



Order F22-29

## BC CORONERS SERVICE

Elizabeth Vranjkovic  
Adjudicator

June 6, 2022

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**Summary:** A journalist requested records related to the BCCS's investigation into the death of a third party. The BCCS initially withheld all of the records under s. 64(1) of the *Coroners Act*. The BCCS then disclosed the records but withheld some information in the records under s. 22(1) (unreasonable invasion of privacy) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator found that s. 22(1) applied to most of the information in dispute and ordered the BCCS to disclose the information it was not authorized to refuse to disclose under s. 22(1).

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2), 22(2)(a), 22(2)(b), 22(2)(f), 22(2)(h), 22(2)(i), 22(3)(a), 22(4), 22(4)(b), 54(b) and Schedule 1.

## INTRODUCTION

[1] The applicant, who is a journalist, submitted a request to the BC Coroners Service (BCCS) for access to records under the *Freedom of Information and Protection of Privacy Act* (FIPPA). Specifically, he requested the Coroner's Report into the death of a named individual (the Deceased), including contextual exhibits or appendices and correspondence to and from the Royal Canadian Mounted Police (RCMP), its agents or representatives, and the Mounted Police Professional Association of Canada (MPPAC), its agents or representatives.

[2] The BCCS denied access to the responsive records under s. 64(1) of the *Coroners Act*.<sup>1</sup> The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the BCCS's decision. Mediation by the OIPC did not resolve the matter and it proceeded to inquiry.

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<sup>1</sup> *Coroners Act*, SBC 2007, c 15.

[3] After the OIPC issued the notice of written inquiry, the BCCS withdrew its reliance on s. 64(1) of the *Coroners Act*. The BCCS disclosed the responsive records to the applicant, but withheld some information in the records under s. 22(1) (unreasonable invasion of a third party's personal privacy) of FIPPA. The OIPC referred the file back to mediation. Mediation did not resolve the issues and the applicant requested that the file be sent back to inquiry. Accordingly, the OIPC issued an amended notice of written inquiry (amended notice) stating that the issue to be determined is whether the BCCS is required by s. 22 of FIPPA to withhold information in the responsive records.

### ***Preliminary Matters***

#### *Notice, s. 54(b)*

[4] In his submission, the applicant says that it is necessary to pause these proceedings until the next of kin of the Deceased or her legal representative are invited to participate in this inquiry.<sup>2</sup>

[5] The BCCS responds that FIPPA allows an appropriate person to act on behalf of a deceased individual in relation to certain sections of FIPPA, none of which are relevant to this inquiry. The BCCS also says that on the face of the information at issue in this inquiry, the next of kin of the Deceased was not an appropriate person to invite to participate in the inquiry pursuant to s. 54(b) of FIPPA. As a result, the BCCS says that it is not necessary to pause the proceedings.<sup>3</sup>

[6] Section 54 states:

- 54 On receiving a request for a review, the commissioner must give a copy to
- (a) the head of the public body concerned, and
  - (b) any other person the commissioner considers appropriate.

[7] Although s. 54 states that notice is to be given “on receiving a request for a review,” notice may be given during mediation or at the inquiry stage if it becomes apparent that another party needs to be notified.<sup>4</sup>

[8] With respect to the exercise of discretion under s. 54(b), the BC Court of Appeal has held that the Commissioner “is to exercise his judgment as to who might reasonably be thought to be affected by his decision.” The Court characterized the decision of whether to give notice to other parties as “deciding

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<sup>2</sup> Applicant's submission at para. 9.

<sup>3</sup> BCCS's response submission at pp. 2-3.

<sup>4</sup> Order 01-52, [2001] B.C.I.P.C.D. No. 55 (letter decision), p. 11, online: <https://www.oipc.bc.ca/decisions/140>.

who ought to be found to have a sufficient interest in the inquiry proceedings to become a participant in the process.”<sup>5</sup>

[9] I have reviewed the information in dispute and, for the reasons that will be discussed below, I find that it is not the personal information of the Deceased or his next of kin. As a result, I find that the next of the kin of the Deceased would not reasonably be thought to be affected by my decision and that she does not have sufficient interest in the inquiry proceedings to be invited to participate in the process.

