Order F21-35

MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

Lisa Siew
Adjudicator

August 6, 2021

CanLII Cite: 2021 BCIPC 43
Quicklaw Cite: [2021] B.C.I.P.C.D. No. 43

Summary: A wife and husband requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to records containing their personal information and their son's personal information. The Ministry of Children and Family Development (the Ministry) disclosed some records to the applicants, but withheld some information or the entirety of other records under several exceptions to disclosure under FIPPA and the *Child, Family and Community Service Act* (*Act*). The adjudicator confirmed the Ministry's decision which concluded the applicants were not authorized to access their son's personal information because the applicants did not establish they had the authority to act on behalf of their son in exercising his access rights under s. 5(1)(b) of FIPPA and s. 76 of the *Act*. The adjudicator also concluded the Ministry was authorized or required to withhold some of the information at issue under s. 14 (solicitor client privilege) and s. 22(1) (unreasonable invasion of third party personal privacy) of FIPPA and also under ss. 77(1) (reveal the identity of reporter) and 77(2)(b) (information supplied in confidence during assessment or investigation) of the *Act*. However, the adjudicator found the Ministry was not authorized to withhold information under s. 15(1)(l) (harm the security of a computer system) of FIPPA. The Ministry was required to disclose any information that it was not authorized or required to withhold.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 5(1)(b), 14, 15(1)(l), 22, 79, Schedule 1 (definition of "public body", "local public body", "health care body"). *Freedom of Information and Protection of Privacy Regulation*, ss. 3(1)(a) and 3(2). *Child, Family and Community Service Act*, ss. 1 (definition of "care", "child", "custody", "youth"), 73, 76 and 77(1), 77(2)(b). *Interpretation Act*, ss. 2 and 29 (definition of "minor"). *Age of Majority Act*, ss. 1(1), 1(2).

INTRODUCTION

[1] In October 2017, a wife and husband (the applicants) requested the Ministry of Children and Family Development (the Ministry) provide access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to

records containing their personal information and the personal information of their son (the youth).[1] The applicants requested all records from several Ministry departments, specifically Family Services, Child Services, Child and Youth with Special Needs Family Services, Autism Services, Complaints and Child Protection Incident Services.

[2] The Ministry advised the applicants that it required certain documentation in order to process their request for access to the youth's personal information.[2] It requested the applicants provide them with the youth's signed consent or complete a guardian declaration form if the youth did not have the capacity to provide consent. The applicants did not provide the requested documentation.

[3] Therefore, the Ministry determined the applicants were not acting on behalf of the youth in accordance with the requirements of s. 5(1)(b) of FIPPA, s. 3 of the *Freedom of Information and Protection of Privacy Regulation* (Regulation) and s. 76 (who can act for a child) of the *Child, Family and Community Service Act* (the *Act*).[3] As a result, the Ministry processed the applicants' request for the youth's personal information as a request for third party personal information.

[4] The Ministry disclosed some records to the applicants, but withheld other records and parts of records under ss. 14 (solicitor client privilege), 15(1)(l) (harm the security of a computer system) and 22(1) (unreasonable invasion of third party personal privacy) of FIPPA and ss. 77(1) (reveal the identity of reporter) and 77(2)(b) (information supplied in confidence during assessment or investigation) of the *Act*.

[5] The applicants asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision. Mediation did not resolve the matters at issue and they were forwarded to an inquiry. Before the OIPC issued the notice of inquiry, the Ministry located additional responsive records and provided them to the applicants, withholding information under ss. 14, 15(1)(l) and 22(1) of FIPPA and ss. 77(1) and 77(2)(b) of the *Act*.[4]

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[1] The wife requested access to records containing her and her husband's personal information and their son's personal information. The Ministry obtained the wife and husband's consent to disclose their personal information to each other and treated the wife's request as a joint request from both the wife and husband.

[2] I note that Information Access Operations (IAO) processes all access to information requests received by the provincial government. IAO processed the applicants' access request and requested the necessary documentation. For ease of reference, I refer to this government department as the "Ministry".

[3] *Child, Family and Community Service Act*, RSBC 1996, c 46.

[4] There is no indication that there was any mediation conducted between the parties about the information withheld in these additional responsive records, but I have considered this information as part of this inquiry.

[6] Both parties provided submissions for the inquiry. The Ministry's evidence includes pre-approved *in camera* material.[5]

PRELIMINARY MATTER

Should an affidavit with an error be admitted into evidence?

[7] The Ministry seeks approval to admit into evidence an affidavit from a child protection social worker (social worker) that the Ministry says it realized contains an error. The affidavit includes two documents referred to as Exhibit A and Exhibit B. In the affidavit, the social worker describes Exhibit A as a copy of a "Special Needs Agreement" concerning the applicants' son and identifies Exhibit B as a table describing the records that the Ministry withheld under s. 14 of FIPPA.

[8] However, the two exhibits were not properly identified when the affidavit was affirmed by the social worker in front of a commissioner for taking affidavits within British Columbia. The "Special Needs Agreement" was incorrectly stamped and noted as Exhibit B instead of Exhibit A. Likewise, the table describing the records withheld under s. 14 was incorrectly stamped and noted as Exhibit A when it should have been marked as Exhibit B. The Ministry notes that the applicants do not dispute the authenticity of the "Special Needs Agreement", which was signed by them.

[9] The Ministry says it did not identify the mistake until it was preparing its reply submission for this inquiry. The Ministry says, in normal circumstances, it would cure the defect by providing a properly sworn affidavit. However, the Ministry submits the COVID-19 pandemic has made commissioning affidavits difficult or impossible in some cases. The Ministry's explanation also includes pre-approved *in camera* material. It provides further explanation *in camera* why it would be challenging for it to obtain a corrected affidavit from the social worker. Given these challenges, the Ministry requests the OIPC accept the "defective affidavit" into evidence and that it be given appropriate weight.

[10] The typical solution to address this concern would be for the Ministry to obtain a corrected affidavit from the social worker. I do not find the Ministry's argument that the COVID-19 pandemic has made commissioning affidavits difficult or impossible persuasive since the courts have established new rules about the virtual commissioning of affidavits that take into account the difficulties

[5] The OIPC allows parties to seek approval to provide materials *in camera* on a number of limited grounds, including where those materials would reveal the information in dispute in the inquiry. Where information is approved *in camera*, the decision-maker considers this information privately and the other party will receive the inquiry submissions with the *in camera* material redacted.

of swearing or affirming affidavits in person during the pandemic.[6] However, the Ministry's *in camera* information persuades me that there are challenges with obtaining a newly sworn affidavit from the social worker. As a result, the issue I must address is whether the social worker's affidavit should be admitted into evidence for this inquiry even though it contains an error.

[11] As an administrative tribunal, the OIPC is generally not bound by the normal rules of evidence that govern judicial proceedings.[7] Section 56(1) of FIPPA sets out the Commissioner's authority to determine matters regarding the admissibility of evidence. This provision gives the Commissioner or their delegate the authority to decide all matters of fact and law arising in the course of an inquiry.

[12] In the circumstances, I find it would be appropriate to admit the social worker's affidavit into evidence despite the error in the identification of the accompanying exhibits. The affidavit is relevant to the matters at issue in the inquiry and it was affirmed by a person with direct knowledge of the facts attested to in the affidavit. Although the exhibits were mis-identified when they were endorsed, the exhibits are limited in number and the two documents are distinct in content and form so there is little chance that the social worker would be confused about the documents referenced in their affidavit. Further, as noted by the Ministry, the applicants do not dispute the authenticity of the signed "Special Needs Agreement" attached as an exhibit to the social worker's affidavit. Taking all this into account, I find the misidentification of the exhibits does not affect the substance of the social worker's affirmed statements.

[13] I also find there is no unfairness to the applicants in admitting this evidence. The applicants were given notice and an opportunity to comment on the evidence and contradict it. They did not object to the admittance of the affidavit with its errors.[8] Further, from reviewing the affidavit and the exhibits, it is clear that the two exhibits were placed in the wrong order when they were endorsed and affirmed. I am satisfied that this error did not affect the applicants' ability to respond to the statements made by the social worker in the affidavit and to comment on the documents attached as exhibits to the affidavit.

[14] For all these reasons, I have accepted the affidavit of the social worker into evidence and I will consider it along with the rest of the Ministry's arguments and evidence.

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[6] <https://www.lawsociety.bc.ca/about-us/news-and-publications/news/2020/covid-19-update-commissioning-affidavits-and-info/>.
[7] *Gichuru v. The Law Society of British Columbia*, 2010 BCSC 522 (CanLII) at paras. 35-36. Decision F06-07, 2006 CanLII 32976 (BC IPC) at paras. 12-13, quoting *Alberta (Workers' Compensation Board) v. Appeals Commission*, 2005 ABCA 276 at paras. 62-69. Order F15-43, 2015 BCIPC 46 at para. 22. Order F15-56, 2015 BCIPC 59 (CanLII) at para. 18.
[8] Applicants' submission dated February 21, 2021.

ISSUES

[15] The issues to be decided in this inquiry are as follows:

1. Are the applicants authorized to act for the youth in accordance with s. 5(1) of FIPPA, s. 3 of FIPPA's Regulation and s. 76 of the *Act*?

2. Is the Ministry authorized to withhold information under s. 14 of FIPPA?

3. Is the Ministry authorized to withhold information under s. 15(1)(l) of FIPPA?

4. Is the Ministry required to withhold information under s. 77(1) of the *Act*?

5. Is the Ministry authorized to withhold information under s. 77(2)(b) of the *Act*?

6. Is the Ministry required to withhold information under s. 22(1) of FIPPA?

[16] The applicants' submissions include other matters not set out in the OIPC investigator's fact report or the notice of inquiry. For instance, the applicants' submissions include various allegations of wrongdoing and incompetence against Ministry employees and other named individuals. I do not have the jurisdiction to determine those matters. I will only refer to these submissions where it is relevant to the issues in this inquiry. To be clear, the issues I will decide in this inquiry are limited to those identified above.

[17] *Burden of proof for ss. 14, 15 and 22 of FIPPA*: Section 57(1) places the burden on the Ministry, as the public body, to prove the applicants have no right of access to the information withheld under ss. 14 and 15(1)(l). Section 57(2) places the burden on the applicants to establish that disclosure of the information at issue would not unreasonably invade a third party's personal privacy. However, the public body has the initial burden of proving the information at issue qualifies as personal information under s. 22(1).[9]

[18] *Burden of proof for s. 5(1) of FIPPA, s. 3 of FIPPA's Regulation and s. 76 of the Act*: Neither FIPPA nor the *Act* identify which party has the burden to prove the applicants are authorized to act for or on behalf of the youth in exercising his access rights under FIPPA or the *Act*, and the parties express no opinion about this. However, previous OIPC orders have found that each party is responsible for submitting arguments and evidence to support their position.[10] I adopt the same approach here.

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[9] Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9–11.
[10] Order F17-04, 2017 BCIPC 4 at para. 4.

[19] *Burden of proof for s. 77 of the Act*: Neither the parties, FIPPA nor the *Act* identify which party has the burden to prove ss. 77(1) or 77(2)(b) apply to the information at issue. No previous OIPC order or court decision has directly identified which party bears the burden of proof under those provisions.[11]

[20] Where FIPPA does not identify who bears the burden for a particular issue, previous OIPC adjudicators have relied on past precedents or made a determination about which party should be assigned the burden of proof.[12] In making such a determination, previous decisions have considered the following factors:[13]

1) Who raised the issue or invoked the relevant statutory provision to refuse access?

2) Who is in the best position to meet the burden of proof, including which party has the relevant expertise, evidence and knowledge to establish a provision applies?

3) What is fair in the circumstances?

[21] Taking into account the criteria noted above, I conclude it is appropriate to place the burden on the public body to demonstrate that s. 77 applies. The Ministry determined that ss. 77(1) and 77(2)(b) applied to the information at issue and it is only fair for the public body to support its decision. Section 77 also invokes the interrelationship between FIPPA and the *Act*. The Ministry has the expertise and knowledge to interpret and apply an enabling statute and to provide any interpretation or arguments regarding the interaction between that statute and FIPPA.

[22] The Ministry is also in the best position to establish that the requirements of s. 77 are satisfied. Unlike the applicants, the Ministry knows what information is at issue, as well as the facts and circumstances to support its application of s. 77. I find that it is not an unfair burden to impose since the Ministry is the party who can best meet the burden by providing evidence to establish the information at issue was properly withheld under s. 77. For all these reasons, I conclude the Ministry, as the public body, has the burden to prove that it is authorized or required to withhold the information at issue under ss. 77(1) and 77(2)(b).

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[11] In considering whether the Ministry was authorized or required to withhold information under s. 77(1) and 77(2)(b), the adjudicator in Order F18-38, 2018 BCIPC 41 appears to have implicitly placed the burden on the public body, but no decisions are cited in support of this position nor is there any analysis on the issue.

[12] For example, Order 02-38, 2002 CanLII 42472 (BCIPC) and Order F18-11, 2018 BCIPC 14 (CanLII).

[13] *British Columbia Teachers' Federation v. British Columbia*, 2012 BCCA 326 at paras. 70-72; Order F18-11, 2018 BCIPC 14 (CanLII) at paras. 10-21; Order 98-007, 1998 CanLII 18636 (AB OIPC) at paras. 12-13.

DISCUSSION

Background[14]

[23] Under the *Act*, the Ministry provides services to assist families in caring for their children, including community-based specialized mental health services and special needs support. The Ministry also has the legislative authority for child protection services. The Director of Child Protection (Director) delegates to child protection social workers the authority to provide child protection services across the province.

[24] The *Act* defines when a child is in need of protection and sets out the legal process that follows the removal of a child and the options available once the Director is involved with a family. Section 2 of the *Act* mandates the Director to keep the safety and well-being of children as paramount considerations in fulfilling their duties and functions under the statute.

[25] The applicants and the youth have been involved with the Ministry for a number of years and were initially serviced by Child and Youth Mental Health and later with Child and Youth Special Needs. In September 2017, the youth was temporarily certified under the *Mental Health Act* and admitted to hospital.[15] When the hospital was ready to discharge the youth, the Ministry concluded the applicants were unwilling or unable to resume care of the youth. As a result, the Director removed the youth from their care.

[26] In September 2017, a court granted the Director temporary custody of the youth for three months with reasonable access to both parents supervised at the discretion of the Director. The applicants consented to this temporary custody order and it was extended several times with consent.[16]

[27] In October 2017, the Ministry received the applicants' access request. At the time of the request, the youth was over the age of 12 and in the custody of the Director. The youth is currently under 19 years of age and in the care of the Director under a special needs arrangement executed in 2019.[17]

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[14] The information in this background section is from the Ministry's submissions and the affidavit of the social worker.
[15] Ministry submission dated January 15, 2020 at para. 15.
[16] Page 792 of the records.
[17] A copy of this agreement is included in the social worker's affidavit.

