information obtained under the *Act* in accordance with ss. 79(a)–(l). The Ministry is relying on s. 79(a) of the *Act* which allows a director, without the consent of any person, to disclose information obtained under the *Act* if the disclosure is necessary to ensure the safety or well-being of a child.

[39] There is very little guidance or jurisprudence on how s. 79(a) should be interpreted and applied by the Commissioner. I know of only one decision where the Commissioner's delegate considered s. 79(a) and found the Ministry was authorized to make the disclosure. In that decision, an OIPC portfolio officer (now referred to as an investigator) made the following findings and observations:

As I have said, our office does not have the expertise to determine whether the safety or well-being of the child in this case was in fact at risk. However, based on the above information, I am satisfied that the resource worker acted in good faith; that she followed the proper procedures by consulting with her supervisor in coming to this decision; that the decision was made after weighing the privacy issues against the child's safety or well-being; and that the resource worker's decision was consistent with the guiding principles of the [Act].³¹

[40] I agree with the portfolio officer that OIPC staff do not have same the expertise as a Ministry social worker to determine whether the safety or well-being of a child was in fact at risk at the time of the disclosure. Those decisions are made by individuals with the training and education to operate in the child protection context. However, as previously discussed, the legislature has empowered the Commissioner with the authority to review complaints about a director's decision to disclose information under s. 79 of the *Act*. What approach then should the Commissioner or their delegate take when reviewing a disclosure complaint related to s. 79(a)?

[41] I find the portfolio officer's decision provides some guidance as to an appropriate approach. The word "may" in s. 79 gives a director the discretion to disclose information, without the consent of any person, if the disclosure falls under one of the circumstances set out under ss. 79(a)-(l). In their decision, the portfolio officer was satisfied the Ministry was entitled to rely on s. 79(a) partly because the social worker acted in good faith and followed proper procedures in making the disclosure.³² In other words, the portfolio officer focused on the social worker's exercise of discretion under s. 79(a) rather than reviewing the social worker's judgment that a child's safety or well-being was at risk.

[42] I agree with that approach. The *Act's* overriding goal is to ensure children are protected from both existing and potential harm.³³ I find Ministry social workers have the authority, expertise and training to make s. 79(a) determinations in the moment. In my opinion, they are in the best position to assess the circumstances at the time to determine whether disclosing information is necessary to ensure a child's safety and well-being.

[43] I also note the Supreme Court of Canada has found that in the child protection context, the best interests of the child take priority over parental rights.³⁴ I find the fact that Ministry social workers do not need the consent of any

³¹ Decision cited in *Harrison v. British Columbia (Information and Privacy Commissioner)*, 2009 BCCA 203 (CanLII) at para. 31.

³² The BC Court of Appeal did not address the portfolio officer's finding about the applicability of s. 79(a), but allowed the appeal on the basis the Commissioner, at that time, did not have the jurisdiction to review disclosures made under s. 79.

³³ *T.L. v. British Columbia (Attorney General)*, 2023 BCCA 167 (CanLII) at paras. 22-23.

³⁴ *Ibid* at para. 119 and the cases cited there.

person to make the necessary disclosure reinforces the value of their training and expertise and the legislature’s intention to ensure that the best interests of the child take priority over other interests and rights.

[44] The BC Court of Appeal has also recognized that, to properly fulfill their role, social workers must be able to act quickly and take preventative action to protect children.³⁵ Therefore, social workers are often required to make time-sensitive decisions about ensuring a child’s safety and well-being in challenging and uncertain circumstances. I find second-guessing that judgment on review risks undermining the protective and preventive goals of the *Act*.

[45] Therefore, I conclude the role of the Commissioner or their delegate in a s. 79(a) disclosure complaint should be limited to reviewing a director’s exercise of their discretion under s. 79(a). This means the review should consider whether the director or their delegate exercised their discretion in deciding to disclose information obtained under the *Act* based on proper considerations. I find this approach satisfies the legislature’s intentions for the Commissioner to review a s. 79(a) disclosure complaint, the objectives of the *Act* and recognizes the reality of the conditions in which social workers exercise their judgment and expertise in carrying out their duties and responsibilities under the *Act*.