*Issues and allegations outside the scope of this inquiry*

[10] In his inquiry submission, the applicant raises issues not set out in the OIPC investigator’s amended fact report (fact report) and amended notice. Specifically, the applicant raises concerns about delay and the influence of a third party on the BCCS’s response to his access request.

[11] In response, the BCCS says that it would be inappropriate to add the adequacy of the search for records or delay as issues at this late stage in the inquiry.<sup>6</sup> The BCCS also characterizes some of the applicant’s submissions as allegations of impropriety and says that they should be disregarded due to their irrelevance to the issue in this inquiry.<sup>7</sup>

[12] As described in the amended notice received by both parties, the fact report sets out the issues for the inquiry. The amended notice also clearly states that parties may not add new issues into the inquiry without the OIPC’s prior consent.<sup>8</sup> Numerous previous orders have said that if a party was to add a new inquiry issue, it must request and receive permission from the OIPC to do so.<sup>9</sup> To allow otherwise would undermine the effectiveness of the mediation process which exists, in part, to assist the parties in identifying, defining and crystallizing the issues prior to inquiry.<sup>10</sup>

[13] The amended notice and the fact report do not identify delay or the influence of a third party on the search for records as inquiry issues. The applicant did not request permission to add these new issues or point to any

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<sup>5</sup> *Guide Outfitters Assoc. v British Columbia (Information and Privacy Commissioner)*, 2004 BCCA 210 at para. 29.

<sup>6</sup> BCCS’s response submission at pp. 1-2.

<sup>7</sup> *Ibid* at p. 1.

<sup>8</sup> Amended Notice of Written Inquiry, February 2, 2022.

<sup>9</sup> For example, see Order F12-07, 2012 BCIPC 10 at para. 6; Order F10-27, 2010 BCIPC 55 at para. 10; Decision F07-03, 2007 CanLII 30393 (BC IPC) at paras. 6-11; and Decision F08-02, 2008 CanLII 1647 (BC IPC).

<sup>10</sup> Order F15-15, 2015 BCIPC 16 at para. 10; Decision F08-02, 2008 CanLII 1647 (BC IPC) at paras. 28-30.

exceptional circumstances that would justify doing so at this stage. Therefore, I will not consider these issues.

## **ISSUE**

[14] At this inquiry, I must decide whether the BCCS is required to refuse to disclose the information in dispute under s. 22(1) of FIPPA. Section 57(2) of FIPPA places the burden on the applicant 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).<sup>11</sup>

## **DISCUSSION**

### ***Background***

[15] The BCCS is responsible for the inquiry into and investigation of sudden and unexpected, unexplained or unattended deaths in British Columbia. Coroners are responsible for ascertaining facts surrounding a death and must determine the identity of the deceased, and how, when, where and by what means the deceased died.<sup>12</sup>

[16] A Special Investigations Coroner (Coroner) conducted an investigation into the death of the Deceased. During his investigation, the Coroner obtained information from various individuals, including the president of the MPPAC (President) and an individual (Associate) who stated that he was "with" the MPPAC.<sup>13</sup>

[17] The Coroner determined that the MPPAC had possession or control of documents that he believed were relevant to his investigation of the Deceased's death. The Coroner served the President with an Order of the Coroner compelling the MPPAC to provide him with copies of those documents under s. 11(1)(e) of the *Coroners Act*. The President provided the Coroner with the relevant documents.<sup>14</sup>

### ***Information in Dispute***

[18] The responsive records consist of 34 pages, with approximately nine of those pages containing information in dispute. The records consist of emails between the President and the Coroner, emails between the Associate and the Coroner, the order to seize records issued by the Coroner, internal RCMP

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<sup>11</sup> Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 9-11.