Records and information at issue

[28] The responsive records consist of 820 pages, with approximately 575 of those pages containing information in dispute.[18] The records consist of two separate Ministry files: a family services file and a child protection file. These files contain a variety of records related to the applicants and the youth, including handwritten notes from Ministry employees, Ministry records, medical records, court documents, correspondence and evaluations of the youth and the family by Ministry employees, health professionals and other public body employees.

Making an access request for a minor or on behalf of a child

[29] At issue in this inquiry is whether the applicants are authorized to make an access request on behalf of or for the youth. The outcome of this matter will affect how some of the other issues are determined in this inquiry. If the applicants are found to be acting on behalf of or for the youth, then the access request is treated as if the youth is making the request. In other words, the analysis would consider that the youth is requesting access to his own personal information rather than the applicants requesting access to the personal information of a third party under FIPPA.[19]

[30] Both FIPPA and the *Act* contain provisions regarding who can exercise another individual's access to information rights in these circumstances, specifically when a guardian can act for a "minor" under FIPPA and when a person can act on behalf of a "child" under the *Act*. Section 5(1)(b) of FIPPA states the following:

> 5 (1) To obtain access to a record, the applicant must make a written request that
> …
>
> (b) provides written proof of the authority of the applicant to make the request, if the applicant is acting on behalf of another person in accordance with the regulations, and
> …

[31] Section 3 of the Regulation sets out when a guardian may act for a minor in making a request under s. 5(1) of FIPPA and says the following:

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[18] The Ministry corrects an error in the OIPC investigator's fact report. The Ministry explains that there are only 820 pages of responsive records and the investigator was incorrectly informed there were 829 pages of responsive records.

[19] In the event that I find the applicants are authorized to act on behalf of their son, the Ministry has requested that it be given an opportunity to make a different decision with respect to the appropriate severing of the information withheld under s. 22 of FIPPA and s. 77(2)(b) of the *Act*.

> 3 (1) A guardian of a minor may act for the minor in relation to any of the following sections of the Act if the minor is incapable of acting under that section:
>
> (a) section 5;
> …
>
> (2) A guardian of a minor may exercise a power granted to the guardian under subsection (1) of this section only if the power is within the scope of the guardian's duties or powers.

[32] Section 76 of the *Act* states that a person who has legal care of a child may exercise the child's access rights under FIPPA. The relevant part of s. 76 in this case reads as follows:

> 76 (2) A person, other than a director, who has legal care of a child 12 years of age or older may, on behalf of the child, exercise the child's rights under the *Freedom of Information and Protection of Privacy Act*
>
> (a) to be given access to information about the child in a record,
> …
>
> if the child is incapable of exercising those rights.

[33] The question at this point is which provision applies. Section 79 of FIPPA states that, if a provision of FIPPA is inconsistent or in conflict with a provision in another Act, the FIPPA provision prevails unless the other Act expressly states that it, or a provision of it, applies despite FIPPA. Section 79 is an "override" provision that determines whether a FIPPA provision applies or some other legislative provision applies instead of FIPPA.[20]

[34] Where there is an inconsistency or conflict between a provision of FIPPA and another provincial statute, the other statute will take precedence if it contains a provision that expressly overrides FIPPA.[21] The *Act* contains such an override provision, specifically s. 74(1) of the *Act*, which says ss. 74-79 of the *Act* apply despite FIPPA. Therefore, the first step is determining whether there is an inconsistency or conflict between s. 5(1)(b) of FIPPA and ss. 3(1)(a) and 3(2) of FIPPA's Regulation and s. 76(2) of the *Act*.[22]

[35] An inconsistency or conflict refers to a situation where two laws cannot stand together, where compliance with one set of rules would require a breach of

[20] Order 04-01, 2004 CanLII 34255 (BC IPC) at paras. 13 and 14.
[21] Order 04-01, 2004 CanLII 34255 (BC IPC) at para. 25.
[22] Order 04-01, 2004 CanLII 34255 (BC IPC) at paras. 16-36. For a similar approach, see Alberta Order F2005-007, 2006 CanLII 80857 (AB OIPC) at paras. 11-15.

the other.[23] The analysis requires looking at "the precise provisions and the way they operate in the precise case" and determine whether they can co-exist in this particular case in their operation.[24]

[36] Therefore, I will first consider whether the applicants can act on behalf of or for the youth in accordance with s. 76(2) of the *Act* and then consider the same question under s. 5(1)(b) of FIPPA and ss. 3(1)(a) and 3(2) of FIPPA's Regulation. If there is an inconsistency or conflict between FIPPA and the *Act*, then s. 76(2) of the *Act* prevails over FIPPA's provisions.

When a person can act on behalf of a "child" under the Act?

[37] Section 1 of the *Act* defines a "child" as a person under 19 years of age and includes a "youth", which is defined as "a person who is 16 years of age or over but is under 19 years of age." The applicant's son is currently, and at the time of the access request, between 12 to 19 years of age; therefore, he would qualify as a "child" under the *Act*.

[38] Turning to s. 76 of the *Act*, the Ministry submits and I agree that s. 76(2)(a) requires that where the child is over 12 years of age, which applies in this case to the youth, the following three conditions must be satisfied:[25]

1. The applicants have "legal care" of the child;

2. The applicants are exercising the child's rights under FIPPA "on behalf of" the child; and

3. The child is incapable of exercising their rights under FIPPA.

[39] I will first consider whether the applicants have "legal care" of the youth. The *Act* does not define when a person has "legal care" of a child. Past OIPC orders have found that "legal care" of a child means legal custody or guardianship of the child.[26] In Order F17-04, Adjudicator Francis found that a court order that designates a husband and wife as their children's joint guardians was sufficient for the purposes of "legal care" under s. 76(1) of the *Act*.[27]

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[23] *British Columbia Lottery Corp. v. Vancouver (City of)*, 1999 BCCA 18 (CanLII) at para. 20; *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40 (CanLII) at paras. 38 & 46.
[24] *British Columbia Lottery Corp. v. Vancouver (City of)*, 1999 BCCA 18 (CanLII) at para. 19.
[25] Ministry's submission dated January 15, 2020 at para. 42, citing Order F17-04, 2017 BCIPC 4 at para. 13. The Ministry notes (at footnote 25) that Adjudicator Francis' analysis is about s. 76(1)(a), but this provision is identical to s. 76(2)(b) with the addition of the third requirement, that the child be incapable of exercising their rights under FIPPA.
[26] Order F17-04, 2017 BCIPC 4 at footnote 5, citing Order F06-06, 2006 CanLII 17222 (BC IPC) at paras. 12-14 and Order 04-22, 2004 CanLII 45532 (BC IPC) at paras. 23-26.
[27] Order F17-04, 2017 BCIPC 4 at para. 14.

[40] However, the Ministry submits that "legal care" of a child under the *Act* would not require legal custody or guardianship.[28] It says prior OIPC orders did not consider the definition of "care" under s. 1 of the *Act*, which is defined as "when used in relation to the care of a child by a director or another person, means physical care and control of the child." The Ministry submits that "legal care" under the *Act* "must be interpreted in the context of that statute, which includes a statutory definition of "care".[29] Based on this definition, the Ministry argues that "legal care" does not require legal custody or guardianship, but "only the legal authority for the physical care and control of a child."[30]

[41] It is not apparent, however, and the Ministry does not explain how its interpretation of "legal care" is different from legal custody or guardianship or how one would go about determining that a person has "legal authority for the physical care and control of a child". Therefore, without more, I am not persuaded that there is a difference between legal custody or guardianship of a child and having "legal care" of a child under the *Act*.

[42] Furthermore, the Ministry accepts that legal custody of a child is sufficient to establish "legal care" of a child under s. 76.[31] It refers to the definition of "custody" under s. 1 of the *Act* which says custody "includes care and guardianship of a child."[32] As a result, I conclude that "legal care" of a child under the *Act* includes legal custody or guardianship of a child. Therefore, the question is whether the applicants have legal custody or guardianship of the youth?

[43] The applicants submit they were reinstated as their son's guardians in October 2019 and insist they are their son's guardians and advocate.[33] The Ministry's evidence is that, starting September 2017, the youth was in the custody of the Director pursuant to a court order. However, as of November 1, 2019, the youth has been in the Director's care pursuant to a special needs agreement that was extended by agreement of the parties until April 30, 2021. The Ministry provided a copy of this agreement which was signed by the applicants.[34]

[44] I conclude the applicants have not established that they currently have legal custody or guardianship of the youth or at the time of their access request. Other than their assertion that they were reinstated as the youth's guardians in October 2019, the applicants did not provide any other evidence to counter the

[28] Ministry's submission dated January 15, 2020 at para. 49.
[29] Ministry's submission dated January 15, 2020 at para. 49.
[30] Ministry's submission dated January 15, 2020 at para. 49.
[31] Ministry's submission dated January 15, 2020 at para. 49.
[32] Ministry's submission dated January 15, 2020 at para. 46.
[33] Applicants' submission dated February 21, 2021.
[34] Social worker's affidavit at paras. 20-22 and Exhibit A. Ministry's submission dated September 17, 2020 at para. 2 and Appendix A.

Ministry's submissions and evidence about who has legal custody and guardianship of their son. Therefore, one of the three necessary conditions under s. 76(2)(a) is not satisfied.

When can a guardian act for a "minor" under FIPPA?

[45] In order for the applicants to act for the youth in exercising his access rights under FIPPA, the youth must qualify as a "minor" under FIPPA. Neither FIPPA nor its Regulation define who is considered a "minor". Instead, the *Interpretation Act* defines a "minor" as a person under the age of majority.[35] I conclude this definition applies to FIPPA. Section 2 of the *Interpretation Act* provides that every provision of this Act applies to every enactment unless a contrary intention appears in this Act or in the enactment. There is no contrary intention in FIPPA or in the *Interpretation Act*; therefore, the definition of a "minor" under s. 29 of the *Interpretation Act* applies to FIPPA.

[46] The *Interpretation Act* does not define when a person reaches the "age of majority". However, the *Age of Majority Act* states that a person reaches the age of majority on becoming 19 years old.[36] I am also satisfied that this provision applies to FIPPA.[37] Applying these definitions, I conclude that a "minor" under FIPPA is a person who is under 19 years of age. The youth is currently, and at the time of the access request, between 12 to 19 years of age; therefore, he would qualify as a "minor" under ss. 3(1)(a) and 3(2) of FIPPA's Regulation.

[47] The next question is what criteria is needed under FIPPA to determine whether the applicants are authorized to act for the youth. Sections 5(1)(b) of FIPPA and ss. 3(1)(a) and 3(2) of FIPPA's Regulation should be read together to determine the following:[38]

1. Are the applicants the minor's "guardian"?

2. Are the applicants acting "for" the minor?

3. Is the minor "incapable of acting" under s. 5(1) to exercise their access rights?

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[35] RSBC 1996, c 238 at s. 29.
[36] RSBC 1996, c 7 at s. 1(1). Also referred to by the Ministry at para. 33 of its initial submissions.
[37] Section 1(2) of the *Age of Majority Act* provides that ss. 1(1) applies for the purposes of "any rule of law" and "in the absence of a definition or of an indication of a contrary intention, for the interpretation of..."**minor**"…and similar expressions in an enactment whenever enacted." As noted, FIPPA does not define a "minor" and there is no indication of a contrary intention in FIPPA that the definition of a "minor" in the *Age of Majority Act* should not apply.
[38] Order F17-04, 2017 BCIPC 4 at paras. 11-17. In Order F17-04, Adjudicator Francis and the *Act* use the term "child"; however, FIPPA uses the term "minor". I have adopted FIPPA's terminology. The Ministry referred to and relied on the analysis set out in Order F17-04 at paras. 35, 42 and 43 of its submission dated January 15, 2020.

4. Is exercising the minor's rights under FIPPA "within the scope of the guardian's duties or powers"?

[48] In addition to the four requirements above, s. 5(1)(b) of FIPPA also requires the applicants to provide "written proof" of their authority to make the request on behalf of the minor.

[49] The Ministry submits the applicants have not provided written proof of their authority to request records on behalf of the youth as required under s. 5(1)(b) of FIPPA. The Ministry says when the applicants made their access request, they were asked to provide a copy of the youth's written consent or if he lacked the capacity to consent, then they had to complete a "Guardian Declaration" form. The Ministry says the form required the applicants to establish they have legal care or guardianship of the youth and to explain how they were acting on behalf of and for the sole benefit of the youth. The Ministry says the applicants did not provide or return the requested documentation. It submits that "this in itself is sufficient to conclude that the requirements of s. 5(1)(b) of FIPPA have not been satisfied."[39]

[50] Section 5(1)(b) of FIPPA and s. 3(1)(a) of FIPPA's Regulation requires written proof of an access applicant's authority, as a guardian of a minor, to make an access request on behalf of that minor. The applicants have not provided proof of this authority. Previous OIPC orders have found that a copy of a court order would be sufficient to prove guardianship.[40] The applicants did not provide a copy of a court order or any other document that establishes they have legal custody or guardianship of the youth. Therefore, I conclude the applicants have not provided written proof of their authority to make an access request on behalf of the youth in accordance with s. 5(1)(b) of FIPPA and s. 3(1)(a) of FIPPA's Regulation. Based on this finding, it is not necessary for me to consider the other requirements in the analysis, and I decline to do so, since each requirement must be satisfied.

Conclusion on the applicants' authority to act for the youth

[51] For the reasons given above, I find the applicants are not authorized to act on behalf of or for the youth under FIPPA or the *Act*. As a result, I find there is no inconsistency or conflict in this case between s. 5(1)(b) of FIPPA and ss. 3(1)(a) and 3(2) of FIPPA's Regulation and the requirements under s. 76(2) of the *Act*. Given the applicants have no right to exercise the youth's access rights under FIPPA, I conclude the applicants are requesting access to the personal information of a third party under FIPPA.

[39] Ministry's submission dated January 15, 2020 at para. 44.
[40] Order F17-04, 2017 BCIPC 4 at para. 14.

Section 14 – solicitor client privilege

[52] Section 14 of FIPPA states that the head of a public body may refuse to disclose information that is subject to solicitor client privilege. Section 14 encompasses both legal advice privilege and litigation privilege.[41] The Ministry claims legal advice privilege over the information withheld under s. 14.