[46] As a result, I find the starting point for this inquiry is determining whether a director disclosed information obtained under the *Act*. If so, then the next step is to consider whether the director exercised their discretion in deciding to disclose that information based on proper considerations.

Did a director disclose information obtained under the Act?

[47] The complainant alleges a Ministry social worker inappropriately disclosed information about them to the Grandparent and the Parent. The complainant says the social worker sent them a letter (Letter) and then later emailed the Letter to the Grandparent and the Parent.³⁶ The complainant provided supporting documents to support their position.

[48] The Ministry did not address the complainant’s allegation about the social worker’s disclosure of the Letter to the Grandparent and Parent. However, the Ministry acknowledges a social worker disclosed the complainant’s information in an email discussion that included the Grandparent (Email). The Ministry describes the Email as a conversation between the social worker and the Grandparent about the complainant’s “completion of a course which [the complainant] stated satisfied the requirement of a court order and consequently

³⁵ *T.L. v. British Columbia (Attorney General)*, 2023 BCCA 167 (CanLII) at para. 138.

³⁶ Complainant’s submission dated January 6, 2023 at p. 21.

triggered [their] ability to have unsupervised access to [the child].”³⁷ In response, the complainant submits the social worker acted inappropriately by interfering with a court order that resulted in the disclosure of their information.³⁸

[49] Except for the Email, the Ministry argues the complainant has not clearly articulated what other alleged disclosures of their information they believe contravened the *Act*.

[50] I will consider the Email and the Letter below. The parties did not clearly specify any other relevant disclosures for consideration in this inquiry nor is it apparent from their materials. Furthermore, although ss. 75 and 79(a) apply to any information obtained under the *Act*, given their submissions, I find the complainant is only disputing the disclosure of information in the Email and Letter that is about the complainant.³⁹ Therefore, my analysis will focus on that information.

Analysis and findings on step one of the s. 79(a) test

[51] To satisfy the first part of the s. 79(a) test, there must be evidence to establish a person who is a “director” disclosed information obtained under the *Act*.

[52] Starting with the Email, I can see that it is the last in a series of email communications that occurred between the social worker and the Parent. First, the Parent contacted the social worker by email seeking advice on a matter involving the complainant.⁴⁰ As part of their email, the Parent forwards the social worker a copy of an email from the complainant.⁴¹ The social worker then responds to the Parent by sending the Email.⁴² The Email is addressed to the Parent and copied to the Grandparent and another Ministry employee. In the body of the Email, the social worker talks about the complainant. Therefore, I am satisfied the social worker disclosed information about the complainant to the Email’s recipients.

[53] In terms of the Letter, the complainant’s supporting evidence includes copies of case notes written by the social worker to record their actions on the file and to summarize any conversations they had with individuals related to the file such as the Parent, the complainant and other Ministry employees. The social

³⁷ Ministry’s submission dated December 7, 2022 at para. 17, citing an email found at pp. 35-36 of the complainant’s supporting documents titled “Package #2.”

³⁸ Complainant’s submission dated January 6, 2023 at p. 18.

³⁹ Unlike FIPPA, the *Act* does not define “personal information” or differentiate it from other information. Therefore, in this order, I have not referred to information about the complainant as the complainant’s “personal information.”

⁴⁰ “Package #2” at pp. 36-37.

⁴¹ Complainant’s email located at pp. 37-28 of “Package #2.”

⁴² Email found at pp. 35-36 of “Package #2.”

worker's case notes confirm they sent the complainant the Letter and then forwarded the Letter to the Parent by email.⁴³ In the Letter, the social worker brings up certain information about the complainant and informs the complainant that they intend to conduct a risk assessment. As a result, I am satisfied the social worker disclosed information about the complainant when they forwarded the Letter to the Parent.