<sup>12</sup> Affidavit of Special Investigations Coroner (Coroner) at paras. 4 and 7.

<sup>13</sup> Coroner's affidavit, at paras. 13, 15 and 16 and information located at pp. 1, 2, 4 and 6-10 of the records.

<sup>14</sup> Coroner's affidavit at paras. 17-19.

emails, a letter from the RCMP to the College of Psychologists of BC, and two RCMP documents.

[19] The BCCS has provided the applicant with most of the information in the records, but is refusing to disclose the following:

- the Associate’s name and email address;
- the President’s email address;
- sentences that reveal information about deceased individuals;
- a sentence that reveals the President’s views; and
- a sentence that reveals what a named psychologist said about another individual (whose name has been withheld).

***Unreasonable Invasion of Personal Privacy – s. 22(1)***

[20] Section 22 requires a public body to refuse to disclose personal information if its disclosure would be an unreasonable invasion of a third party’s personal privacy.<sup>15</sup> Numerous orders have considered the application of s. 22, and I will apply those same principles here.<sup>16</sup>

*Personal information*

[21] The first step in any s. 22 analysis is to determine if the information is personal information.

[22] Personal information is defined in FIPPA as “recorded information about an identifiable individual other than contact information.”<sup>17</sup> FIPPA defines contact information 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.”<sup>18</sup> Previous orders have said that information is about an identifiable individual when it is reasonably capable of identifying an individual, either alone or when combined with other available sources of information.<sup>19</sup>

[23] The BCCS submits that the withheld information is the personal information of third parties since it is information about identifiable individuals

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<sup>15</sup> Schedule 1 of FIPPA says: “third party” in relation to a request for access to a record or for correction of personal information, means any person, group of persons or organization other than (a) the person who made the request, or (b) a public body.

<sup>16</sup> See, for example, Order F15-03, 2015 BCIPC 3 (CanLII) at para. 58.

<sup>17</sup> Schedule 1 of FIPPA.

<sup>18</sup> *Ibid.*

<sup>19</sup> Order F19-13, 2019 BCIPC 15 (CanLII) at para. 16, citing Order F18-11, 2018 BCIPC 14 at para. 32.

other than the applicant.<sup>20</sup> The BCCS makes further submissions about specific categories of withheld information, which I will discuss in greater detail below.

*Name and email addresses*

[24] The BCCS says that the Associate's name and email address and the President's email address constitute personal information under FIPPA.<sup>21</sup> The BCCS also says that names and email addresses have only been withheld from disclosure where the Associate and the President communicated with the BCCS in their personal capacity from their personal email addresses.<sup>22</sup>

[25] Under the definitions in Schedule 1 of FIPPA, if information is contact information, it is not considered to be personal information. Whether information is contact information depends on the context in which it appears.<sup>23</sup> For example, where a personal address is repeatedly used for sending and receiving email messages in the ordinary course of conducting the third party's business affairs, the email address comprises contact information.<sup>24</sup>

[26] The majority of the President's correspondence with the Coroner was through the President's business email address, which was disclosed in the records. A different email address for the President, however, was withheld in one page of the records.<sup>25</sup> That address appears to be a personal email address as it ends with a domain name commonly associated with personal email addresses. As the withheld email address appears to be personal and, unlike the President's business email address, was not repeatedly used in communication with the Coroner, I find that the withheld email address is personal information and not contact information.

[27] The Associate sent one email to the Coroner, in which he stated that he was with the MPPAC and signed the email with his first and last name.<sup>26</sup> He does not indicate the nature of his role within the MPPAC or include a business signature in the email. The email address appears on its face to be a personal email address, as it contains the Associate's first and last name and ends with a domain name commonly associated with personal email addresses. Based on my review of the records, I am not persuaded that the MPPAC is the Associate's place of business, or that his name and email address are information to enable the Associate to be contacted at a place of business. I find that the Associate contacted the Coroner in his personal capacity from his personal email address.