[53] Legal advice privilege applies to confidential communications between solicitor and client for the purposes of obtaining and giving legal advice.[42] The Ministry and previous OIPC orders accept that in order for legal advice privilege to apply, the communication must:

1. be between a solicitor and client;
2. entail the seeking or giving of legal advice; and
3. the parties must have intended it to be confidential.[43]

[54] Legal advice privilege does not apply to all communications or documents that pass between a lawyer and their client.[44] However, if the conditions set out above are satisfied, then legal advice privilege applies to the communication and the records relating to it.[45]

[55] Courts have also found that solicitor client privilege extends to communications that are "part of the continuum of information exchanged" between the client and the lawyer in order to obtain or provide the legal advice.[46] A "continuum of communications" involves the necessary exchange of information between solicitor and client for the purpose of obtaining and providing legal advice such as "history and background from a client" or communications to clarify or refine the issues or facts.[47]

Parties' position on s. 14

[56] The Ministry submits the information that it withheld under s. 14 would reveal confidential communications between the Ministry and its lawyers that directly relate to the seeking, formulating and giving of legal advice. The Ministry says s. 14 applies to emails between a small number of its employees and legal

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[41] *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [*College*] at para. 26
[42] *College* at paras. 26-31.
[43] *Solosky v. The Queen*, 1979 CanLII 9 (SCC) at p. 838, [1980] 1 SCR 821 at p. 13. Ministry's submission dated January 15, 2020 at para. 63.
[44] *Keefer Laundry Ltd v. Pellerin Milnor Corp et al,* 2006 BCSC 1180 at para. 61.
[45] *R v. B*, 1995 CanLII 2007 (BCSC) at para. 22.
[46] *Huang v. Silvercorp Metals Inc*., 2017 BCSC 795 at para. 83; *Camp Development Corporation v. South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 [*Camp Development*] at paras. 40-46.
[47] *Camp Development* at para. 40.

counsel external to government and handwritten notes recording such communications. The Ministry notes that one of the emails includes two attachments which are court documents discussed in the email.[48] It submits that the disclosure of the attachments would permit accurate inferences about the privileged communication and, therefore, the attachments are also privileged.

[57] The Ministry says the communications at issue relate to child protection court proceedings involving the applicants and the youth. It submits that all the participants intended their communications to be confidential and maintained that confidentiality. It also relies on the purpose and content of the communications to support its claim that the communications were confidential.

[58] The Ministry says there are communications where legal advice is not explicitly sought or provided, but these communications "fit within the confines of a solicitor client relationship and are within the continuum of communications in which [the lawyers] provided their legal advice to [the Ministry]."[49] It says some of the communications were about court procedural matters that were necessary for the representation and the legal advice. The Ministry claims every communication was for the purpose of the lawyers providing legal advice to the Ministry and representing the Director in the court proceedings.

[59] The Ministry chose not to provide the records for my review. To establish that s. 14 applies to the withheld information, the Ministry relies on its submissions and affidavit evidence from a child protection social worker that includes a table describing the records at issue. The Ministry explains that in some cases, the evidence does not identify "the precise dates of most of the emails because the applicants were involved in the corresponding legal proceedings and might infer privileged information if the dates were disclosed."[50]

[60] The Ministry says the social worker was the Director's delegate for the purpose of the court proceedings involving the applicants. According to the social worker, the Director is required to attend provincial court if the Director has removed a child from their family. The social worker says the Director delegates child protection social workers with the authority to carry out the duties and functions of the Director in these court proceedings, including regularly instructing legal counsel and receiving their legal advice.

[61] The social worker confirms she was the Director's delegate for the court proceedings involving the applicants and their son. The social worker explains that the Ministry retained legal counsel shortly after removing the youth from their care. She says the Ministry hired legal counsel to represent the Director in the

[48] Pages 539 and 819-820 of the records.
[49] Ministry's submission dated January 15, 2020 at para. 76.
[50] Ministry's submission dated January 15, 2020 at para. 69.

provincial court proceedings resulting from the removal and to give legal advice on child protection matters relating to the youth.

[62] The table included with the social worker's affidavit describes the records at issue as emails between Ministry employees, between Ministry employees and legal counsel, attachments to emails and handwritten notes. The social worker attests to the accuracy of the information described in the table of records attached to her affidavit. She describes the records at issue as correspondence, court documents and handwritten notes from Ministry employees involved in the files. The social worker says most of the handwritten notes were her own.

[63] The social worker confirms the intended confidentiality of the communications. She also identifies all the people involved in the various emails, which consists of four lawyers from a named law firm and Ministry employees including herself, her direct supervisor, the director of operations who is also her office manager, an employee from the Ministry's family services team, a Ministry complaints manager and a complaints specialist.

[64] The social worker highlights one particular email between Ministry employees where the Ministry withheld one sentence that she says "indicates that we sought legal advice on a specific matter."[51] The social worker confirms that the lawyers from the previously named law firm provided the legal advice and the legal advice was intended by all the parties to be confidential. The Ministry submits s. 14 applies to this information because "the precise subject matter of legal advice given or sought is subject to solicitor client privilege" and "legal advice remains privileged when it is discussed and shared internally by the client."[52]

[65] The applicants did not respond to the Ministry's submissions and evidence regarding the information withheld under s. 14. Instead, the applicants' response submissions focus on how they are seeking full access to the youth's records and personal information to advocate for him and his well-being.

Analysis and findings on s. 14

[66] The Ministry's submissions and evidence persuades me that s. 14 applies to the information withheld in the records at issue. The Ministry provided an affidavit from a social worker with direct knowledge of the facts and records at issue in this inquiry. Previous orders have confirmed that, where public bodies decline to provide the records withheld under s. 14, affidavit evidence can be provided to establish that privilege applies, as was done in this case.[53]

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[51] Social worker's affidavit at para. 33, referring to information withheld on p. 717 of the records.
[52] Ministry's submission dated January 15, 2020 at para. 75, quoting *Canada (Justice) v. Blank*, 2007 FCA 87 at para. 13 and Order F17-23, 2017 BCIPC 24 at para. 44.
[53] Order F20-48, 2020 BCIPC 57 at para. 36.

[67] An affidavit from legal counsel is the preferred approach when a public body relies on affidavit evidence to establish its claim of privilege.[54] The Ministry says it did not provide evidence from any of the lawyers "because they are not employees of the government and because of their involvement in the applicants' child protection proceedings."[55] It is not clear why any of these reasons would be an impediment since other public bodies, in the past, have provided affidavit evidence from external counsel who provided the legal advice in question.[56] Nevertheless, an affidavit from the instructing client may be a suitable alternative in a minority of cases.[57]

[68] In this present case, the social worker was involved in the court proceedings and the child protection matters involving the applicants and the youth. The social worker attests that she and her direct supervisor instructed legal counsel and received their legal advice in relation to those matters. Therefore, I am satisfied that an affidavit from the social worker who instructed and received legal advice from the relevant legal counsel is a suitable alternative in this case.

[69] Where affidavit evidence is relied upon to support a claim of solicitor-client privilege, the evidence should specifically address the documents subject to the privilege claim.[58] The social worker discusses the information and records withheld under s. 14, the context in which the records were created or obtained and identifies all the parties involved in the communications and their roles. Furthermore, the records are individually described in the table, including the specific date or a general date where possible, the parties involved and a general description of the record's content and the subject matter. The table of records also lists all the individual emails in any email chains and identifies and describes any attachments. I find the social worker's sworn affidavit and the detailed table of records included with her affidavit sufficiently addresses the records and the surrounding circumstances.

[70] Turning now to whether s. 14 applies to the withheld information, the social worker confirms confidential legal advice was sought and provided by legal counsel about the court proceedings and child protection matters relating to the applicants and the youth. The description of the records supports the Ministry's claim of confidentiality since the communications only involve Ministry employees. I also agree with the Ministry that the purpose and content of the records indicates the parties intended the communications to be confidential

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[54] Order F20-48, 2020 BCIPC 57 at para. 36.
[55] Ministry's submission dated January 15, 2020 at para. 70.
[56] For example, Order F20-37, 2020 BCIPC 43 (CanLII).
[57] *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at para. 83.
[58] *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at para. 91.

since they deal with sensitive or potentially contentious matters (i.e., child protection matters and court proceedings). I, therefore, accept that legal advice privilege applies to the information withheld by the Ministry in the emails between Ministry employees and legal counsel, including the handwritten notes that record some of these privileged communications.[59]

[71] The table of records also identifies two attachments to an email.[60] The Ministry says the two attachments are court documents which are discussed in the email and its disclosure would permit accurate inferences about the privileged communication. The social worker does not directly address these attachments in her affidavit, but she confirms that the records at issue include court documents.

[72] The social worker also attests that the table of records accurately describes the information withheld under s. 14. The table describes the communication as an email from a named lawyer to the social worker and her direct supervisor where the lawyer is providing advice on child protection proceedings. The attachments to this email are described in the table as "two court documents attached and discussed in email."[61]

[73] Taking all this into account, I accept that disclosure of the email attachments could permit accurate inferences about the privileged communication. Legal advice privilege applies to an attachment that would reveal privileged communications or would allow one to infer the content and substance of privileged advice.[62]

[74] I also accept that legal advice privilege applies to information in an email between Ministry employees talking about the lawyers' legal advice.[63] The scope of solicitor client privilege extends to communications between employees of a ministry discussing previously obtained legal advice.[64] The social worker confirms that it received the legal advice being discussed by the employees and the parties intended for this advice to be kept in confidence.

[75] The Ministry also submits that the disclosure of the information in this email would reveal that it sought legal advice from its lawyers on a particular matter. Past jurisprudence has found that it would not be appropriate "to require the severance of material that forms a part of the privileged communication by,

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[59] Handwritten notes located at pp. 627-628 and 662 of the records.
[60] Email located at p. 539 of the records and attachments at pp. 819 and 820.
[61] Email located at p. 539 of the records and attachments at pp. 819 and 820.
[62] *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at para. 111; Order F18-18, 2018 BCIPC 21 at paras. 36 and 39.
[63] Information withheld on p. 717 of the records.
[64] *Bank of Montreal v. Tortora*, 2010 BCSC 1430 at paras. 12-13 and, see for example, Order F17-23, 2017 BCIPC 24 at paras. 43-44.

for example, requiring the disclosure of material that would reveal the precise subject of the communication."[65] As a result, I accept that disclosing this information may reveal the lawyers' confidential legal advice, including the precise subject matter of the legal advice. I, therefore, conclude the Ministry may withhold this information under s. 14.

Section 15(1)(l) – disclosure harmful to a computer system

[76] The Ministry applied s. 15(1)(l) to a small amount of the information at issue in this inquiry, specifically usernames. Section 15(1)(l) of FIPPA provides that a public body must refuse to disclose information if the disclosure "could reasonably be expected to harm the security of any property or system, including a building, a vehicle, a computer system or a communications system."

[77] The standard of proof applicable to harms-based exceptions like s. 15(1)(l) is whether disclosure of the information could reasonably be expected to cause the specific harm. The Supreme Court of Canada has described this standard as "a reasonable expectation of probable harm" and "a middle ground between that which is probable and that which is merely possible."[66]

[78] There needs to be a reasonable basis for believing the harm will result and the standard does not require a demonstration that harm is probable.[67] The public body need not show on a balance of probabilities that the harm will occur if the information is disclosed, but it must demonstrate that disclosure will result in a risk of harm that is well beyond the merely possible or speculative.[68]

[79] The determination of whether the standard of proof has been met is contextual, and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and the "inherent probabilities or improbabilities or the seriousness of the allegations or consequences."[69] Previous OIPC orders have said general speculative or subjective evidence will not suffice.[70]

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[65] *Canada (Justice) v. Blank*, 2007 FCA 87 at para. 13, quoted in Ministry's initial submission at para. 75.
[66] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54, citing *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at paras. 197 and 199.
[67] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at para. 59 and *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 (CanLII) at para. 93, cases also cited in Ministry's initial submission at paras. 79-18.
[68] *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 206.
[69] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)***,** 2014 SCC 31 at para. 54.
[70] For example, Order F08-03, 2008 CanLII 13321 (BC IPC) at para. 27.

[80] Further, it is the release of the information itself which must give rise to a reasonable expectation of harm.[71] The public body must prove there is a clear and direct connection between the disclosure of the specific information at issue and the alleged harm.[72]

Parties' position on s. 15(1)(l)

[81] The Ministry explains that the government relies on a computer network to operate its programs and services.[73] This computer network consists of interconnected computers and servers that contain computer programs and store data. To ensure that the only individuals who have access to sensitive information are the ones who need it, every government employee and contractor must have a unique username and password to log into government systems.[74] It says the government uses an Internal Directory and Authentication Service (commonly known as IDIR) to authenticate users' identities when they log onto the government's computer network to ensure their access is legitimate.

[82] The Ministry applied s. 15(1)(l) to information that reveals the IDIR usernames of several Ministry employees.[75] It is also applied s. 15(1)(l) to the IDIR username of a "system account", which is defined by the Ministry as an account used by a system to talk to other systems without employee intervention or to perform certain tasks (e.g., printers or servers).[76] The Ministry says disclosure of the information at issue could reasonably be expected to harm the security of its computer system.

[83] The Ministry submits that controlling access to government systems is fundamental to ensuring that only authorized individuals can access government's online resources and information.[77] The Ministry says the information in its databases is particularly sensitive and requires robust security arrangements. It says this information includes the personal information of children, parents and foster parents who are involved with child protection matters, as well as a description of the circumstances that lead to the removal or supervision of children by the Ministry and the "particular special or extraordinary

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[71] *British Columbia (Minister of Citizens' Services) v. British Columbia (Information and Privacy Commissioner),* 2012 BCSC 875 at para. 43.
[72] *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at paras. 197 and 219. Order F08-03, 2008 CanLII 13321 (BC IPC) at para. 27.
[73] Affidavit of Chief Information Security Officer at para. 4.
[74] Ministry's submission dated January 15, 2020 at para. 84, quoting an August 2019 report by the Office of the Auditor General titled, *The BC Government's Internal Directory Account Management: An Independent Audit Report*.
[75] The Ministry applied s.15(1)(l) to a particular IDIR username on p. 694 of the records, but only applied s. 22 to the same information as it appears on p. 693 of the records. I have proceeded on the basis the Ministry meant to apply s. 15(1)(l) to the IDIR username on p. 693 of the records.
[76] Affidavit of Chief Information Security Officer at para. 7.
[77] Ministry's submission dated January 15, 2020 at para. 84.

needs of parents and/or children that have come into contact with [the Ministry]."[78]

[84] In support of its position, the Ministry provided an affidavit from the province's Chief Information Security Officer (Officer). The Officer says the IDIR usernames are not publicly available and the government treats IDIR usernames as confidential for security reasons as the username forms half the credentials required to authenticate an individual's identity. The Officer says IDIR usernames are harder to guess because they are not all the same length and do not follow a standard combination of letters from someone's name. The Officer explains that although IDIR usernames may be based on a person's name, the actual ID is a unique combination of letters derived from a person's first and last name.

[85] The Ministry believes the disclosure of the IDIR usernames would create a real risk of unauthorized individuals potentially accessing the government's computer system. The Officer attests to the fact that there are "presently an average of 308 million cyberattacks on the government network and servers each day."[79] He explains there are so many attempts to hack the computer system because it contains information, including personal information, which is very valuable to hackers. The Officer says personal information has value in the underground market and may be purchased or used for identity theft, fraud or other illicit purposes.

