



OFFICE OF THE
INFORMATION & PRIVACY
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Order F15-28

**Provincial Health Services Authority
(BC Emergency Health Services)**

Hamish Flanagan
Adjudicator

June 30, 2015

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Quicklaw Cite: [2015] B.C.I.P.C.D. No. 31

Summary: An applicant requested BC Emergency Health Services (“BCEHS”) provide her with a transcript, including the name and phone number of an individual who called 911 from the scene of an accident in which the applicant was seriously injured. BCEHS provided the applicant with a transcript of the call, but withheld personal information including the caller’s name and phone number because it believed disclosure would be an unreasonable invasion of third party personal privacy (s. 22 of FIPPA). The applicant was not satisfied with BCEHS’ response and asked the Commissioner to conduct an inquiry. BCEHS requested the Commissioner exercise her discretion under s. 56 of FIPPA to not hold an inquiry. The adjudicator found that it was not plain and obvious that disclosure of the third party’s personal information would be an unreasonable invasion of their personal privacy under s. 22; therefore, BCEHS’s request that an inquiry not be held was denied.

Statutes Considered: *Freedom of Information and Protection of Privacy Act,*

Authorities Considered: B.C.: Decision F08-11, 2008 CanLII 65714 (BC IPC), Order 01-53, 2001 CanLII 21607 (BCIPC); Investigation Report P97-010, <http://www.oipc.bc.ca/investigation-reports/1257>; Order F13-12, 2013 BCIPC 15 (CanLII).

INTRODUCTION

[1] The applicant was involved in a serious cycling accident with another cyclist. The applicant requested that BC Emergency Health Services (“BCEHS”)¹ provide her a transcript of a 911 call from the scene of the accident, including the name and phone number of the other cyclist who made the call. The applicant says she wants the name and phone number of the caller so she can contact him to “pursue resolution and closure, and possibly compensation from him.”²

[2] BCEHS provided the applicant with a transcript of the 911 call but withheld the caller’s name and phone number under s. 22 (disclosure harmful to personal privacy) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”).

[3] The applicant asked the Office of the Information and Privacy Commissioner (“OIPC”) to review BCEHS’s decision to withhold the caller’s name and phone number under s. 22. Attempts to resolve this matter through mediation were unsuccessful. The applicant asked that this matter proceed to an inquiry under Part 5 of FIPPA.

[4] BCEHS is asking the Commissioner to exercise her discretion under s. 56 of FIPPA to not hold an inquiry under Part 5 of FIPPA. It submits that it is plain and obvious that disclosure of the caller’s name and phone number would be an unreasonable invasion of the caller’s personal privacy, so disclosure of that information is not permitted under s. 22 of FIPPA.

ISSUE

[5] Should the Commissioner exercise her discretion under s. 56 of FIPPA to not hold an inquiry into BCEHS’s decision to withhold information from the transcript because it is plain and obvious that s. 22 of FIPPA applies?

[6] **Information at issue** - BCEHS is withholding the caller’s name and phone number from a transcript of a 911 call.

DISCUSSION

[7] Section 56(1) of the Act reads as follows:

Inquiry by Commissioner

56(1) If the matter is not referred to a mediator or is not settled under section 53, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

¹ An agency of the Provincial Health Services Agency.

² Memo attached to Applicant’s request for review to OIPC dated September 17, 2014.

[8] A number of previous orders have set out the principles for the Commissioner's exercise of discretion under s. 56 of FIPPA. Decision F08-11 provided a list of principles to guide the exercise of that discretion:

- the public body must show why an inquiry should not be held,
- the respondent (the applicant for records) does not have a burden of showing why the inquiry should proceed; however, where it appears obvious from previous orders and decisions that the outcome of an inquiry will be to confirm that the public body properly applied FIPPA, the respondent must provide "some cogent basis for arguing the contrary",
- the reasons for exercising discretion under s. 56 in favour of not holding an inquiry are open-ended and include mootness, situations where it is plain and obvious that the records fall under a particular exception or outside the scope of FIPPA, and the principles of abuse of process, *res judicata* and issue estoppel,
- it must in each case be clear that there is no arguable case that merits an inquiry.³

[9] Those principles have guided my analysis in this case.

Section 22

[10] Section 22 of FIPPA requires public bodies to refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy. It reads:

Disclosure harmful to personal privacy

22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[11] Section 22 of FIPPA requires public bodies to withhold information if disclosing it would be an unreasonable invasion of a third party's personal privacy. In considering s. 22, a public body must first determine if the information in issue is personal information, as defined by FIPPA, because s. 22 only applies to "personal information" of third parties.⁴ If it is personal information, the public body must consider whether the information meets any of the criteria identified in s. 22(4). If s. 22(4) applies, the public body must not refuse access to the information under s. 22. If s. 22(4) does not apply, the public body must determine if the information falls within any of the categories in s. 22(3). If s. 22(3) applies, a rebuttable presumption arises that disclosure is an unreasonable invasion of third party privacy. Whether or not a s. 22(3) presumption applies, the

³ Decision F08-11, 2008 CanLII 65714 (BC IPC) at para. 8.