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<sup>20</sup> BCCS's initial submission at para. 23.

<sup>21</sup> *Ibid* at para. 29.

<sup>22</sup> *Ibid* at para. 28.

<sup>23</sup> Order F20-13, 2020 BCIPC 15 at para. 42.

<sup>24</sup> Order F15-22, 2015 BCIPC 36 at para. 31.

<sup>25</sup> Information located on p. 5 of the records.

<sup>26</sup> Information located on pp. 7 and 8 of the records.

[28] I find that the withheld name and email addresses are personal information.

### *Opinions*

[29] The BCCS says that the records contain third parties' personal opinions, which constitute personal information.<sup>27</sup>

[30] An individuals' opinions and comments are their personal information if their identity is known or can be accurately inferred.<sup>28</sup> An individual's opinions about someone else are the personal information of the opinion holder and the person whom the opinion is about.<sup>29</sup>

[31] Here, the relevant information consists of an opinion stated by the President in correspondence with the Coroner and an opinion stated by a psychologist about a third party.<sup>30</sup>

[32] The BCCS disclosed the identity of the individuals who stated the opinions in the records. I conclude, therefore, that the opinions are the personal information of the opinion holders. I find that a portion of the President's opinion is about the Coroner and is therefore simultaneously the personal information of the Coroner. I also find that the psychologist's opinion is simultaneously the personal information of the individual whom the opinion is about.

### *Deceased third party personal information*

[33] The BCCS submits that the records contain statements made by third parties about their personal or life history, which are the personal information of those third parties.<sup>31</sup> The BCCS also submits that statements made by third parties contain the personal information of additional deceased third parties.<sup>32</sup>

[34] I have reviewed the information in dispute and I note that some of the information does not directly identify a deceased individual (i.e. by name), but given the context it is reasonable to conclude that the applicant and/or other members of the public would be able to identify the individual. Therefore, this information is also about an identifiable individual.

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<sup>27</sup> BCCS's initial submission at paras. 30-31.

<sup>28</sup> Order F20-13, 2020 BCIPC 15 (CanLII) at para. 41; Order F19-15, 2019 BCIPC 17 (CanLII) at para. 41.

<sup>29</sup> Order F14-47, 2014 BCIPC 51 (CanLII) at para. 14; Order F16-32, 2016 BCIPC 35 (CanLII) at para. 51.

<sup>30</sup> Information located on pp. 3 and 14 of the records.

<sup>31</sup> BCCS's initial submission at para. 32.

<sup>32</sup> *Ibid* at para. 33.

[35] I find that all of the statements referred to by the BCCS in this section are the personal information of deceased individuals.<sup>33</sup> For clarity, I will refer to this personal information as the “deceased third party personal information.” I also find that some of the deceased third party personal information is about the President and is simultaneously his personal information.<sup>34</sup>

[36] To summarize, I find that all of the information withheld under s. 22 is the personal information of third parties.

***Disclosure not an Unreasonable Invasion of Privacy – s. 22(4)***

[37] The second step in the s. 22 analysis is to determine if the personal information falls into any of the types of information listed in s. 22(4). If so, disclosure would not be an unreasonable invasion of a third party’s personal privacy.

[38] The BCCS says that s. 22(4) does not apply.<sup>35</sup> The applicant lists ss. 22(4)(a) – (e) in his submission, but only provides arguments on the relevance of s. 22(4)(b).<sup>36</sup>

*Compelling circumstances affecting health or safety, s. 22(4)(b)*

[39] Section 22(4)(b) provides that a disclosure of personal information is not an unreasonable invasion of a third party’s privacy if there are compelling circumstances affecting anyone’s health or safety and notice of disclosure is mailed to the last known address of the third party.