[86] The Officer believes that disclosing IDIR usernames would increase the risk of unauthorized access to the government's computer system. He says that "it is a fundamental and widely accepted principle of system security that the less system information an attacker has about a system, the harder it will be for them to attack or otherwise compromise the security of a system."[80] The Officer explains that an IDIR username could be used by an individual for the purpose of initiating social engineering attacks such as phishing by pretending to be a legitimate user and extracting valuable or confidential information such as passwords from authorized users, including help desk employees.

[87] The Officer says hackers could also directly target and attack the government's computer system if they had an IDIR username. He says guessing both the IDIR username and the password is more difficult than guessing the password alone. The Officer believes users often rely on the same passwords for different applications which makes guessing passwords easier and increases the necessity to keep usernames secure.

[88] The applicants did not respond directly to the Ministry's submissions and evidence regarding the information withheld under s. 15(1)(l).

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[78] Ministry's submission dated January 15, 2020 at para. 86.
[79] Ministry's submission dated January 15, 2020 at para. 87 and Officer's affidavit at para. 12.
[80] Officer's affidavit at para. 15.

Analysis and findings on s. 15(1)(l)

[89] I accept that the government's computer network which consists of interconnected computers and servers qualifies as a "computer system" under s. 15(1)(l). Previous OIPC orders have reached the same conclusion.[81] However, for the reasons to follow, I am not satisfied that the disclosure of the Ministry IDIR usernames at issue here could reasonably be expected to threaten the security of the government's computer system.

[90] The Ministry submits that disclosing the IDIR usernames would increase the chance of a successful attack on the government's computer system for two reasons: (1) hackers could use the information to pose as a legitimate user to gain access to confidential information such as passwords; and (2) it would provide hackers with less information to guess at when they attempt to directly login into the government's computer system. Therefore, the alleged harm at issue here is the unauthorized access of the Province's computer system by hackers.

[91] The Ministry believes that disclosing the Ministry IDIR usernames at issue increases the risk of someone gaining unauthorized access to the government's computer system. However, it is not reasonable to assume there are no security measures or protocols in place to detect or prevent unauthorized access. The Ministry's submission that the information at stake is sensitive strongly suggests that the Province's security system would be set up to prevent unauthorized access.[82] However, the Ministry does not discuss what security measures are in place to defend against any attempts at unauthorized access to the government's computer system or the likelihood those measures would be inadequate to address its security concerns.

[92] Given the sensitive personal information stored in government databases, it is not credible to believe that the Province's computer system is so defenceless that it would allow hackers to endlessly guess at login credentials or there would be no countermeasures to phishing attacks. Instead, past OIPC orders indicate the government is aware of these security risks and threats and have security measures and protocols in place to address potential hacker attacks such as password complexity requirements, regularly scheduled password changes and temporary account lockouts after a set number of unsuccessful login attempts.[83]

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[81] Order F15-47, 2015 BCIPC 78 (CanLII) at para. 18. Order F18-38, 2018 BCIPC 41 (CanLII) at paras. 55-59.
[82] For a similar conclusion, see Order F10-39, 2010 CanLII 77325 (BC IPC) at para. 15, upheld on judicial review at *British Columbia (Minister of Citizens' Services) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875 (CanLII)
[83] Order F15-72, 2015 BCIPC 78 at para. 19. Order F10-39, 2010 CanLII 77325 (BC IPC) at paras. 15 and 17.

[93] The Ministry also did not provide sufficient explanation or evidence to establish a direct connection between the disclosure of the information at issue and the alleged threat. The Ministry's affidavit evidence is about harm to government-wide computer systems and the general tactics of hackers. General evidence regarding the "*modus operandi* of hackers" is not sufficient to establish a direct connection between disclosure of the information at issue and the alleged threat.[84] There must be something more that ties a special risk to a particular context so as to meet the "reasonable expectation" test.[85]

[94] The Ministry does not sufficiently explain how a hacker might use the Ministry IDIR usernames at issue here to gain unauthorized access to the government-wide computer system. The Ministry cites an Auditor General report that reviews and investigates the government's management of IDIR accounts.[86] The report suggests that when an account is set up there are restrictions placed on that account so access is limited to those authorized to use or work with the information.[87] In other words, an individual's IDIR username can only typically access certain databases and applications and not the entire government computer system.

[95] The Auditor General's report also indicates the reasonable expectation of probable harm to the government's computer system from external sources such as hackers may be minimal or merely possible. The report suggests that the most likely threat of unauthorized access may originate from internal threats such as employee IDIR accounts that have not been deactivated or properly updated.[88] The concern is that users that should no longer have access, such as former employees or contractors, may still have access to government computer resources and information that could result in unauthorized access and sensitive information being used for fraudulent activities. It is important to note that these individuals would already know the correct IDIR login credentials to gain access to internal government databases.

[96] I am aware of one OIPC order where an adjudicator concluded the disclosure of similar information to what is at issue here would help potential computer hackers attack or threaten the security of the government's computer system. In Order F18-38, Adjudicator Cameron determined the same public body in this inquiry was authorized to withhold the IDIR usernames of several employees under s. 15(1)(l). She reached this conclusion because she found it reasonable to assume that an unauthorized individual seeking to gain access to Ministry records, who had also been given the appropriate internet pathways to

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[84] Order F10-25, 2010 BCIPC 36 (CanLII) at para. 18.
[85] Order F10-25, 2010 BCIPC 36 (CanLII) at para. 20.
[86] August 2019 report by the Office of the Auditor General titled, *The BC Government's Internal Directory Account Management: An Independent Audit Report* [Auditor General report].
[87] Auditor General report at p. 17-19.
[88] For example, Auditor General report at p. 12.

portals where Ministry records are kept, may have an easier time accessing the records if they already have access to a user ID.[89]

[97] In the present case, there is no additional information released to the applicants in the responsive records that would serve as a roadmap to access government systems or Ministry records. The information at issue here is isolated to the IDIR usernames. There are no internet pathways to portals where Ministry records are kept as was the case in Order F18-38. As a result, the circumstances of this inquiry are different from Order F18-38 and I do not find myself bound to reach the same conclusion.

[98] For the reasons given above, I find the Ministry has not provided sufficient explanation or evidence to demonstrate that disclosure will result in a risk of harm that is well beyond the merely possible or speculative or that there is a direct connection between the disclosure of the information at issue and the alleged threat to the government's computer system. As a result, I conclude the Ministry is not authorized to withhold the information at issue under s. 15(1)(l).[90]

[99] My conclusions and findings are consistent with previous OIPC orders that have considered comparable information to what is at issue here (i.e., user login IDs) and found that s. 15(1)(l) did not apply.[91] The public bodies in those cases made similar assertions and arguments in their submissions and affidavit evidence about the alleged harm, specifically hackers using social engineering techniques such as phishing attacks and guessing at login credentials to directly attack the government's computer system. Those adjudicators similarly found the alleged threat not credible, that the reasonable expectation of probable harm was minimal or that the public body failed to establish a direct connection between the disclosure of the information at issue and the alleged threat.

Section 77(1) of the *Act* - protecting the identity of a person

[100] Section 77(1) protects the identity of a person who has made a child protection report to the Director under s. 14 of the *Act*. It says:

> 77(1) A director must refuse to disclose information in a record to a person who has a right of access to the record under the *Freedom of Information and Protection of Privacy Act* if the disclosure could reasonably be expected to reveal the identity of a person who has made a report under section 14 of this Act and who has not consented to the disclosure.

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[89] Order F18-38, 2018 BCIPC 41 at para. 59.
[90] The Ministry did not apply another access exception to this information, but I will later consider this information under s. 22(1) for reasons set out in this order.
[91] Order F10-39, 2010 CanLII 77325 (BC IPC); Order F15-72, 2015 BCIPC 78; Order F14-12, 2014 BCIPC 15 (CanLII); Order F10-25, 2010 BCIPC 36 (CanLII).

[101] Section 14 sets out the duty imposed on any person who has reason to believe that a child needs protection to make a report to the Director or their delegate. Section 13 of the *Act* sets out a list of circumstances in which a child is considered to be in need of protection under s. 14. On receiving a report under s. 14, section 16 requires the Director to either promptly refer the report to another director for assessment or assess the information in the report.

[102] Before considering whether ss. 77(1) applies to the information withheld by the Ministry, there is an interpretive issue that has come up around the issue of consent under s. 77(1). A recent court decision denied a sealing order partly on the basis the Province did not provide evidence as to whether certain individuals consented to their identities being disclosed under s. 77(1).[92] The Ministry disagrees with that approach and I will address those arguments below.

The issue of consent under s. 77(1)

[103] In *IAL v. YC*, the Province applied for a sealing order for documents that identify individuals who made a s. 14 child protection report to the Ministry.[93] The Province argued, among other things, that s. 77 applied to protect the identity of those individuals. Justice Tindale denied the sealing order because there was no evidence to establish that an individual made a report pursuant to s. 14 of the *Act*, or evidence about "the nature of the reports" and whether the individuals do not consent to their identities being disclosed.[94]

[104] Similarly, in this case, the Ministry did not initially discuss or provide evidence to establish whether the individuals concerned do not consent to the disclosure of their identity to the applicants. Given the privacy interests at stake, I offered the Ministry an opportunity to provide further evidence to support its application of s. 77(1). The Ministry provided further evidence, including *in camera* evidence, which establishes certain individuals do not consent to their identities being disclosed to the applicants.

[105] For other individuals, the Ministry was unable to verify whether those individuals consent or not. However, the Ministry argues that an interpretation of s. 77(1) which requires it to contact individuals to determine whether they consent is inconsistent with how previous OIPC orders have applied s. 77(1). The Ministry also says the interpretation of s. 77(1) was not at issue or argued in *IAL v. YC* and Justice Tindale's "comments have no relevance to the task of interpreting the meaning or requirements of s. 77(1)."[95]

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[92] *IAL v. YC*, 2019 BCSC 1211 (CanLII) at paras. 28-35.
[93] 2019 BCSC 1211 (CanLII).
[94] *IAL v. YC*, 2019 BCSC 1211 (CanLII) at paras. 28-35.
[95] Ministry's submission dated April 15, 2021 at para. 8.

[106] I agree with the Ministry that Justice Tindale's understanding of s. 77(1) was not challenged by the Province in that court decision and there was no clear statutory interpretation regarding the legal requirements of s. 77(1). On the other hand, the Ministry has challenged my reference to that court decision and it has offered an alternative interpretation of s. 77(1), which I will consider below. I also note that Justice Tindale's decision follows the latest OIPC order issued on s. 77(1).[96] Therefore, no previous OIPC decision has considered the interpretation of s. 77(1) and the issue of consent in light of Justice Tindale's decision. As a result, I find it appropriate and necessary to do so now.

Parties' position on the interpretation of s. 77(1)

[107] The Ministry submits that the modern principles of statutory interpretation requires that the words of a statute be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."[97] It also notes that "an administrative decision maker's task when interpreting legislation, 'is to interpret the contested provision in a manner consistent with the text, context and purpose, applying its particular insight into the statutory scheme at issue.'"[98]

[108] The Ministry submits that most of the language in s. 77(1) is clear, but the only potential ambiguity is the phrase "and who has not consented to the disclosure" in s. 77(1). The Ministry says, and I agree, that there are two possible interpretations of s. 77(1) and the meaning of those words. One interpretation is that the director must withhold information under s. 77(1), that could reasonably be expected to identify an individual who made a s. 14 child protection report, only where there is evidence the individual who made the s. 14 child protection report *does not consent* to the disclosure. The second interpretation is that the director must withhold information under s. 77(1), that could reasonably be expected to identify an individual who made a s. 14 child protection report, *unless* the director receives the individual's consent to disclose their identity.

[109] The Ministry rejects the first interpretation on the issue of consent under s. 77(1) because it believes the identities of "reporters" would be unprotected and would render the legislation unworkable and harmful to child protection in the province. In support of its position, the Ministry provided an affidavit from the deputy director of child welfare (deputy director) who finds it unworkable to ask a person making a child protection report if they would consent, at that time, to the disclosure of their identity in response to a future access request. The deputy

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[96] Order F18-38, 2018 BCIPC 41.
[97] Ministry's submission dated April 15, 2021 at para. 9, quoting *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC) at para. 21.
[98] Ministry's submission dated April 15, 2021 at para. 12, quoting *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 121.

director contends that the Ministry "could not reasonably, or in good faith, rely on their response indefinitely or for any access request."[99]

[110] In terms of harm, the Ministry submits that this interpretation would be harmful because it would result in the disclosure of an individual's identity when the Ministry is unable to confirm whether that individual consents to the disclosure. The Ministry also believes it would breach confidentiality and place some individuals at risk where that individual lives with the person they are reporting on, including "children, parents, foster parents and relatives [who] make up a significant proportion of reporters."[100]

[111] The second interpretation, and the one favoured by the Ministry, is that the director must withhold information under s. 77(1), that could reasonably be expected to identify an individual who made a s. 14 child protection report, *unless* the director receives the individual's consent to disclose their identity. The Ministry contends that, in the absence of consent, it must withhold information which might identify an individual who made a s. 14 child protection report.

[112] The Ministry says the welfare of children is the paramount consideration of the legislation and the provisions which mandate and enforce the reporting of child protection concerns aim to address the problem of under-reporting.[101] The Ministry underscores the seriousness of the circumstances in which a child may need protection, which includes physical harm and sexual abuse by the child's parent. It states that a significant number of child abuse cases would go unreported if there was no mandatory reporting of child protection concerns. The deputy director says the ability to offer confidentiality or anonymity to people who make child protection reports is a critical aspect of the child protection scheme.[102]

[113] The Ministry submits that, when read in context, the purpose of s. 77(1) must be to encourage child protection reports by removing the risk that the Ministry would identify reporters through access requests under FIPPA. The Ministry submits that the consent provision in s. 77(1) is to provide individuals with control over whether they disclose their identities and to whom in the context of an access request. The Ministry also argues that this interpretation of s. 77(1) values the protection of children over an applicant's right to access information.[103]

[114] The applicants submit the child protection system is flawed because "there is nothing evident that ensures that the 'reporters' are authentic, not being

[99] Deputy Director's affidavit at para. 18.
[100] Ministry's submission dated April 15, 2021 at para. 49.
[101] Ministry's submission dated April 15, 2021 at paras. 22-27.
[102] Director's affidavit at para. 32.
[103] Ministry's submission dated April 15, 2021 at paras. 39-40.

influenced by potential nefarious individuals, and that there is not collusion."[104] The applicants question the lack of protection given to children and their families "from unwarranted and baseless reports."[105]

[115] In response, the Ministry says the applicants' submission on this matter is not relevant or responsive to the interpretation of s. 77(1) and the issue of consent.

Analysis and conclusions on the interpretation of s. 77(1)

[116] I agree with the Ministry that s. 77(1) must be interpreted according to the modern rule of statutory interpretation.[106] This approach requires that I pay attention to the scheme of the Act, its object or the intention of the legislature and the context of the words at issue.[107] In other words, the interpretation of s. 77(1) must be made according to a textual, contextual and purposive analysis to find a meaning that is harmonious with the *Act* as a whole.

