



Order F21-38

INTERIOR HEALTH AUTHORITY

Celia Francis
Adjudicator

August 23, 2021

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Summary: An applicant requested access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to her son's hospital file. The Interior Health Authority (IHA) disclosed much of the file, but withheld some information under s. 22(1) of FIPPA (unreasonable invasion of third-party privacy). The adjudicator found that the information related almost exclusively to third parties and confirmed that s. 22(1) applies to the information in dispute.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 4(2) and 22(1).

INTRODUCTION

[1] This case concerns an applicant's request for access to her son's medical records. In October 2018, the applicant made a request to the Interior Health Authority (IHA) under the *Freedom of Information and Protection of Privacy Act* (FIPPA), as her son's legal representative, for access to her adult son's medical records in the custody of a major hospital.

[2] The IHA disclosed some records in full in January 2019 and further records in severed form in February 2019. The IHA's second decision letter did not specify the exception it had applied to sever the records. However, the Investigator's Fact Report for this inquiry states that the IHA withheld the information under s. 22(1) of FIPPA (unreasonable invasion of third-party privacy).

[3] The applicant requested a review of the IHA's decision by the Office of the Information and Privacy Commissioner (OIPC) in March 2019. Mediation by the OIPC did not resolve the matter and it proceeded to inquiry. The OIPC received brief submissions from the applicant and the IHA.

ISSUE

[4] The issue to be decided in this inquiry is whether s. 22(1) of FIPPA requires the IHA to withhold the information in dispute.

[5] Under s. 57(2) of FIPPA, the applicant has the burden of proving that disclosure of the withheld information would not be an unreasonable invasion of third-party personal privacy.

DISCUSSION

Information in dispute

[6] The responsive records relate to the son's treatment while in hospital. The IHA disclosed much of the information. The information the IHA withheld under s. 22(1) is the information in dispute.

Unreasonable invasion of third-party personal privacy – s. 22(1)

[7] The approach to applying s. 22(1) of FIPPA has long been established. See, for example, Order F15-03, where the adjudicator said this:

Numerous orders have considered the approach to s. 22 of FIPPA, which states that a "public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy." This section only applies to "personal information" as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy.¹

[8] The IHA listed the steps in applying s. 22(1) and said it had determined that "disclosure of the information at issue would amount to an unreasonable

¹ Order F15-03, 2015 BCIPC 3 (CanLII), at para. 58.

invasion of another individual's (or individuals') personal privacy".² However, the IHA did not explain why it thought so.

[9] The applicant said that the hospital social worker should "be questioned regarding her practice of misinforming us of our right to records and information. That in itself warrants an inquiry."³ She did not explain why she thinks s. 22(1) does not apply here.

Is it personal information?

[10] FIPPA defines "personal information" as recorded information about an identifiable individual, other than contact information.⁴

[11] The information in dispute is about named individuals and is not contact information. It relates almost exclusively to individuals other than the applicant and the son, although a minor amount is the joint, intertwined personal information of the son or of the applicant and third parties. I find that it is all personal information.

Does s. 22(4) apply?

[12] Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. There is no basis for finding that s. 22(4) applies here. The personal information at issue does not, for example, relate to any third party's position, functions or remuneration as an officer, employee or member of a public body (s. 22(4)(e)).

Presumed unreasonable invasion of third-party privacy – s. 22(3)

[13] Section 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. The withheld information is about meetings and interactions among a number of individuals at the hospital. It does not fall squarely into any of the categories set out in s. 22(3).

Relevant circumstances – s. 22(2)

[14] Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing

² IHA's initial submission.

³ Applicant's response. The IHA told the applicant in its reply that she could take up her concerns about the social worker with its Patient Care Quality Office.

⁴ "Contact information" is defined in Schedule 1 of 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."

the personal information would be an unreasonable invasion of a third party's personal privacy.

[15] None of the circumstances listed in s. 22(2) applies here. For example, there is no indication that disclosure of the information in dispute is desirable for subjecting the IHA to public scrutiny (s. 22(2)(a)). There is also no indication that the information is inaccurate or unreliable (s. 22(2)(g)).

[16] However, the information in dispute concerns private meetings and interactions between hospital staff and individuals other than the applicant and the son. It includes sensitive accounts of these other individuals' views, personal feelings and domestic situations. In my view, these factors favour its withholding.

Conclusion on s. 22(1)

[17] I found above that the information in dispute is personal information and that ss. 22(3) and 22(4) do not apply. I also found that the listed circumstances in s. 22(2) do not apply. However, I also found that the fact that the personal information relates almost entirely to individuals other than the applicant and the son favours withholding the information, as does its sensitivity.

[18] The applicant has not met her burden of proof in this case. She did not explain why she should have access to the personal information of others and I am not persuaded that she should. I find that s. 22(1) applies to the information in dispute.

Severance

[19] Section 4(2) of FIPPA states that the right of access to a record does not extend to information excepted from disclosure under s. 22(1), among other sections, but if that information can reasonably be severed from a record an applicant has the right of access to the remainder of the record.

[20] The applicant and the son are mentioned briefly, once or twice in passing, in the information in dispute. However, this intertwined information appears in the context of the hospital staff's meetings and interactions with other individuals. It would not, in my view, be reasonable under s. 4(2) to sever the information about third-party individuals and disclose meaningful information to the applicant. The result would be meaningless, disconnected snippets of information.⁵

⁵ See Order F16-12, 2016 BCIPC 14 (CanLII) Order F10-08, 2010 BCIPC 12 (CanLII) and Order 03-16, 2003 CanLII 49186 (BC IPC) for similar findings.

CONCLUSION

[21] For the reasons given above, under s. 58 of FIPPA, I confirm that the IHA is required to withhold the information in dispute under s. 22(1).

August 23, 2021

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

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