[40] The applicant says:

Under section 22(4), there is no unreasonable invasion of a third party’s personal privacy if there are compelling circumstances affecting anyone’s health or safety. The most compelling circumstance is to prevent further incidents and save lives.<sup>37</sup>

[41] Previous orders have held that s. 22(4)(b) is relevant and applicable when a public body has decided to *disclose* a third party’s personal information and is required to justify doing so. It does not apply when a public body has *refused* to disclose personal information to an applicant.<sup>38</sup> As the BCCS is refusing to disclose personal information to the applicant, I find that s. 22(4)(b) does not apply.

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<sup>33</sup> Information located on pp. 1, 4 and 7-10 of the records.

<sup>34</sup> Information located on pp. 1, 4, 9 and 10 of the records.

<sup>35</sup> BCCS’s initial submission at para. 43 and response submission at p. 2.

<sup>36</sup> Applicant’s submission at paras. 8 and 19.

<sup>37</sup> *Ibid* at para. 19.

<sup>38</sup> Order F19-02, 2019 BCIPC 2 (CanLII) at paras. 21-24.



[42] I have considered the remaining categories of information in s. 22(4) and I am satisfied that none apply.

***Presumptions of Unreasonable Invasion of Privacy – s. 22(3)***

[43] The third step in the s. 22 analysis is to determine whether s. 22(3) applies to the personal information. If so, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy.

[44] The BCCS submits that s. 22(3)(a) applies. The applicant makes no submissions about s. 22(3).

*Medical, psychiatric or psychological history, s. 22(3)(a)*

[45] 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.

[46] The BCCS says that on the face of the records, the deceased third party personal information plainly relates to the medical and psychiatric history and condition of the deceased individuals.<sup>39</sup>

[47] The deceased third party personal information reveals the cause of death of three individuals. I find that disclosure of the deceased third party personal information would indirectly reveal information about the medical, psychiatric or psychological histories of those individuals. Therefore, I am satisfied that the deceased third party personal information relates to their medical, psychiatric or psychological histories. As a result, disclosure of the deceased third party personal information is presumed to be an unreasonable invasion of third parties' personal privacy.

[48] I have considered the other subsections of s. 22(3) and find none of them applicable here.

***Relevant Circumstances – s. 22(2)***

[49] The final step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those listed in s. 22(2). It is at this step that the s. 22(3) presumptions may be rebutted.

[50] The BCCS submits that ss. 22(2)(f) and (i) are relevant circumstances. The applicant submits that ss. 22(2)(a) and (b) are relevant circumstances. The

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<sup>39</sup> BCCS's initial submission at para. 46.

applicant also makes submissions about the relevance of the open court principle and the impact of the conclusion of the coroner's inquiry.

[51] I will consider all of these circumstances in my s. 22(2) analysis. I will also consider whether there are any other circumstances, including those listed under s. 22(2), that may apply.

*Public scrutiny of a public body, s. 22(2)(a)*

[52] Section 22(2)(a) asks whether disclosure of personal information is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny. Section 22(2)(a) recognizes that where disclosure of the information in dispute would foster accountability of a public body, this may provide a foundation for finding that disclosure would not constitute an unreasonable invasion of a third party's personal privacy.<sup>40</sup>

[53] The applicant says that disclosure is desirable to subject the RCMP to public scrutiny.<sup>41</sup> The BCCS responds that, on its face, the information is not of a nature where it would subject the government of British Columbia or a public body to scrutiny.<sup>42</sup>

[54] Under FIPPA, the RCMP is not a "public body" and therefore s. 22(2)(a) does not apply. However, I find that subjecting the RCMP to public scrutiny is a relevant non-enumerated factor under s. 22(2). This is consistent with a previous order in which Adjudicator Alexander found subjecting police interactions with the public to public scrutiny to be a relevant non-enumerated factor under s. 22(2).<sup>43</sup>

[55] Having reviewed the specific personal information at issue, I do not see how its disclosure would subject the RCMP to public scrutiny. In my view, there is not a sufficient connection between the withheld information and the RCMP for its disclosure to foster accountability of the RCMP. For example, while some of the withheld information is the personal information of former members of the RCMP, it is not clear from the face of the records that the information is about those individuals in their capacity as members of the RCMP. For the reasons outlined above, I find that subjecting the RCMP to public scrutiny is not a relevant circumstance for consideration.