[117] The Ministry's submission assists me in understanding the scheme and object of the *Act*. Section 2 of the *Act* confirms that the welfare of children is the paramount consideration of the legislation. It states the *Act* must be interpreted and administered so that the safety and well-being of children are the paramount considerations and in accordance with several specified principles including the principle that "children are entitled to be protected from abuse, neglect and harm or threat of harm."

[118] It is a well-established principle of statutory interpretation that the legislature does not intend to produce absurd consequences, which includes interpretations that are incompatible with other provisions or that defeat the purpose of a statute.[108] Considering this principle, an interpretation of s. 77(1) that promotes the safety and well-being of children by encouraging people to make child protection reports is favoured over one that does not.

[119] Under the first possible interpretation, s. 77(1) would only apply where there is evidence the individual *does not consent* to the disclosure of their identity. If the Ministry were unable to confirm the individual does not consent to the disclosure, as occurred for some individuals in this case, then there is a risk that the individual's identity would be disclosed. This risk of disclosure may discourage individuals, who value confidentiality, from making a s. 14 child protection report, even though they are legally obligated to and may face monetary fines or imprisonment for not doing so.

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[104] Applicant's submission dated May 10, 2021 at p. 9.
[105] Applicant's submission dated May 10, 2021 at p. 9.
[106] *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC) at para. 21.
[107] *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC) at para. 23.
[108] *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC) at para. 27.

[120] The Ministry also says contacting some individuals, which may include children, could put them at risk of retaliation or harm familial relationships and friendships if it was discovered they made a child protection report. I accept that individuals who make a s. 14 report may include children. Therefore, I conclude that an interpretation of s. 77(1) that requires the Ministry to contact every individual who makes a s. 14 report every time there is an access request may cause harm to children or other individuals depending on the circumstances. As a result, I find the first interpretation of s. 77(1) is not reasonable because it would defeat the purpose of the *Act* to ensure the safety and well-being of children and to protect them from harm.

[121] I conclude that the second possible interpretation of s. 77(1), and the one favoured by the Ministry, is more harmonious with the *Act* as a whole and best protects the identity of a person who makes a s. 14 child protection report. This interpretation of s. 77(1) makes non-disclosure the default, thereby, ensuring a person's identity is not disclosed without their consent. This interpretation does not defeat the purpose of the *Act* or s. 77 because the director must withhold the relevant information if there is no evidence the individual consents to the disclosure of their identity in response to a FIPPA access request.

[122] It is a well-accepted principle of statutory interpretation that the legislature is presumed to avoid "superfluous or meaningless words" and that "every word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose."[109] Therefore, I have considered that this interpretation of s. 77(1) appears to render the consent clause under s. 77(1) unnecessary or meaningless. For instance, it will only be in limited circumstances that an access applicant would know the identity of an individual who made a s. 14 child protection report and, thus, to contact that individual to obtain their consent. Therefore, if there is no obligation on the Ministry to determine whether an individual consents to the disclosure of their identity, then it appears that the consent requirement under s. 77(1) is redundant or meaningless.

[123] However, the Ministry submits and I agree that access to information is not the purpose of the provision, but the aim and priority is to encourage the protection of children.[110] Furthermore, there may be limited circumstances where an access applicant can provide this proof of consent under s. 77(1) or where the Ministry comes across evidence that an individual does not object to the disclosure of their identity. In those rare circumstances, the consent requirement under s. 77(1) would serve a function and allow the identity of the individual to be

[109] *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 (CanLII) at para. 38, quoting *Sullivan on the Construction of Statutes*, 5th ed. Markham, Ont.: LexisNexis, 2008.at p. 210.
[110] Ministry's submission dated April 15, 2021 at paras. 39-40.

disclosed to an access applicant. As a result, I conclude the consent provision under s 77(1) does have a role to play and it is not superfluous or meaningless.

[124] Therefore, for all the reasons given, I conclude the proper interpretation of s. 77(1) is that the director must withhold information under s. 77(1), that could reasonably be expected to identify an individual who made a s. 14 child protection report, *unless* the director receives the individual's consent to disclose their identity. Applying this interpretation of s. 77(1), I will now consider whether the Ministry properly applied s. 77(1) to withhold information from the records.

Does s. 77(1) apply to the information at issue?

[125] The Ministry submits that it applied s. 77(1) to information which identifies people who reported concerns about the youth to the Ministry. The social worker identifies which records reveal the identity of an individual who made a report to the Ministry. The social worker explains, *in camera*, the overall content of each report and identifies the person who made the report.[111] The Ministry also identifies additional pages where information was withheld under s. 77(1).[112]

[126] The Ministry claims the disclosure of the information at issue could reveal the identity of these individuals on its own or in combination with information known to the applicants.[113] It believes the information withheld under s. 77(1) "is, for the most part, clear on its face that it identifies a reporter."[114] The Ministry explains that it may not be apparent that some of the withheld information identifies a reporter; however, the Ministry says the applicants could use their knowledge of the circumstances to identify the reporter as they were involved in the events leading to the youth being taken into the Director's care.

[127] For one set of records, the Ministry says it withheld the entire record because the applicants likely have copies of those pages.[115] This record is described in the table of records as "court forms." It believes the applicants could use their copy to identify the individual who made a report to the Ministry. The Ministry submits that it is required to withhold any s. 77(1) information in response to an access request and that it does not matter if the applicants already have a copy of these pages because "s. 77(1) does not involve the weighing of privacy concerns required by s. 22 of FIPPA or proof of harm."[116]

[128] The applicants did not provide any direct submissions in response to the Ministry's arguments and evidence on s. 77(1).

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[111] Affidavit of social worker at para. 36.
[112] Ministry's submission dated January 15, 2020 at para. 130.
[113] Information withheld on pp. 310-312, 397, 412, 465, 486, 649-651, 655-656, 656-657, 667, 668-669, 669-670, 732-733, 809, 812 of the records.
[114] Ministry's submission dated January 15, 2020 at para. 132.
[115] Record located at pp. 310-312 of the records.
[116] Ministry's submission dated January 15, 2020 at para. 134.

Analysis and conclusions on the application of s. 77(1)

[129] Based on my review of the relevant records, I am satisfied that some of the withheld information would reveal, either directly or indirectly, the identity of a person who made a s. 14 child protection report to the Ministry.[117] The disputed records include a Ministry employee's documentation of each s. 14 report that was made. The Ministry also provided an affidavit which reveals, *in camera*, that the Ministry is protecting the identity of five individuals who made such a report.[118] Some of the information withheld by the Ministry in the records reveals the identity of those individuals such as their names and job titles. There is no evidence that these individuals who made a s. 14 child protection report consented to the disclosure of their identities. Therefore, the Ministry is required to withhold this information under s. 77(1).

[130] I also accept that other information contains details that would otherwise reveal a person's identity based on information already known to the applicants.[119] Based on the applicants' submissions, I conclude the applicants already know the identity of some of these individuals since the applicants were directly involved in most of the relevant events or later learned of this information. However, I agree with the Ministry that s. 77(1) does not involve a weighing of privacy concerns or a consideration of the relevant circumstances as is the case with s. 22(1) of FIPPA. Section 77(1) imposes a mandatory obligation on the Ministry to refuse to disclose any identifying information in response to an access request, which I find the Ministry has done for this information.

[131] However, I find some of the withheld information does not reveal the identity of a person nor is it clear how some of the withheld information could reasonably be expected to allow the applicants to determine the identity of an individual who made a s. 14 child protection report. For instance, the Ministry is withholding certain information given during a phone call with a person who made a s. 14 child protection report, but this withheld information does not reveal the identity of the person who made the call.[120]

[132] Instead, the information which I find does not disclose the identity of a person who made a s. 14 report consists of information about the youth, the family's history, part of the reason for making a report, the names of other public bodies or the type of institution involved, or discusses reports and statements made by certain health professionals none of which appear to be a s. 14 child

[117] Information located on pp. 310-312, 486, 649, 650, 651, 655, 656, 657, 667, 668, 669, 732 and 733 of the records.
[118] Affidavit of J.C. dated April 1, 2021.
[119] For instance, pp. 310-312 and 667 of the records.
[120] Information located on pp. 733-734, 809 and 812 of the records.

protection report.[121] The Ministry does not sufficiently explain how the *identity of a person* who made a s. 14 child protection report could be revealed if this information is disclosed. As a result, I find this information does not meet the criteria set out in s. 77(1).[122]

Section 77(2)(b) – information supplied in confidence

[133] Turning now to s. 77(2)(b), the relevant provision reads:

> 77(2) A director may refuse to disclose information in a record to a person who has a right of access to the record under the *Freedom of Information and Protection of Privacy Act* if
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> …
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> (b) the information was supplied in confidence, during an assessment under section 16(2)(b.1) [family assessment] or an investigation under section 16(2)(c) [a child's need for protection], by a person who was not acting on behalf of or under the direction of a director.

[134] The Ministry submits, and I agree, that s. 77(2)(b) has the following requirements:[123]

1) The information must have been provided to the Ministry by a person who was not acting on behalf of or under a director;

2) The information must have been provided in the course of an assessment under s. 16(2)(b.1) or an investigation under s. 16(2)(c); and

3) The information must have been supplied in confidence.

[135] In order for s. 77(2)(b) to apply, there must be evidence that establishes all three of the above-noted requirements are satisfied.

Parties' position on s. 77(2)(b)

[136] The Ministry submits that it properly applied s. 77(2)(b) to information received from individuals external to the Ministry during an investigation or assessment under s. 16(2).[124] The social worker says the Ministry applied s. 77(2)(b) to information that was gathered or received in the course of

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[121] Information located on pp. 397, 412, 465, 649, 650, 656, 657, 668, 669, 670, 733, 809 and 812 of the records.
[122] I note the Ministry also applied s. 22(1) to some of this information so I will later consider whether s. 22 applies to that information.
[123] Ministry's submission dated January 15, 2020 at para. 137.
[124] Information withheld on pp. 484, 510-514, 516, 551-554, 636, 660-663, 665, and 734 of the records.

investigating the youth's need for protection, assessing the youth's safety and the family's need for services from the Ministry.[125] The Ministry says, in September 2017, it had to make an immediate decision to take the youth into its care, but the Ministry explains that its assessment under s. 16(2)(b.1) and its investigation under s. 16(2)(c) remained ongoing after that date.

[137] The social worker says the Ministry's assessment and investigation of the youth and the family required it to communicate with and interview individuals who had contact with the family and to gather relevant records about the youth, such as his medical or school records. The social worker explains that some of the information at issue includes their notes of interviews or phone calls with people involved in the youth's life. The social worker identifies, *in camera*, some of the individuals that they communicated with and the relevant records where that information was withheld.[126]

[138] In terms of confidentiality, the Ministry says "social workers who interview collateral sources in the context of an assessment or investigation under [the *Act*] provide assurances of confidentiality to the sources."[127] The Ministry also submits that "based on the context within which the s. 77(2)(b) information was gathered, and based on its sensitive content, it is reasonable to conclude that it was supplied in confidence."[128]

[139] The social worker confirms that it is common practice for Ministry social workers to advise individuals interviewed during an assessment or investigation that any information provided will be treated in a confidential manner. The social worker claims that "if it were not for such an assurance, it is likely that many third parties would refuse or be reluctant to provide [the Ministry] with child protection information, for fear of retaliation."[129] The social worker believes it is reasonable to assume that any person providing information to the Ministry "during such an interview understands that the Ministry is collecting such information on a confidential basis and is providing the information on a confidential basis."[130]

[140] The applicants did not provide any direct submissions in response to the Ministry's arguments and evidence on s. 77(2)(b).

Analysis and conclusions – s. 77(2)(b)

[141] I am satisfied that some of the withheld information would reveal information supplied in confidence, by a person who was not acting on behalf of

[125] Affidavit of social worker at para. 37.
[126] Social worker's affidavit at para. 42.
[127] Ministry's submission dated January 15, 2020 at para. 140.
[128] Ministry's submission dated January 15, 2020 at para. 141.
[129] Social worker's affidavit at para. 43.
[130] Social worker's affidavit at para. 44.

or under a director, during an assessment or investigation under s. 16(2). I can see that some of the withheld information consists of handwritten or typed notes of interviews or discussions that the social worker had with individuals during an assessment or investigation of the youth's need for protection and the family's need of services from the Ministry.[131] The Ministry's submissions and evidence assists me in understanding the context in which this information was collected or received and the individuals involved.

[142] However, some of the withheld information does not reveal that a "person" supplied confidential information to the Ministry, but instead is about the activities of the Ministry and another public body.[132] As well, some of the information at issue does not appear to be supplied in confidence given the non-sensitive nature of this information or the fact that it is already known to the applicants.[133] For instance, the Ministry does not explain how there can be an assumption of confidentiality over information regarding the social worker's interaction with another individual that occurred in the presence of one of the applicants.[134]

[143] The Ministry also withheld information that was supplied or observed by a Ministry employee or individuals acting on behalf or under a director, including where the social worker is recording her observations of the non-contentious actions of herself or other individuals.[135] The Ministry does not sufficiently explain how s. 77(2)(b) applies to this information or how these individuals are not "acting on behalf of or under a director." As a result, I find this withheld information does not meet the criteria set out in s. 77(2)(b).

Section 22 – unreasonable invasion of third party personal privacy

[144] Section 22 of FIPPA provides that a public body must refuse to disclose personal information the disclosure of which would unreasonably invade a third party's personal privacy. Numerous OIPC orders have considered the application of s. 22 and I will apply the same approach in this inquiry.

[145] As previously noted, I find the applicants did not establish they have the proper authority to act for the youth in requesting access to records containing his personal information. As a result, the applicants' request for records containing the youth's personal information is a request for third party personal information under FIPPA. This does not mean, however, that the relationship between the parties is irrelevant. The s. 22 analysis considers the impact of disclosing the personal information at issue in light of all relevant circumstances, which may include the relationship between the parties. Therefore, the applicants

[131] Information located on pp. 510-514, 516, 551-553, 660, 661, 662 and 663 of the records.
[132] Information located on pp. 484 and 636 of the records.
[133] Information located on pp. 513, 661, 662, 665 and 734 of the records.
[134] Information located on p. 662 of the records.
[135] Information located on pp. 660, 661, 662, 665 and 734 of the records.

have the burden of establishing that the youth's personal information could be disclosed to them without unreasonably invading his personal privacy.

[146] Turning now to what information will be considered under s. 22, as previously noted, the Ministry applied s. 22 to the same information that it withheld under ss. 77(1) or 77(2)(b) of the *Act*. For this particular information, I will only consider whether s. 22 applies to the information that I found the Ministry could not withhold under ss. 77(1) or 77(2)(b) of the *Act*.[136] It is not necessary for me to consider information I have already determined the Ministry is required or authorized to withhold under s. 77. Where s. 77 of the *Act* and s. 22(1) is applied to the same information, I find the proper approach is to first consider whether the information can be withheld under s. 77 of the *Act* and then consider whether s. 22(1) applies to any of the information that cannot be withheld under s. 77.