[54] The complainant also argues the Letter was sent to the Grandparent. I was not provided with a copy of the email that shows the Grandparent received the Letter, as the complainant contends. However, the social worker's case notes and information in the Letter itself indicates the social worker intended to send the Letter to the Grandparent.⁴⁴ I also note the Ministry had the opportunity but did not dispute that the Letter was disclosed to the Grandparent. Therefore, I accept the Letter was also provided to the Grandparent. As a result, I am satisfied the social worker disclosed information about the complainant to the Grandparent via the Letter.

[55] The next question is whether the social worker qualifies as a "director" under the *Act*. Under s. 1 of the *Act*, a "director" means a person designated by the minister under s. 91. Under s. 92, a director "may delegate to any person or class of person any or all of the director's powers, duties or functions" under the *Act*. The Ministry submits, and I accept, that Ministry social workers are delegated the director's powers and authority to act under s. 79 of the *Act*.⁴⁵ Based on my review of the relevant communications, I find the social worker was acting in their professional capacity at the time and, therefore, they were exercising their delegated duties or functions under the *Act*. As a result, I am satisfied the social worker qualifies as a "director" for the purposes of s. 79(a).

[56] The remaining question is whether the information disclosed by the social worker in the Email and Letter was obtained under the *Act*. The Ministry notes that, under s. 96(1) a director may collect from a person any information that is necessary to enable the director to exercise their powers or perform their duties or functions under the *Act*, despite FIPPA.⁴⁶ Section 96(1) gives a director the statutory right to access any information in the custody or control of a public body, as defined in FIPPA, that they consider necessary to exercise their powers or perform their duties or functions under the *Act*. However, in the present case, I find the information disclosed by the social worker in the Email and Letter was not obtained from a public body; therefore, I conclude s. 96(1) of the *Act* is not applicable in this case.

⁴³ "Package #2": letter located at pp. 39-46 and confirmation of letter sent to complainant at p. 54 and to Parent at p. 55.

⁴⁴ "Package #2" at pp. 40 and 55.

⁴⁵ Affidavit of D.R. at para. 9.

⁴⁶ Ministry's submission dated December 7, 2022 at para. 25, citing s. 96(1) of the *Act*.

[57] Instead, based on my review of the evidence, I find the information about the complainant in the Letter and the Email was obtained by the social worker from the Parent. The evidence indicates the Parent forwarded the social worker a copy of an email from the complainant.⁴⁷ The complainant sent the email to arrange and coordinate dates for unsupervised visits with the child. The complainant's email contains the information about them that was shared by the social worker with the Parent and the Grandparent in the Email and the Letter. Therefore, I find the social worker obtained the information about the complainant from the Parent.

[58] Where a director obtains information from a person and not a public body, then the relevant provisions are ss. 96(2.1) and 96(3) which read:

96(2.1) A director may collect from a person any information that is necessary to enable the director to exercise his or her powers or perform his or her duties or functions under this Act.

96(3) This section applies despite any other enactment but is subject to a claim of privilege based on a solicitor-client relationship.

[59] It is common sense that a director needs to collect and receive information from others to fulfil their responsibilities under the *Act*. It is also clear from the provisions under s. 96 that a director has the authority to collect or compel any necessary information to do their work, subject to certain conditions.⁴⁸ Therefore, I conclude a director who collects or receives information from a person while exercising their delegated powers or performing their duties or functions is obtaining information under the *Act* for the purposes of s. 79(a).

[60] The terms “powers”, “duties” and “functions” under s. 96 are not defined in the *Act*, but the BC Court of Appeal has found those terms apply to a wide spectrum of a director's responsibilities including protecting children from harm, decisions related to guardianship, participating in court proceedings and administrative tasks.⁴⁹ Therefore, to properly fulfill their role, a director may collect and receive information from any person to fulfil a wide range of responsibilities under the *Act*, including taking action to ensure a child's safety.