*Public health and safety, protection of the environment, s. 22(2)(b)*

[56] Section 22(2)(b) considers whether the disclosure is likely to promote public health and safety or to promote the protection of the environment.

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<sup>40</sup> Order F05-18, 2005 CanLII 24734 (BC IPC) at para. 49.

<sup>41</sup> Applicant's submission at para. 5.

<sup>42</sup> BCCS's response submission at p. 2.

<sup>43</sup> Order F15-42, 2015 BCIPC 45 at para. 46.

[57] The applicant says that disclosure is desirable to promote public health and safety.<sup>44</sup> The BCCS responds that on its face, the personal information is not of a nature where it would be likely to promote public health and safety.<sup>45</sup>

[58] Having reviewed the records, I do not see how disclosure of the personal information is likely to promote public health and safety. The applicant does not adequately explain how disclosure of the personal information at issue is likely to promote public health and safety. As a result, I am not persuaded that s. 22(2)(b) is a relevant circumstance weighing in favour of disclosure.

*Supplied in confidence, s. 22(2)(f)*

[59] Section 22(2)(f) asks whether the personal information has been supplied in confidence. If so, this factor weighs in favour of withholding the information. In order for s. 22(2)(f) to apply, there must be evidence that an individual supplied the information and that they did so under an objectively reasonable expectation of confidentiality, at the time the information was provided.<sup>46</sup>

[60] The BCCS says that s. 22(2)(f) is a relevant consideration weighing against disclosure as all of the information at issue was received by the BCCS in confidence.<sup>47</sup> The BCCS says that it treats information received from third parties as confidential.<sup>48</sup> The BCCS also says that the *Coroners Act* provides context respecting the importance of confidentiality in the work of the BCCS.<sup>49</sup>

[61] In his affidavit evidence, the Coroner says that he believes that third parties would generally expect, given the sensitive nature of the investigations and the broad legislated authorities enabling coroners to compel evidence from third parties, that the information and records they provide to the BCCS will be treated in a confidential manner.<sup>50</sup>

[62] I have considered the BCCS's arguments that it received the information in confidence. However, the question I must consider under s. 22(2)(f) is whether the supplier of the personal information at issue provided that information in confidence, not whether the recipient chose to treat it confidentially.<sup>51</sup>

[63] Having reviewed the records, I do not see any indication that the President or the Associate had any expectations of confidentiality when they supplied the

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<sup>44</sup> Applicant's submission at para. 5.

<sup>45</sup> BCCS's response submission at p. 2.

<sup>46</sup> Order F11-05, 2011 BCIPC 5 (CanLII) at para. 41, citing and adopting the analysis in Order 01-36, 2001 CanLII 21590 (BC IPC) at paras. 23-26 regarding s. 21(1)(b).

<sup>47</sup> BCCS's initial submission at para. 57.

<sup>48</sup> BCCS's initial submission at para. 55.

<sup>49</sup> BCCS's initial submission at para. 56.

<sup>50</sup> Coroner's affidavit at para. 23.

<sup>51</sup> 2021 BCIPC 40 at para. 118.

personal information to the Coroner. Additionally, although the Coroner says that he believes third parties would generally have an expectation of confidentiality when they provide information and records to the Coroner, he does not say anything about the expectations of the Associate or the President in this matter. I am not satisfied from the evidence and submissions before me that the personal information was supplied in confidence. As a result, I find that s. 22(2)(f) does not weigh in favour of withholding the personal information.