[147] As well, I found previously that s. 15(1)(l) (harm the security of a computer system) does not apply to several IDIR usernames withheld by the Ministry. Even though the Ministry did not apply s. 22(1) to this information, I am aware that previous OIPC orders have found that s. 22(1) applied to similar information such as an employee ID number.[137] Therefore, I will consider whether s. 22(1) applies to this information since s. 22(1) is a mandatory exception to access.

Personal information

[148] The first step in any s. 22 analysis is to determine if the information is personal information. The Ministry has the burden of proving the information at issue qualifies as personal information.[138] Personal information" is defined in FIPPA as "recorded information about an identifiable individual other than contact information."[139] Information is about an identifiable individual when it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.[140]

[149] The Ministry says it applied s. 22(1) to the personal information of several third parties, including personal information about the youth, people involved in the youth's life, Ministry staff and professionals not employed by the Ministry. The Ministry says some of the withheld information is somewhat abstract, but it submits this information reveals third party personal information when considered in context.[141] This is the full extent of the Ministry's submissions about this "somewhat abstract" information.

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[136] Information located on pp. 397, 412, 465, 484, 513, 636, 649, 650, 656, 657, 660, 661, 662, 665, 668, 669, 670, 733, 734, 809 and 812 of the records.
[137] For instance, Order F15-17, 2015 BCIPC 18 (CanLII) at para. 37.
[138] Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9–11.
[139] Schedule 1 of FIPPA.
[140] Order F16-36, 2016 BCIPC 40 (CanLII) at para. 17.
[141] The Ministry says this information is located on pp. 484, 817 and 818 of the records.

[150] I am satisfied some of the information withheld by the Ministry under s. 22(1) is the personal information of several third parties and it does not qualify as contact information. Most of this information is the youth's personal information, which consists of his health records, some financial and educational information, his interactions with other family members and information related to his child protection and custody proceedings. Some of this information is in the form of assessments, observations and opinions of the youth and other members of the family completed or conducted by Ministry employees, health professionals and other individuals involved in the youth's and his family's life.

[151] There is also third party information about other individuals, including Ministry employees, other public and private sector employees and people involved in the youth's life. For instance, I can see there are a number of IDIR usernames associated with several Ministry employees. These usernames are composed of a combination of letters derived from the Ministry employee's name. These usernames are a particular login identifier assigned to the employee; therefore, I am satisfied this information qualifies as the personal information of these individuals.[142]

[152] The Ministry also describes some of the withheld information as the personal information of the applicants that is also a third party's personal information or "inextricably intertwined with third party personal information."[143] It does not identify where this information is located in the records.

[153] Based on my review of the records, there is some information that qualifies as the personal information of the applicants. Some of this information is intertwined with third party personal information in the form of other people's descriptions of their discussions or encounters with the applicants, including the youth's recounting of family interactions. In other cases, the information is about the applicants in the form of their name, birthdate and personal contact information.[144] I will discuss this particular information further in the s. 22(4) analysis, but I find that it does qualify as personal information under s. 22(1).

[154] I do conclude, however, that the Ministry has withheld information under s. 22(1) that is not recorded information about an identifiable individual. This information consists of information on forms, information about the responsive records package and information located in emails and on fax cover pages and in the headers and footers of documents.[145] The Ministry does not explain how any

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[142] Information located on pp. 305, 306, 463, 464, 622, 682, 683, 684, 685, 686, 687, 688, 689, 692, 693, 694, 695, 696, 697, 698, 700, 701, 739, 740, 742, 744, 753, 754, 755, 756, 757, 758, 760, 761, 764, 765, 766, 767, 768, 769, 770, 771, 772, 780, 782, 784, 785 and 789.
[143] Ministry's submission dated January 15, 2020 at para. 96.
[144] For example, information located on p. 306 of the records.
[145] Information located on pp. 2, 5, 6, 7, 22, 23, 28, 31, 32, 33, 51, 52, 53, 55, 63, 82, 83, 90, 91, 100-103, 105-109, 111, 113, 118-123, 140, 170, 180, 183, 196, 197, 198-208, 215, 216, 218-228, 230, 231, 233-237, 239, 240, 242, 243, 245-252, 254, 255, 258, 259, 261-272, 274, 275, 277,

of this information is reasonably capable of identifying a particular individual on its own or when combined with other available sources of information.

[155] For instance, some of the information consists of page numbers, the date a document was printed, instructions on forms, public body names and addresses, blank entries for an individual's personal details such as a name and phone numbers not associated with any identifiable individual.[146] I, therefore, conclude this information may not be withheld under s. 22(1) since it does not qualify as personal information.

[156] I also conclude that s. 22(1) does not apply to an IDIR username that the Ministry says is assigned to a system account since this information would not be about an identifiable individual and, therefore, would not qualify as personal information under s. 22(1).[147] There are also some usernames that consist of a combination of letters that do not appear to be associated with a particular individual or bear any resemblance to a Ministry employee's name.[148] Therefore, I conclude this information does not qualify as personal information and find s. 22(1) does not apply.[149]

Contact information

[157] Contact information is defined in FIPPA as "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."[150] The Ministry submits that it has not withheld any contact information in the disputed records. I conclude, however, that the Ministry has withheld information under s. 22(1) that qualifies as contact information. This information includes the name, job title, phone number, office address or email address of several individuals, health professionals and Ministry employees.[151]

[158] I can see from the context in which this information appears in the records that these individuals were communicating in a professional or employment capacity or the information is for work contact purposes. For instance, the

278, 280-290, 292, 294-299, 383, 384, 385, 387-393, 395, 402-408, 410, 414, 419, 420, 421, 423, 430, 432, 433, 435, 436, 693, 699, 743, 759, 783, 791, 802, 806-808, 814, 816-818 of the records.

[146] For example, pp. 245-247, 253, 263, 408, 419-421, 432, 433, 699 of the records.

[147] Information located on pp. 305, 464, 682, 684, 688, 694, 696, 700, 740, 742, 744, 754, 756, 760, 765, 767, 771, 780, 782, and 785 of the records.

[148] Information located on pp. page 305, 463, 684, 696, 742, 756, 767 and 782 of the records.

[149] I also note that one IDIR username is withheld on pp. 305, 684, 696, 742, 756, 767, 782 of the records, but then disclosed on pp. 463, 682, 688, 694, 700, 740, 744, 754, 760, 765, 771, 780, and 785 of the records.

[150] Schedule 1 of FIPPA.

[151] Information located on pp. 55, 61, 88, 176, 330-333, 335, 384, 385, 386, 387, 388, 389, 390, 391, 393, 395, 408, 426, 791, and 816 of the records.

Ministry withheld a list of names, job titles and phone numbers for several individuals. This information is listed in a document so the individuals may be contacted for work-related purposes in connection with the youth.[152] I conclude this information qualifies as contact information so it is not personal information and the Ministry is not authorized to withhold it under s. 22.

[159] The Ministry submits that the context of an access request determines whether information qualifies as contact information or personal information, specifically it contends that "whether information will be considered 'contact information' will depend on the context in which the information is sought or disclosed."[153] The Ministry says the applicants are not seeking access to the records in any business capacity, considering the nature of the records and the applicants' involvement with the Ministry.[154] Therefore, the Ministry submits none of the withheld information is contact information.

[160] The Ministry cites Order F08-03 in support of its position; however, I do not find the analysis and findings in that order supports the Ministry's interpretation of "contact information" in FIPPA. In his reasons, former Commissioner Loukidelis said the following about determining whether information qualifies as "contact information" in FIPPA:

> …the purpose of this exclusion is to clarify that information relating to the ability to communicate with a person at that person's workplace, in a business capacity, is not personal information and that, accordingly, public bodies need not have s. 22 concerns regarding disclosure of such information when it is sought. Similarly, public bodies need not have s. 22 or Part 3 concerns with respect to publication of this information (for example, in an employee directory or on employee business cards). Whether information will be considered "contact information" will depend on the context in which the information is sought or disclosed. The context here is one where the applicant is not seeking access to the name, address or telephone number of an identifiable individual in any business capacity and so this type of information, where found in the records, is not "contact information" for FIPPA "personal information" definition purposes.[155] [Emphasis added].

[161] The Ministry says the applicants are not seeking the information in any "business capacity" so none of the withheld information qualifies as contact information. The Ministry seems to have taken the above-highlighted statements in F08-03 to mean that information is contact information only if the applicant is seeking the information for a business reason.

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[152] Information located on p. 176 of the records. The Ministry also disclosed this same information on pp. 178-179 of the records.
[153] Ministry's submission dated January 15, 2020 at para. 97, quoting Order F08-03, 2008 CanLII 13321 at para. 82.
[154] Ministry's submission dated January 15, 2020 at para. 98.
[155] Order F08-03, 2008 CanLII 13321 (BC IPC) at paras. 82-83.

[162] In my view, this interpretation of "contact information" ignores the wording of the definition in FIPPA which is about the information in the record itself and not about the access applicant's reasons for seeking access or whether the access applicant was acting in a personal or business capacity. Former Commissioner Loukidelis is also clear in his conclusions in Order F08-03 that work-related identifying information, in the record itself, of an individual acting in a professional or employment capacity such as a business telephone number or email must be disclosed to the applicant.[156]

[163] Furthermore, if it were followed, the Ministry's interpretation would result in the absurd consequence that none of the information in a responsive record would qualify as "contact information" when an applicant makes an access request in a personal capacity. In other words, the Ministry is saying only when an applicant seeks the information in a business capacity will the information qualify as contact information. However, there is nothing in my review of FIPPA that suggests the legislature intended the definition of "contact information" to apply so narrowly.

[164] The Ministry's position is also inconsistent with how previous OIPC orders have interpreted and applied what qualifies as contact information. Previous OIPC orders have considered the context in which the information appears *in the record* to assess whether the individuals in question intended the information to be used to contact them in their business or employment capacity, for business or work purposes or whether the information was provided in the ordinary course of conducting business or work.[157] For instance, a personal email address or cell phone number is not normally "information to enable an individual at a place of business to be contacted." However, this information may qualify as "contact information" under FIPPA if the person is using their personal email address or cell phone number to conduct business or to allow someone to contact them for business purposes. I find this is the proper approach to determining whether information qualifies as "contact information" under FIPPA.

Section 22(4) – disclosure not an unreasonable invasion

[165] The second step in the s. 22 analysis is to determine if the personal information falls into any of the types of information or circumstances listed in s. 22(4). If it does, then the disclosure of the personal information is not an unreasonable invasion of a third party's personal privacy and the information cannot be withheld under s. 22(1).

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[156] Order F08-03, 2008 CanLII 13321 (BC IPC) at para. 101.
[157] For example, Order F20-52, 2020 BCIPC 61 (CanLII) at paras. 22-29. Order F15-32, 2015 BCIPC 35 (CanLII) at para. 15. Order F14-45, 2014 BCIPC 48 (CanLII) at para. 41.

[166] Section 22(4)(a) is relevant for this inquiry. It states the disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the third party has, in writing, consented to or requested the disclosure. The Ministry confirms the applicants have consented, in writing, to the disclosure of their personal information to each other under s. 22(4)(a).[158] As a result, the Ministry says it has already disclosed any information which is exclusively the applicants' personal information. It contends that any remaining information contains other third parties' personal information and, therefore, s. 22(4)(a) does not apply.

[167] I can see the Ministry has properly disclosed information that qualifies as the applicants' personal information in accordance with s. 22(4)(a). However, I conclude the Ministry has not disclosed all of this information where it appears in the records. I find there is more information that consists of the applicants' personal information in the records, including their names, phone numbers and birthdates.[159] None of this information is inextricably intertwined with other third party personal information and can be easily severed and disclosed on its own in accordance with s. 4(2).[160] I, therefore, conclude s. 22(4)(a) applies to this information and the Ministry is not authorized to withhold it under s. 22.[161]

[168] The Ministry submits that none of the other s. 22(4) provisions apply. In particular, the Ministry says it considered whether s. 22(4)(e) applies to the information in dispute. Section 22(4)(e) provides that the disclosure of personal information about a public body employee's position, functions or remuneration is not an unreasonable invasion of that third party's personal privacy. This section applies to third-party identifying information that relates to a third party's job duties in the normal course of work-related activities, namely objective factual information about what the third party did or said in the course of discharging their job duties.[162] The Ministry acknowledges there is information about Ministry employees performing their job duties. However, it says s. 22(4)(e) does not apply to this information because it is "simultaneously" the son's information "or other third party's personal information."[163]

[169] Previous OIPC orders have held that a public body employee's name and actions that appear in the context of work-related activities and relate to their

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[158] Ministry's submission dated January 15, 2020 at para. 100.
[159] Information located on pp. 3, 4, 119, 403-404, 670, 685, 687, 693, 697, 699, 758, 759, 768, 770, 783, 784 of the records.
[160] Section 4(2) requires the Ministry to disclose any information that can reasonably be severed from information that is protected by a FIPPA exception to disclosure.
[161] I also note the Ministry has disclosed some of this same information elsewhere in the records. For instance, the Ministry withheld the applicants' birthdates on pages 670, 693 and 783, but then disclosed it in numerous places in the records, including pages 672 and 677 of the records.
[162] Order 01-53, 2001 CanLII 21607 at para. 40. Order F18-38, 2018 BCIPC 41 (CanLII) at para. 70.
[163] Ministry's submission dated January 15, 2020 at para. 103.

functions as a public body employee fall under s. 22(4)(e).[164] I find the records at issue contain objective, factual information about what some Ministry employees and other public body employees did in the normal course of carrying out their work functions. The Ministry withheld information that shows what certain public body employees said and did in the ordinary course of work-related activities related to the youth such as setting up meetings and processing the applicants' access request.[165] The withheld information is easily severable and includes a public body employee's name, signature, job title and place of employment. I conclude s. 22(4)(e) applies to this personal information and the Ministry is not authorized to withhold it under s. 22(1).

Section 22(3) – presumptions in favour of withholding

[170] The third step in the s. 22 analysis is to determine whether any of the presumptions in s. 22(3) apply. Section 22(3) creates a rebuttable presumption that the disclosure of personal information of certain kinds or in certain circumstances would be an unreasonable invasion of third party personal privacy.[166]

[171] The Ministry submits that disclosing the information at issue is presumed to be an unreasonable invasion of a third party's personal privacy because some of the information relates to a third party's medical, psychiatric and psychological diagnoses and care under s. 22(3)(a), the personal information was compiled in the course of a child protection investigation which it says falls under s. 22(3)(b), some of the information includes eligibility for social service benefits under s. 22(3)(c) and a third party's educational history under s. 22(3)(d). I will consider each of these presumptions below.

[172] The applicants did not make submissions about s. 22(3) or address the Ministry's arguments about the s. 22(3) presumptions that may apply.