⁴ FIPPA, Schedule 2.

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.⁵

[12] I will consider the above approach to considering whether s. 22 applies in determining whether it is plain and obvious or open to argument that s. 22 applies to the withheld information.

BCEHS's submissions

[13] BCEHS submits it is plain and obvious that s. 22 applies to the withheld information. It relies on s. 22(2)(f) which provides:

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

...

(f) the personal information has been supplied in confidence,

...

[14] BCEHS cites two previous orders, Investigation Report P97-010⁶ and Order F13-12⁷ in support of the position that 911 calls have been recognized as inherently confidential. BCEHS says that therefore it is plain and obvious that the name and phone number of the caller must not be disclosed.

[15] BCEHS also says that the caller is aware of the applicant's request and has chosen not to contact her. It says this shows the caller had an expectation of privacy at the time of the call and that the caller does not consent to disclosure of their personal information.

Applicant's submissions

[16] The applicant chose not to make a submission regarding BCEHS's s. 56 application.

Analysis

[17] The term personal information under FIPPA means "recorded information about an identifiable individual other than contact information".⁸ The information

⁵ See for example, Order 01-53, 2001 CanLII 21607 (BC IPC) at paras. 22-24.

⁶ Investigation Report P97-010, <http://www.oipc.bc.ca/investigation-reports/1257>.

⁷ Order F13-12, 2013 BCIPC 15 (CanLII).

⁸ Definitions are in Schedule 1 of FIPPA.

at issue is personal information of a third party and it is not “contact information” because it is not their business or work contact information.

[18] A decision whether to disclose third party personal information frequently involves a balancing of all relevant factors. I agree with the BCEHS submission that Investigation Report P97-010 and Order F13-12 demonstrate that s. 22(2)(f) is a relevant factor, and in fact a strong factor, in deciding whether to disclose information in 911 calls.

[19] However, the fact that s. 22(2)(f) is a relevant factor does not mean that it is plain and obvious that the contents of the 911 call in issue must be withheld. I am satisfied that in the present case there are other relevant factors to consider before deciding whether disclosing the information in issue is an unreasonable invasion of third party personal privacy under s. 22. To give an example, in her request the applicant refers to needing the information to potentially seek compensation from the other cyclist. This raises the possible relevance of s. 22(2)(c), which provides that a factor to consider in making a determination about s. 22 is whether the information is relevant to a fair determination of the applicant’s rights. An inquiry is the appropriate forum to properly consider and weigh the potentially relevant factors. Order F13-12, which BCEHS cites in support of its s. 56 application, illustrates this point. Section 22(2)(f) was only one of several relevant factors considered before a decision was reached regarding the 911 call.

[20] I also note that the content of 911 calls are not always withheld, as was illustrated in Order F13-12. In that case, the public body disclosed some personal information of the applicant from a 911 call to them before the inquiry. I make this observation simply to highlight that it is not plain and obvious that personal information in a 911 call must be withheld - all factors need to be considered before deciding whether to disclose information in a 911 call.

[21] The other factors that BCEHS cite are not sufficiently strong to establish that it is plain and obvious that the information must be withheld under s. 22 of FIPPA. For instance BCEHS’s evidence regarding the third party’s lack of consent to disclosure of his information is speculative and hearsay, so I give it little weight. Further, while third party consent to disclosure would be determinative of the issue under s. 22(4)(a), lack of consent by the third party is simply one further potentially relevant factor to consider under s. 22.

Finding on s. 56

[22] In my view, the fact that s. 22(2)(f) is relevant and that the third party may not consent to disclosure does not mean it is plain and obvious that disclosure of the third parties’ personal information would be an unreasonable invasion of their personal privacy under s. 22 of FIPPA. The facts of this case suggest that there are other relevant factors that also need to be considered, perhaps including s.

22(2)(c). An inquiry is the proper forum to consider all relevant factors and decide whether the information in issue must be withheld under s. 22.

CONCLUSION

[23] BCEHS bears the burden of establishing why its application to the OIPC to exercise its discretion to not hold an inquiry under s. 56 should be granted. In my opinion, BCEHS has not established that it is plain and obvious that it is required to refuse to disclose the withheld personal information under s. 22 of FIPPA. Therefore, BCEHS' s. 56 application is denied and an inquiry will proceed under Part 5 of FIPPA.

[24] I reach this decision without drawing any conclusions on whether disclosure of the withheld information is an unreasonable invasion of personal privacy under s. 22. That is the issue that will be determined at the inquiry.

June 30, 2015

ORIGINAL SIGNED BY

Hamish Flanagan, Adjudicator

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