*Disclosure may unfairly damage reputation, s. 22(2)(h)*

[64] Section 22(2)(h) considers whether the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant. It has two requirements; first the information must damage an individual's reputation. Second, the damage to an individual's reputation must be unfair.<sup>52</sup>

[65] Having reviewed the information at issue, I find that disclosure of the named psychologist's opinion would damage the reputation of the individual whom the opinion is about. The evidence before me does not show that the subject of the opinion knew of the opinion or had an opportunity to respond. Additionally, the evidence does not demonstrate that the psychologist's opinion is accurate. For these reasons, I find that the reputational harm would be "unfair" within the meaning of s. 22(h). I conclude that s. 22(2)(h) weighs in favour of withholding the psychologist's opinion.

*Information about a deceased person, s. 22(2)(i)*

[66] Section 22(2)(i) asks whether the information is about a deceased person, and if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person's personal privacy.

[67] FIPPA does not specify a number of years after which a deceased individual's personal information may be disclosed. Previous orders have noted that in most Canadian jurisdictions, the law provides that disclosing information about someone who has been deceased for 20-30 years is not an unreasonable invasion of their privacy.<sup>53</sup> Previous orders have also said that an individual's personal privacy rights are likely to continue for at least 20 years past their death.<sup>54</sup>

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<sup>52</sup> Order F19-02, 2019 BCIPC 2 at para. 69.

<sup>53</sup> Order F14-09, 2014 BCIPC 11 at para. 33.

<sup>54</sup> *Ibid* at para. 30.

[68] The BCCS submits that there has not been a sufficient passage of time to warrant a reduction in the privacy interests of the deceased individuals whose personal information is contained in the records.<sup>55</sup>

[69] In this case, the deceased third party personal information relates to three deceased individuals. Two of these individuals have been deceased for less than 20 years; therefore, I find that their privacy rights continue and have not been reduced by the passage of time. I do not have any evidence or submissions before me regarding how long the third individual has been deceased. As a result, I am unable to conclude that the length of time this individual has been deceased indicates that disclosure is not an unreasonable invasion of their privacy. I find that s. 22(2)(i) does not weigh in favour of disclosing the deceased third party personal information.

#### *Open court principle*

[70] The applicant submits that the BCCS sometimes acts in the same fashion as a court, and that the open court principle in Canadian law must apply to the BCCS's hearings and files.<sup>56</sup> The applicant refers to *Sherman Estate v Donovan*<sup>57</sup> but does not provide arguments in support of his position. The BCCS responds that *Sherman Estate* is not pertinent to the analysis in this inquiry.<sup>58</sup>

[71] In my view, the applicant has not adequately explained how the open court principle is relevant to this inquiry. I find that it is not a relevant circumstance for consideration.

#### *Conclusion of coroner's inquiry*

[72] The applicant submits that, as the proceedings in coroners court ended in November 2018, any harm in releasing information on the file that may have existed prior to the conclusion of those hearings is no longer a concern.<sup>59</sup> The public body responds that disclosure of the information in dispute is an unreasonable invasion of a third party's personal privacy regardless of the conclusion of the Coroners Inquest.<sup>60</sup>

[73] The applicant does not explain what harm he is referring to in his submission, how it is no longer a concern, or the relevance of the proceedings in coroner's court to the s. 22 analysis. I do not see how proceedings under the *Coroners Act* are relevant to the determination of whether disclosure of the personal information at issue constitutes an unreasonable invasion of a third

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<sup>55</sup> BCCS's initial submission at para. 63.

<sup>56</sup> Applicant's submission at para. 23.

<sup>57</sup> *Sherman Estate v Donovan*, 2021 SCC 25.

<sup>58</sup> BCCS's response submission at p. 3.

<sup>59</sup> Applicant's submission at para. 17.

<sup>60</sup> BCCS's response submission at p. 3.

party's personal privacy. I find that this is not a relevant circumstance for consideration.

### *Sensitivity*

[74] Past orders have treated the sensitivity of the personal information at issue as a relevant circumstance. For example, past orders have found that where information is sensitive, it is a circumstance weighing in favour of withholding the information.<sup>61</sup> Conversely, where information is not sensitive, past orders have found that this weighs in favour of disclosure.<sup>62</sup>

[75] In its submission regarding s. 22(2)(f), the BCCS says that the deceased third party personal information is sensitive personal information the disclosure of which would be an unreasonable invasion of the deceased individuals' personal privacy.<sup>63</sup> The BCCS makes no submissions about the sensitivity of the balance of the personal information.