Medical and psychiatric history, treatment and evaluation – s. 22(3)(a)

[173] Section 22(3)(a) states that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation. The Ministry says the records

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[164] Order 01-15, 2001 CanLII 21569 (BC IPC) at para. 35 and Order 04-20, 2004 CanLII 45530 at paras. 17-18. Order F18-51, 2018 BCIPC 55 (CanLII) at paras. 86-87, the decision about s. 22(4)(e) was upheld on judicial review at *British Columbia Hydro and Power Authority v British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 (CanLII) at paras. 70-71.
[165] Information located on p. 2, 118, 170, 217, 221-234, 236-246, 249-262, 268- 269, 270-281, 283-290, 330, 331 and 817 of the records. This information is not contact information because it was not provided for contact purposes.
[166] *B.C. Teachers' Federation, Nanaimo District Teachers' Association et al. v. Information and Privacy Commissioner (B.C.) et al*., 2006 BCSC 131 (CanLII) at para. 45.

contain a significant amount of information about the youth's medical, psychiatric and psychological diagnoses and care.

[174] I agree that the records do contain a large amount of information about the youth's medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation.[167] I can also see there is some information about another third party's medical, psychiatric or psychological history.[168] Therefore, the disclosure of all this information is presumed to be an unreasonable invasion of a third party's personal privacy under s. 22(3)(a).

Part of investigation into a possible violation of law – s. 22(3)(b)

[175] Section 22(3)(b) creates a rebuttable presumption against disclosure where the personal information was "compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation."

[176] In Order 01-12, former Commissioner Loukidelis concluded that, for the purposes of s. 22(3)(b), the term "law" in FIPPA refers to "(1) a statute or regulation enacted by, or under the statutory authority of, the Legislature, Parliament or another legislature, (2) where a penalty or sanction could be imposed for violation of that law."[169] I accept this definition of "law" for the purposes of s. 22(3)(b).

[177] The Ministry submits that s. 22(3)(b) applies to all of the information that it withheld under ss. 77(1) or 77(2)(b) of the *Act*. It submits that s. 22(3)(b) applies to any information compiled in the course of a child protection investigation. In support of its position, it cites three previous OIPC orders which it submits amounts to the OIPC accepting that child protection investigations under the *Act* meet the requirements of s. 22(3)(b).[170]

[178] The first question I must address is whether there is a possible violation of law, specifically what is the relevant law? In the present case, there is no evidence there was a possible violation of law. It is not clear what provision or offence under the *Act* the Ministry believes is possibly being violated or what other law is relevant in these circumstances.

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[167] For example, information located on pp. 6, 8, 9, 10, 11, 15, 16, 22, 24, 27, 28, 30, 31, 32, 33, 50, 51, 52, 53, 64-78, 82, 83, 86, 88, 89, 90, 100, 101, 102, 103, 105, 106, 107, 109, 111, 115, 124, 125, 126, 127, 130, 132-170, 172, 173, 175, 180, 184-189, 192, 194, 214, 327-328, 359, 365, 379-381, 383, 384, 385, 387, 388, 389, 390, 391, 392.
[168] Information located on p. 398, 403, 656 of the records.
[169] Order F01-03, 2001 CanLII 21566 (BC IPC) at para. 17.
[170] Order 00-03, 2000 CanLII 8520 (BC IPC); Order F06-06, 2006 CanLII 17222 (BC IPC) at paras. 25-26; Order F18-38, 2018 BCIPC 41 (CanLII) at paras. 74-77.

[179] The youth came into the Ministry's care and custody because the Ministry determined the applicants were unwilling or unable to care for the youth in accordance with s. 13(1)(h). If the Ministry is arguing that the law being violated is s. 13(1)(h) of the *Act*, then there are no offence provisions under the *Act* that results in sanctions or penalties for being unable or unwilling to care for a child and not making adequate provision for their care.

[180] Based on my review of the *Act*, I conclude that while it may be an offence under another statute to abuse, harm, neglect or threaten a child (e.g. under the *Criminal Code*), the *Act* does not impose any sanctions or penalties against a person who has allegedly caused a child to be in need of protection. The only offences that could result in fines or imprisonment under the *Act* are for failing to report, or falsely reporting, a child in need of protection under s. 14. There are also specific offences set out under s. 102 such as failing to produce a record under s. 65 or contravening an access order under ss. 55 and 56 or the improper disclosure of information under s. 75.

[181] As a result, it is not a violation of the *Act* to cause a child to be in need of protection and there are no offence provisions under the *Act* for doing so. Considering the entirety of the *Act*, its purpose is on ensuring the safety and well-being of a child, which includes removal of the child from a harmful situation or offering support services and assistance to the family, rather than punishing or penalizing any alleged wrongdoers.

[182] I accept that there may be circumstances where a child protection investigation results in an investigation into a possible violation of law, but that depends on the circumstances and facts of each case. For example, a child protection investigation may lead to the involvement of law enforcement and criminal charges against a person who has harmed, threatened or exploited a child. The presumption under s. 22(3)(b) may apply to any personal information compiled and identifiable as part of that law enforcement investigation. But, each case depends on its own facts and, contrary to the Ministry's position, I conclude there is no automatic or broad application of the presumption under s. 22(3)(b) to every child protection investigation under the *Act*. Therefore, without more, I do not find the presumption under s. 22(3)(b) applies to any of the information at issue.

Eligibility for social service benefits – s. 22(3)(c)

[183] Section 22(3)(c) creates a rebuttable presumption against disclosure where the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels. The Ministry submits that this presumption applies to some of the information in dispute and identifies where that information is located in the records.[171] In support of its

[171] Information located on pp. 294-299, 316, 317, 323-325, 330-331, 363, 806-808 of the records.

position, the Ministry submits that the term "social service benefits" includes both governmental and non-governmental subsidies and public health care coverage and funding. This is the full extent of the Ministry's submission on this matter.

[184] Previous OIPC orders have found that the term "social service benefits" includes any monetary and non-monetary benefits funded or sponsored by a federal, provincial or municipal government or a government agency.[172] For instance, the presumption under s. 22(3)(c) was found to apply to personal information related to a provincial child care subsidy, which is a monetary benefit that assists low income individuals with child care costs, and to the names of individuals who are appealing WorkSafeBC benefit decisions.[173]

[185] Considering those previous orders, I conclude the presumption applies to some of the withheld information since it consists of a monetary benefit provided by the province and a payment made to two third parties for a specific provincial subsidy in relation to the youth.[174] I also find the presumption applies to information that the Ministry describes as public health care coverage and funding.[175] I can see from the records that this information relates to the youth's eligibility for provincially-funded health care coverage and certain benefits.

[186] For the rest of the information at issue, the Ministry applied s. 22(3)(c) to a list of payments made to several third parties in relation to the youth.[176] The Ministry did not identify what these payments are for and it is not apparent from the records. Therefore, I am unable to determine whether these payments qualify as a "social service benefit" for the purposes of s. 22(3)(c).

[187] The Ministry has also withheld information that relates to the youth's eligibility to receive benefits provided by two private organizations.[177] The Ministry submits that the term "social service benefits" includes non-governmental subsidies. However, the Ministry did not identify any previous OIPC orders that applied s. 22(3)(c) to a benefit provided by a private organization and I am not aware of any legal authorities that support such a position. Therefore, without more, I am not satisfied that s. 22(3)(c) applies to this information.

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[172] Order No. 74-1995, 1995 CanLII 815 (BC IPC) at p. 26, quoting and adopting the definitions in the BC government's "*Freedom of Information and Protection of Privacy Act* Policy and Procedures Manual."
[173] Order F18-44, 2018 BCIPC 47 (CanLII) at paras. 32-34; Order F14-44, 2014 BCIPC 47 (CanLII) at para. 42.
[174] Information located on p. 336 and pp. 316-317 (appears again on p. 806) of the records.
[175] Information located on pp. 323-325, 330-331, and 363.
[176] Information located on pp. 806-808.
[177] Information located on pp. 294-299, 319-322, 815 of the records

Employment, occupational and educational history – s. 22(3)(d)

[188] Section 22(3)(d) creates a rebuttable presumption against disclosure where the personal information relates to the employment, occupational or educational history of a third party. The Ministry submits some of the withheld information relates to the youth's educational history and, therefore, s. 22(3)(d) applies.[178] I agree with the Ministry that some of the withheld information reveals the youth's educational history, including his activities, behaviours and performance at school. Therefore, I conclude the presumption under s. 22(3)(d) applies to that information.[179]

[189] I also conclude the presumption under s. 22(3)(d) applies to the IDIR usernames or logon IDs of several Ministry employees and other public body employees.[180] I can see that the usernames and IDs are a unique combination of letters derived from an employee's name. Previous OIPC orders have found that personal identifiers for an employee may form part of their employment history under s. 22(3)(d).[181] I agree with that conclusion. I find the presumption under s. 22(3)(d) applies to the IDIR username or logon ID of these employees since it is assigned to them and used by them as part of their employment. Therefore, I conclude this personal identifier is a part of their employment history and its disclosure is presumed to be an unreasonable invasion of third party personal privacy under s. 22(3)(d).

[190] The parties did not identify any other s. 22(3) presumptions that may apply in this case and I am satisfied that no other s. 22(3) presumptions are relevant.

Section 22(2) – relevant circumstances

[191] The final step in the s. 22 analysis is to consider the impact of disclosing the personal information at issue in light of all relevant circumstances. Section 22(2) requires a public body to consider the circumstances listed under ss. 22(2)(a) to 22(2)(i) and any other relevant circumstances.

[192] The Ministry submits that a relevant s. 22(2) circumstance is that most of the information was supplied in confidence in accordance with s. 22(2)(f) of FIPPA. It also submits there are two factors not identified under s. 22(2) that are relevant. The Ministry says most of the withheld information is sensitive personal information. It also argues that even though the applicants likely have some

[178] The Ministry notes some of that information is located on pp. 364, 370, 374 of the records.
[179] Information located on pp. 196-208, 300-303, 364, 369, 370, 374, 428-429, 603-604, 815 of the records.
[180] Information located on pp. 218-220, 305, 306, 463, 464, 622, 682-689, 692, 694, 695, 696, 697, 698, 700, 701, 739, 740, 742, 744, 753, 754, 755, 756, 757, 758, 760, 761, 764, 765, 766, 767, 768, 769, 770, 771, 772, 780, 782, 784, 785, 789 of the records.
[181] Order F14-41, 2014 BCIPC 44 (CanLII) at para. 46; Order F15-17, 2015 BCIPC 18 (CanLII) at para. 37 and Order 03-21, 2003 CanLII 49195 at paras. 25-26.

existing knowledge of the withheld information, this circumstance should not weigh in favour of disclosure.

[193] The applicants did not make any responsive submissions about s. 22(2) or address the Ministry's arguments and evidence. However, the applicants submit that they are seeking full access to the youth's records to know what happened with their son. They say full disclosure of their son's documents would assist them "in allowing for more comprehensive understanding of who [their] son is in terms of functioning and behaviours, so that [their] son can receive the most appropriate interventions and support that would benefit him."[182]

[194] I will consider all these circumstances below in my s. 22(2) analysis. I have also considered whether there are any other circumstances, including those listed under s. 22(2), that may apply. Based on my review of the withheld information, I find s. 22(2)(a) is a relevant circumstance and another relevant factor is the youth's perspective regarding the disclosure of his personal information to the applicants.

Subjecting a public body's activities to public scrutiny - s. 22(2)(a)

[195] One of the factors listed under s. 22(2) is s. 22(2)(a) which considers whether disclosing the third party's personal information is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny. Where disclosure of records would foster accountability of a public body, this may be a relevant circumstance that weighs in favour of disclosing the personal information at issue.

[196] I find there is some information in the records that would shed some light on the actions of the hospital in regards to their decision, in September 2017, to discharge the youth.[183] The hospital qualifies as a "public body" under FIPPA.[184] I am satisfied that disclosing this information would be useful or desirable for the purpose of allowing the public to scrutinize this public body's activities during the events in question, which eventually led to the youth's removal from his parent's custody and care. Therefore, I find s. 22(2)(a) is a factor that weighs heavily in favour of disclosing this information.

[182] Applicants' submission dated August 21, 2020.
[183] Information located on pp. 487, 488, 656 and 658 and only withheld under s. 22(1) of FIPPA.
[184] Under Schedule 1 of FIPPA, the definition of a "public body" includes "a local public body", which in turn is defined to include a "health care body" that includes "a hospital as defined in section 1 of the *Hospital Act*." This particular hospital qualifies as a "health care body" under FIPPA.

Supplied in confidence – s. 22(2)(f)

[197] The Ministry submits that the presumption under s. 22(2)(f) applies to all of the information that it has withheld under ss. 77(1) and 77(2)(b) of *Act*. The Ministry says it treats any information which may be subject to s. 77 as sensitive and highly confidential. It explains that Ministry social workers who gather such information provide explicit assurances of confidentiality to people who provide that information. The Ministry also submits that "the nature of the information in dispute, for example medical records and children's personal information, is sensitive and ordinarily provided confidentially."[185] It says the individuals who provide and receive such information do so in confidence.

[198] Based on my review of the records, including the information that I found could not be withheld under s. 77, I find some of the information at issue reveals information that was supplied in confidence by a third party to a Ministry employee or other public body employee.[186] This withheld information includes information provided directly by the youth to Ministry employees, other individuals or certain health professionals[187] and information that was given by certain individuals during interviews or discussions about the youth, the family or the family's need for supportive services.[188]

[199] Given the sensitive nature of this information and the personal details that it reveals, I am satisfied that the individuals providing the information intended for it to be kept confidential. For example, I can see there is some detailed personal information about a third party that was likely supplied in confidence by that third party to a Ministry employee considering it reveals intimate details about the third party and their life.[189] I, therefore, find this is a factor that weighs in favour of withholding the above-noted information.

[200] However, I conclude there is some information that the Ministry withheld under s. 77 of the *Act* that does not qualify as being supplied in confidence in accordance with s. 22(2)(f). Some of this information is not inherently confidential since it only reveals non-contentious or non-sensitive information about the youth, the family, other individuals or a Ministry employee's activities.[190] Other information was not likely supplied in confidence since it was openly shared with the applicants or there is no identifiable person who supplied the information.[191]

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[185] Ministry's submission dated January 15, 2020 at para. 114.
[186] Information located on pp. 40, 53, 54, 145-146, 360, 367, 368, 371, 397, 400, 410, 412, 483, 487, 488, 606, 607, 628, 629, 634, 636, 650, 662, 667, 670, 710, 733, 811, 814, 816 of the records.
[187] For example, information located on pp. 397, 412, 733 and 816 of the records.
[188] For example, information located on pp. 360, 397 and 410 of the records.
[189] Information located on p. 54 of the records.
[190] Information located on pp. 513, 649, 650, 656, 657, 660, 661, 662, 668, 669 of the records.
[191] Information located on pp. 465, 484, 650, 656, 657, 668, 669, 734, 809 of the records,

[201] As well, some information was supplied by the applicants to the Ministry.[192] Previous orders have found that s. 22(2)(f) "does not support withholding information supplied by an applicant because the applicant is the source of the information."[193] Furthermore, s. 22(2)(f) requires that the information be *supplied* in confidence and not generated by a Ministry employee.[194] Some of the information at issue was created, inputted or observed by a Ministry employee.[195] Therefore, I find this information was not supplied in confidence in accordance with s. 22(2)(f).