[61] In the present case, I find the Parent contacted the social worker because she was concerned about the safety of the child in an unsupervised access situation with the complainant.⁵⁰ As noted, social workers have the delegated responsibility under the *Act* to protect children from harm. The Parent provided

⁴⁷ Complainant's email located at pp. 37-38 of “Package #2.” An assigned Ministry “Review Authority” makes the same finding at “Package #1” on p. 7.

⁴⁸ Those conditions are discussed in more detail at *T.L. v. British Columbia (Attorney General)*, 2023 BCCA 167 (CanLII) at paras. 17-18, 140-143 and 273.

⁴⁹ *T.L. v. British Columbia (Attorney General)*, 2023 BCCA 167 (CanLII) at paras. 2, 13 and 124.

⁵⁰ Parent's email located at pp. 36-37 of “Package #2.”

the complainant's information to the social worker to obtain their assistance in the matter. The social worker decided to conduct a "safety assessment" and communicated with the Parent about the matter via the Email.⁵¹ The social worker then contacted the complainant via the Letter to inform them that they were required to undergo a "risk assessment" before they could have unsupervised access to the child.⁵²

[62] Taking all of this into account, I find the social worker, acting as the director's delegate, obtained information about the complainant from the Parent while fulfilling their responsibilities under the *Act*. Therefore, I conclude the information disclosed in the Email and Letter was obtained under the *Act* for the purposes of s. 79(a).

Was the director authorized to make the disclosure under s. 79(a)?

[63] For the second part of the s. 79(a) analysis, as I explained previously, my role is to review the director's exercise of discretion under s. 79(a). This means I am considering whether the director or their delegate exercised their discretion in deciding to disclose information obtained under the *Act* based on proper considerations.

[64] In this case, I concluded the Email was sent to the Parent, another Ministry employee and the Grandparent and that the Letter was sent to the Parent and the Grandparent. From the complainant's submissions, I understand the complainant is disputing the disclosures to the Parent and the Grandparent.⁵³ Therefore, my analysis will focus on the social worker's decision to disclose the information in the Email and the Letter to the Parent and Grandparent.

[65] The Ministry's submission only focuses on the Email and the disclosure to the Grandparent.⁵⁴ The Ministry submits it was necessary to disclose information about the complainant in the Email to the Grandparent because it was concerned about the safety of the child. In support of its position, the Ministry says there was a history of domestic violence in the complainant and Parent's relationship. It also notes there was a court order that required the complainant's visits with the child to be supervised until certain conditions were met, including the completion of an anger management course.

[66] The Ministry also describes how the Grandparent was involved in the Parent and child's life.⁵⁵ The Ministry says the Grandparent and another named

⁵¹ Social worker email located at pp. 35-36 of "Package #2."

⁵² Letter located at pp. 39-41 of "Package #2."

⁵³ Complainant's submission dated November 7, 2022 at pp. 2, 5 and submission dated January 6, 2023 at pp. 1, 9, 21 and 23.

⁵⁴ Ministry's submission dated December 7, 2022 at paras. 17-18 and 30-33.

⁵⁵ Ministry's submission dated December 7, 2022 at paras. 27-31.

individual would typically facilitate the complainant's supervised visits. It also says the Grandparent assisted the Parent with the child's care and parenting responsibilities and that the Parent consented to the Grandparent being involved in safety planning for the child. The Ministry explains that it relied on the Grandparent as a relative living in the same home as the child to ensure the child's safety and well-being.

[67] Considering this information, the Ministry submits a safety concern arose when the complainant sought unsupervised access to the child. The Ministry says the child and Parent were living with the Grandparent at the time and there was a "particularly potent safety concern" if the complainant was coming to the Grandparent's home to remove the child.⁵⁶ The Ministry says "the exchange had the potential to become quite heated" given the complainant's "record of domestic violence" and because it understood the Grandparent and Parent "would most probably not have allowed the removal of the child."⁵⁷ Therefore, the Ministry contends that it was necessary for the social worker to include the Grandparent on the Email.