[76] I have considered whether the personal information is sensitive and I find that some of it is. Specifically, I find that the deceased third party personal information is highly sensitive. In my view, the sensitive nature of this information weighs against disclosure.

[77] Based on my review of the information in dispute, I find there are no other relevant circumstances for consideration.

### **Conclusion, s. 22(1)**

[78] I find that all of the information at issue is "personal information" under FIPPA.

[79] I find that the presumption against disclosure under s. 22(3)(a) applies to the deceased third party personal information. This information is highly sensitive, which weighs against disclosure, and there are no circumstances that weigh in favour of disclosure. Therefore, I find that the presumption has not been rebutted for this personal information and disclosing it would be an unreasonable invasion of third parties' personal privacy. The BCCS must refuse to disclose this information under s. 22(1).

[80] I find that there are no s. 22(3) presumptions applicable to the balance of the withheld information.

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<sup>61</sup> Order F19-15, 2019 BCIPC 17 at para. 99, for example.

<sup>62</sup> Order F16-52, 2016 BCIPC 58 at para. 91, for example.

<sup>63</sup> BCCS's initial submission at paras. 47-48.

[81] With respect to the psychologist's opinion, I find that there are no circumstances that favour disclosure and one relevant circumstance – the potential for unfair reputational harm – weighs against disclosure. I find that disclosing the psychologist's opinion would be an unreasonable invasion of a third party's personal privacy. The BCCS must refuse to disclose this information under s. 22(1).

[82] I do not see any relevant circumstances that weigh for or against disclosing the withheld email addresses. The applicant has not convinced me that the withheld email addresses should be disclosed. In my view, it would be an unreasonable invasion of third parties' personal privacy to disclose the withheld email addresses. This is consistent with past orders which have found that it would be an unreasonable invasion of a third party's personal privacy to disclose email addresses being used as personal and private email addresses.<sup>64</sup> The BCCS must refuse to disclose this information under s. 22(1).

[83] I do not see any relevant circumstances that weigh for or against disclosing the Associate's name. The applicant has not persuaded me that the Associate's name should be disclosed. I find that disclosing the Associate's name would be an unreasonable invasion of his personal privacy. This is consistent with past orders dealing with names of members of the public.<sup>65</sup> The BCCS must refuse to disclose this information under s. 22(1).

[84] Lastly, with respect to the President's opinion, I find that there are no relevant circumstances that weigh against disclosure, and that the non-sensitive nature of the opinion weighs in favour of disclosure. I find that disclosing the President's opinion would not be an unreasonable invasion of any third party's personal privacy. The BCCS is, therefore, not required to refuse to disclose this information under s. 22(1).

## **CONCLUSION**

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

1. Subject to item 2 below, I confirm in part the BCCS's decision to refuse access to the information withheld in the records under s. 22(1).
2. The BCCS is not required by s. 22(1) to withhold the information highlighted in a copy of the records that are provided to BCCS with this order. The BCCS is required to give the applicant access to the highlighted information.

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<sup>64</sup> For example, see Order F22-15, 2022 BCIPC 17 at para. 72.

<sup>65</sup> For example, see Order F20-27, 2020 BCIPC 32 at para. 54; Order F17-19, 2017 BCIPC 20 at para. 54; and Order F18-14, 2018 BCIPC 17 at para. 26.

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3. The BCCS must provide the OIPC registrar of inquiries with proof that it has complied with the terms of this order, along with a copy of the relevant records.

[86] Pursuant to s. 59(1) of FIPPA, the BCCS is required to comply with this order by July 19, 2022.

June 6, 2022

**ORIGINAL SIGNED BY**

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Elizabeth Vranjkovic, Adjudicator

OIPC File No.: F16-65056