Sensitivity of the information

[202] Previous OIPC orders have considered the sensitivity of the personal information at issue and where the sensitivity of the information is high (e.g., medical or other intimate information), withholding the information should be favoured.[196] However, where the information is of a non-sensitive nature or that sensitivity is reduced by the circumstances, then this factor may weigh in favour of disclosure.[197]

[203] The Ministry says the records contain intimate details about the youth's life such as the circumstances that led to his removal by the Ministry and his special needs. The Ministry also says some of the withheld information reveals "interviews with third parties that reveals intimate details of their experiences with the [youth] and their opinions about others."[198] The Ministry submits "the sensitivity of the personal information is a factor which weighs heavily in favour of withholding much of the information in dispute."[199]

[204] As previously discussed, I find some of the withheld information reveals the medical and psychiatric history, treatment and evaluation of the youth and other individuals. This type of information is highly sensitive and this factor weighs against disclosure.

[205] From my review of the records, I can also see that there were interviews and correspondence with several third parties about the youth and the family.[200] There were also interviews and discussions directly with the son and other

[192] For example, information located on p. 812 of the records, which is also disclosed on p. 809 of the records.
[193] Order F15-29, 2015 BCIPC 32 (CanLII) at para. 42.
[194] Order F18-38, 2018 BCIPC 41 (CanLII) at para. 88.
[195] For example, information located on pp. 656, 657 and 662 of the records.
[196] Order F16-52, 2016 BCIPC 58 at para. 87.
[197] Order F16-52, 2016 BCIPC 58 at paras. 87-91 and 93.
[198] Ministry's submission dated January 15, 2020 at para. 115.
[199] Ministry's submission dated January 15, 2020 at para. 117.
[200] For example, information located on pp. 596, 606, 610, 611, 628, 629, 638, 639, 776 of the records.

members of the family.[201] Some of this information reveals intimate details about certain individuals and its sensitivity weighs against disclosure.

[206] However, there is some information in the records that is not intimate or sensitive. For instance, there are blank or non-sensitive medical forms and Ministry records related to the youth,[202] a list of attachments and an index for a Ministry file,[203] general information about meetings with family members or other individuals and their availability,[204] information about meetings and discussions that occurred between certain individuals about an obvious topic,[205] non-sensitive information about the youth and the family,[206] and factual information about events and the activities of Ministry employees and other individuals.[207] The non-sensitive nature of this information weighs in favour of its disclosure.

Applicants' existing knowledge of the information at issue

[207] Previous OIPC orders have found that it would not be an unreasonable invasion of personal privacy under s. 22 to disclose third party personal information already known to the applicant.[208] An applicant's knowledge of the personal information at issue may be a factor that weighs in favour of disclosure where there is evidence, or the circumstances indicate, that an access applicant likely knows or does know the information at issue.[209]

[208] The Ministry submits that the fact that the applicants' likely have some existing knowledge of the personal information which has been withheld is not a factor that supports disclosure. The Ministry says the applicants "may not know the particular information which has been withheld and it would be inappropriate to assume that they do."[210]

[209] In the present case, the Ministry has withheld information that I have no doubt is already known to the applicants such as their children's birthdates, age, gender and which individuals are part of their children's family network, including themselves.[211] Based on my review of the records and the applicants' submissions, I can clearly see that the applicants were actively involved in their

[201] For example, information located on pp. 434, 483, 488, 607, 634, 637, 659, 660, 661 and 710 of the records.
[202] Information located on pp. 4-5, 215, 462, 463, 646.
[203] Information located on pp. 817 and 818.
[204] Information located on pp. 30, 54.
[205] Information located on pp. 332, 333, 334, 335, 337, 338, 566, 586, 596, 659, 660
[206] Information located on pp. 171, 409, 411, 554, 612, 645 of the records.
[207] Information located on pp. 486, 487, 518, 574, 665, 666, 668, 669, 777, 814, 815.
[208] For example, Order F19-41, 2019 BCIPC 46 at paras. 79-80.
[209] For example, Order F17-05, 2017 BCIPC 6 (CanLII) at paras. 54-60, Order F15-29, 2015 BCIPC 32 (CanLII) at paras. 45-49.
[210] Ministry's submission dated January 15, 2020 at para. 118.
[211] For example, information located on pp. 305, 306, 685, 686, 687, 693, 696, 697, 698, 699, 742, 743, 756, 757, 758, 759, 767, 768, 769, 770, 782, 783, 784, 790 of the records.

children and other family member's lives and already know this information about their children, along with some of the other withheld information.

[210] For instance, the Ministry has withheld information that was clearly provided by the applicants or involved the applicants. This information includes forms that the applicants filled out for the youth that are signed by them, the names of health professionals that the applicants involved in the youth's care, the name of their children's school and teachers, and information about incidents that the applicants were directly involved in, including where the applicants reached out to the Ministry or other authorities for assistance with the youth.[212] I, therefore, find this is a factor that weighs in favour of disclosing some of the withheld information.

[211] Furthermore, based on information already disclosed in the records by the Ministry, it is clear that the applicants already know some of the s. 22(1) information that the Ministry is withholding. For instance, the Ministry withheld the youth's name, date of birth and personal health number and other identifying information in the records, but then disclosed this exact information elsewhere in the records.[213] The Ministry also withheld other third party personal information in the records such as the name of the youth's foster parent, doctors and school employees, but it then disclosed this same information elsewhere in the records.[214] It is unclear, and the Ministry does not explain, how disclosing all of this information a second time would unreasonably invade the personal privacy of these third parties. Therefore, I find this factor weighs in favour of disclosing some of the personal information in dispute.

The applicants' motives for requesting the youth's personal information

[212] An access applicant's motivation or purpose for wanting the personal information at issue may be a relevant circumstance that weighs in favour or against disclosure.[215] In Order F14-32, Adjudicator Alexander determined that the applicant's motives in requesting information about her deceased daughter in an attempt to find peace of mind and closure about her daughter's death strongly favoured disclosure.[216]

[213] In the present case, the applicants submit that they are seeking full access to the youth's records to know what happened and to change or improve the

[212] For example, information located on pp. 3, 37, 587 (598 and 599: examples of applicants reaching out to the Ministry), 633, 809 and 812 of the records.
[213] Information withheld on pp. 126, 127, 133, 134, 135, 136, but then disclosed on pp. 124, 125, 128, 129, 130, 131, 132, 137, 138, 139 of the records.
[214] Name of doctor withheld on pp. 22, 24, 27, 28, but then disclosed on pp. 25, 26. Name of foster parent withheld on p. 332, but then disclosed on p. 518. Names of school employee's withheld in body of email, but then disclosed in header of email.
[215] Order F14-32, 2014 BCIPC 35 (CanLII) at paras. 39-41.
[216] Order F14-32, 2014 BCIPC 35 (CanLII) at para. 41.

youth's current treatment and support. They say full disclosure of the youth's documents would assist them "in allowing for more comprehensive understanding of who [their] son is in terms of functioning and behaviours, so that [their] son can receive the most appropriate interventions and support that would benefit him."[217]

[214] In response, the Ministry says there is no doubt the applicants are seeking the information in dispute in good faith and with the best of intentions. It also acknowledges that the applicants have a sympathetic and understandable motive since the applicants are clearly upset about the circumstances leading to the youth being taken into care and want to understand what happened.[218]

[215] However, the Ministry submits there is no evidence that the youth's current treatment and support services are inappropriate or harmful and "even if there were problems with his supports, it is unclear how disclosure of the information in dispute would assist in changing or improving his current treatment regime."[219] Furthermore, the Ministry submits the applicants have not suggested that they have concerns with the youth's current arrangements which consists of "a number of medical professionals including a psychiatrist and psychologist as well as social workers."[220]

[216] I find the fact that the applicants' have some unanswered questions about what happened with the youth is a factor that weighs in favour of disclosure. As to whether any of the information at issue will shed some further light regarding the circumstances that led the removal of the youth, I find the applicants already know most of the relevant information as they were directly involved in the events or discovered this information in their pursuit of answers regarding the circumstances of the youth's removal from their custody and care.[221]

[217] However, as previously noted, I conclude there is some information that would shed light on the actions of the hospital in deciding to discharge the youth.[222] I discussed this information under s. 22(2)(a), which considers whether disclosure of the disputed personal information is desirable for subjecting a public body's activities to public scrutiny, and I have given that factor some weight under the s. 22 analysis.

[218] The applicants also say they want full disclosure of the youth's documents to ensure that the youth is receiving "the most appropriate interventions and support that would benefit him."[223] I find this is a legitimate purpose that weighs

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[217] Applicants' submission dated August 21, 2020.
[218] Ministry's submission dated September 17, 2020 at para. 7.
[219] Ministry's submission dated September 17, 2020 at paras. 5 and 6.
[220] Ministry's submission dated September 17, 2020 at para. 6.
[221] Applicants' submission dated May 7, 2021.
[222] Information located on pp. 487, 488, 656, 658 and 659 of the records.
[223] Applicants' submission dated August 21, 2020.

in favour of disclosure since the applicants have a direct interest, as the youth's parents, in ensuring that he is receiving the appropriate care and treatment. The Ministry submits there is no evidence that the youth's current treatment and support services are inappropriate or harmful. I make no conclusions about the quality of care the youth is receiving and whether he requires a change in treatment or support since that matter is best left to qualified health professionals. I have only considered that this purpose is a relevant circumstance under s. 22(2).

The youth's perspective

[219] I have considered whether there are any other circumstances that may apply and find the only other relevant circumstance is whether the youth would have any concerns about the disclosure of his personal information to the applicants. There is information in the responsive records that assists me with understanding the youth's perspective about the disclosure of his personal information.[224] Without revealing any of that information, I have taken his perspective into account.

Conclusion on s. 22(1)

[220] To summarize, I find some of the information at issue consists of "contact information" or the information is not about an identifiable individual. As a result, the Ministry is not authorized to withhold this information under s. 22(1) since it does not qualify as "personal information" under FIPPA.

[221] For the information that does qualify as "personal information", I conclude that some of this information falls under s. 22(4)(a) because the applicants have consented to the release of their personal information to each other. I also find s. 22(4)(e) applies to other information because it is about a number of third parties' functions as public body employees and only reveals what certain public body employees said and did in the ordinary course of work-related activities related to the youth. Under s. 22(4), the disclosure of this information is not an unreasonable invasion of third party personal privacy and the Ministry may not withhold that information under s. 22(1).

[222] As for the rest of the withheld information, I find that the presumptions against disclosure under ss. 22(3)(a), (c) and (d) apply to some of the personal information at issue since it consists of a third party's medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation or relates to a third party's eligibility for social service benefits and the determination of benefit levels or relates to a third party's educational or employment history.

[224] Information located on p. 814 of the records.

[223] There were no s. 22(3) presumptions applicable to the other withheld information. I also conclude the presumption under s. 22(3)(b) does not apply since there is no evidence that the personal information at issue was compiled and is identifiable as part of an investigation into a possible violation of law.

[224] Considering all the relevant circumstances, I find it would be an unreasonable invasion of a third party's personal privacy to disclose some of the information subject to a presumption under ss. 22(3)(a), (c) and (d), considering some of that information was supplied in confidence in accordance with s. 22(2)(f) or reveals the sensitive personal information of a number of third parties, including the youth. There were no relevant factors that would rebut the presumptions against disclosure for this information.

[225] However, for other information withheld by the Ministry, some of which is subject to the presumption against disclosure under s. 22(3)(a), I am satisfied that disclosing this information would not be an unreasonable invasion of a third party's personal privacy considering some of it is not sensitive, has already been disclosed to the applicants in the responsive records or this information is already known to the applicants.[225]

[226] In particular, I find there is information in the records that would reveal meaningful information related to the actions of the hospital in deciding to discharge the youth in September 2017.[226] I have considered that some of this information would also reveal sensitive personal information about the youth. However, I find the sensitivity associated with this information is reduced in the circumstances since the Ministry already disclosed this particular information elsewhere in the records provided to the applicants. Furthermore, I find this information would assist the applicants with understanding what happened with the youth and subject the hospital's actions during this event to public scrutiny. As a result, I conclude the Ministry may not withhold this information under s. 22(1).

CONCLUSION

[227] For the reasons given above, under s. 58 of FIPPA, I make the following orders:

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[225] Information located on pp. 3-8, 10, 11, 13, 15, 22-33, 37-39, 41-46, 48, 50-55, 62-64, 82, 83, 86, 87, 90, 91, 100-103, 105-109, 111, 113, 115, 118, 120-171, 173-180, 182-186, 190-196, 198, 209, 212, 214-291, 294-300, 305, 306, 319-335, 337, 338, 364, 378, 383-395, 402-412, 414, 415, 417-421, 423, 426, 427, 430, 432-436, 454, 462-465, 483, 484, 486, 509, 513, 518, 559, 571, 587, 593, 596, 619, 628, 629, 633, 635, 646, 649, 650, 652, 653, 656-662, 665, 666, 668, 669, 684-693, 696-699, 704, 713, 734, 735, 742, 743, 749, 756-759, 767-770, 774, 777, 782-784, 790, 791, 802, 806-809, 811, 812, 814-818 of the records.

[226] Information located on pp. 413, 467, 487, 488, 656 and 658, 659 and only withheld under s. 22(1) of FIPPA.

1. I confirm the Ministry's decision regarding the applicants lack of authority to act on behalf of the youth in exercising his access rights under s. 5(1)(b) of FIPPA, ss. 3(1)(a) and 3(2) of FIPPA's Regulation and s. 76 of the *Act*.

2. The Ministry is not authorized to refuse access to the information that it withheld under s. 15(1)(l) of FIPPA, but it is required to withhold some of this information under s. 22(1) of FIPPA in accordance with item 6 below.

3. I confirm the Ministry's decision to refuse access to the information withheld under s. 14 of FIPPA.

4. Subject to item 6 below, I confirm in part the Ministry's decision to refuse access to the information withheld under ss. 77(1) and 77(2)(b) of the *Act.*

5. Subject to item 6 below, I confirm in part the Ministry's decision to refuse access to the information withheld under s. 22(1) of FIPPA.

6. The Ministry is not authorized or required, by ss. 15(1)(l) and 22(1) of FIPPA or ss. 77(1) and 77(2)(b) of the *Act*, to withhold the information highlighted in a copy of the records that will accompany this order.

7. The Ministry must disclose to the applicants the information it is not authorized or required to withhold and it must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicants, along with a copy of the relevant records.

[228] Under s. 59 of FIPPA, the Ministry is required to give the applicants access to the information it is not authorized or required to withhold by September 20, 2021.

August 6, 2021

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

OIPC File No.: F18-73764