[68] In support of its position, the Ministry provided an affidavit from a senior Ministry employee who acknowledges the Ministry disclosed to the Grandparent some of the complainant's "personal information" that was in its "custody and control."⁵⁸ The senior employee says the best interest of the child was considered and, with the Parent's consent, a plan for the Grandparent to "provide necessary safety was assessed."⁵⁹ Therefore, the senior employee attests the disclosures were in accordance with s. 79 because the Grandparent was involved in safety planning and caregiving for the child.

[69] The complainant says the Ministry's allegations are offensive, unsupported by evidence and have no merit. For instance, the complainant challenges the Ministry's allegation that a history of domestic violence means the complainant was a safety concern to the child. The complainant notes there were no allegations of the complainant being a threat to the child, they were coming to visit the child and not the Parent, and they had completed the conditions required by the courts for unsupervised access to the child.⁶⁰ Therefore, the complainant contends the Ministry's safety concern did not meet the requirements of s. 79(a) since the child's safety or well-being was never at risk.

[70] The complainant also submits the information relied on by the Ministry to determine there was a safety concern is inaccurate or inconsistent with other information. For instance, the complainant says the Grandparent could not

⁵⁶ Ministry's submission dated December 7, 2022 at para. 32.

⁵⁷ Ministry's submission dated December 7, 2022 at para. 32.

⁵⁸ Affidavit of D.R. at para. 4(h).

⁵⁹ Affidavit of D.R. at para. 17.

⁶⁰ Complainant's submission dated January 6, 2023 at p. 17.

facilitate the complainant's visitation with the child because the court order expressly prohibited the Grandparent from supervising those visits.⁶¹ As another example, the complainant contends the Ministry now admits, but has denied for years, that the Grandparent was in a daily parenting role.⁶²

[71] Furthermore, the complainant argues if there truly was a safety concern, then there should have been a protection report filed about the complainant and a Ministry file created in their name.⁶³ The complainant says they had given sufficient and proper notice of their intended visit so there was ample time to file a protection report, conduct an investigation and for the social worker to acquire any necessary documentation to prove the complainant's court conditions were complete.⁶⁴ The complainant submits the lack of those steps or actions means there was not a real or sufficient safety concern.

[72] The complainant also disputes the legality of the social worker's actions. The complainant submits the social worker was acting outside their delegated authority when they required them to undergo a risk assessment because it was contrary to the terms of the court order.⁶⁵ The complainant submits the court order only required them to fulfill certain conditions before they could have unsupervised access with the child, which they argue had been fulfilled. Therefore, the complainant contends the social worker acted without proper authority and any disclosure of the complainant's information in those circumstances was inappropriate and in breach of the court order.

Analysis and findings on step two of the s. 79(a) test

[73] The next step in the s. 79(a) analysis is to consider whether the social worker, as the director's delegate, properly exercised their discretion in deciding to disclose the information in the Email and Letter to the Parent and the Grandparent.

[74] Section 79(a) gives a director the discretion and authority to disclose information, without the consent of any person, if the disclosure is necessary to ensure the safety or well-being of a child. With each case dependent on the facts, I find there is no definitive or exhaustive list of factors to consider in reviewing a director's exercise of discretion under s. 79(a). However, in exercising their discretion under s. 79(a), I conclude a director must establish that they have considered, in all the circumstances, whether the safety or well-being of a child was at risk and that the disclosure was necessary to ensure that child's safety or well-being.

⁶¹ Complainant's submission dated January 6, 2023 at p. 19.

⁶² Complainant's submission dated January 6, 2023 at p. 1.

⁶³ Complainant's submission dated January 6, 2023 at pp. 1-2, 14-15.

⁶⁴ Complainant's submission dated January 6, 2023 at pp. 3, 15-16.

⁶⁵ Complainant's submission dated January 6, 2023 at pp. 4-5 and 13-14.

[75] From the parties' materials and submissions, I can determine the social worker considered the following factors in exercising their discretion under s. 79(a) to disclose information about the complainant:

- There was a history of domestic violence between the complainant and the Parent.⁶⁶
- The complainant was required under a court order to complete certain conditions before their visits with the child could be unsupervised.⁶⁷
- The Parent contacted the social worker to seek advice about the complainant's request for unsupervised access with the child.⁶⁸
- The Parent was concerned about the child's safety and the emotional impact of the unsupervised visit on the child; therefore, the Parent provided the social worker with the information about the complainant that was later disclosed in the Email and the Letter.⁶⁹
- The social worker consulted with their supervisor and a child protection consultant before responding to the Parent via the Email and before deciding to send the Letter.⁷⁰
- The social worker believed there was a possible safety concern for the child given the information provided by the Parent.⁷¹
- The Grandparent was involved in safety planning and caregiving for the child.⁷²
- The Grandparent was aware of the complainant's request for unsupervised access and the information relied on for the request.⁷³

[76] Under these circumstances, I find the social worker exercised their discretion to disclose information about the complainant to the Parent and Grandparent based on proper considerations. Based on the factors noted above, I am satisfied the social worker took into account the existing circumstances at the time, considered whether the safety or well-being of the child was at risk and

⁶⁶ "Package #2" at p. 39.

⁶⁷ "Package #2" at pp. 35, 37-38, 49, 55, 56.

⁶⁸ "Package #2" at pp. 36-38.

⁶⁹ "Package #2" at pp. 36-38.

⁷⁰ "Package #2" at pp. 35 and 55.

⁷¹ "Package #2" at pp. 35, 39-40, 56.

⁷² Affidavit of D.R. at paras. 4(f) and 19.

⁷³ "Package #2" at pp. 47-53.

determined that the disclosure was necessary to ensure the child's safety or well-being.

[77] The complainant argues there was no real safety concern for the child because any history of domestic violence was between them and the Parent and did not involve the child. I agree that there is nothing in the materials before me to indicate the complainant has ever physically harmed or threatened the child. However, the evidence shows the social worker believed there was a possible safety concern for the child given the information provided by the Parent and after consulting with their supervisor and a child protection consultant.⁷⁴ I find this evidence shows the social worker considered whether there was a risk to the child's safety or well-being as they were required to do under s. 79(a).

[78] Furthermore, I conclude s. 79(a) does not require proof of actual harm before a director can disclose information under s. 79(a). The *Act's* overriding goal is to ensure children are protected from both existing and *potential* harm.⁷⁵ Therefore, for the purposes of s. 79(a), I find it is sufficient that the social worker determined there was a possible safety concern for the child.

[79] The complainant also contends the social worker did not follow proper procedures when they required them to undergo a risk assessment. The complainant provided a copy of an internal review conducted by the Ministry which found the social worker did not have the legal authority to require the complainant to undergo a child safety risk assessment before the complainant could have unsupervised visits with the child.⁷⁶ The complainant provided evidence to support their claim.⁷⁷

[80] However, my role in this inquiry is not to determine whether the social worker had the legal authority to make the complainant undergo a risk assessment. As noted by the complainant, that matter was already addressed by the Ministry under its internal review process and decided in favour of the complainant. As the Commissioner's delegate, my review authority under s. 74(2)(f)(ii) is limited to determining whether the disclosure was made in accordance with s. 79(a) and, for the reasons given, I am satisfied that the social worker exercised their discretion under s. 79(a) upon proper considerations.

CONCLUSION

[81] To conclude, for the reasons given, I find the social worker's disclosure of the complainant's information to the Parent and Grandparent via the Email and Letter was authorized under s. 79(a) of the *Act*. As a result, I conclude the

⁷⁴ "Package #2" at pp. 35, 39-40, 56.

⁷⁵ *T.L. v. British Columbia (Attorney General)*, 2023 BCCA 167 (CanLII) at paras. 22-23.

⁷⁶ "Package #1" at pp. 6-8.

⁷⁷ "Package #1" at p. 8.

Ministry did not contravene s. 75 of the *Act* since the disclosure was made in accordance with s. 79(a).

July 11, 2023

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

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