Order F22-31

MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

Ian C. Davis
Adjudicator

June 15, 2022

CanLII Cite: 2022 BCIPC 34
Quicklaw Cite: [2022] B.C.I.P.C.D. No. 34

Summary: The applicants made separate requests under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Ministry of Children and Family Development (Ministry) for access to records containing information about them relating to their operation of a foster home. The Ministry withheld the information in dispute in this inquiry under ss. 15(1)(d) (harm to law enforcement) and 22 (unreasonable invasion of a third party's personal privacy). The Ministry also decided that some records were outside the scope of FIPPA pursuant to s. 3(1)(c). The adjudicator determined that some of the disputed records are beyond the scope of FIPPA under s. 3(1)(c). Regarding the other records, the adjudicator determined that the Ministry is required to withhold most, but not all, of the disputed information under s. 22(1) and that, given this finding, it is not necessary to also consider s. 15(1)(d).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 3(1)(c), 22(1), 22(2)(a), 22(2)(c), 22(2)(f), 22(3)(a), 22(3)(b), 22(3)(d), 22(4)(a) and 22(4)(e).

INTRODUCTION

[1] A husband and wife (applicants)[1] both made separate requests under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Ministry of Children and Family Development (Ministry) for access to records. The applicants operated a foster care home under contract to the Ministry pursuant to the *Child, Family and Community Service Act* (CFCSA).[2] They both requested access to records containing information about them relating to their work as foster parents, including any contracts.

[1] The applicants describe themselves as husband and wife in their access requests.
[2] R.S.B.C. 1996, c. 46. The basic facts in this sentence and the next are based on the evidence in Affidavit #1 of ND at paras. 2-7, which I accept and the applicants do not contest.

[2] In response, the Ministry disclosed 4,020 pages of records to the applicants with some information withheld under various FIPPA exceptions to disclosure. Specifically, the Ministry withheld information under ss. 14 (solicitor-client privilege), 15(1) (harm to law enforcement), 16(1) (harm to intergovernmental relations or negotiations) and 22(1) (unreasonable invasion of a third party's personal privacy).[3] The Ministry also decided that some records were outside the scope of FIPPA under s. 3(1)(c).

[3] The applicants asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision. Mediation did not resolve the matter and it proceeded to this inquiry.

PRELIMINARY MATTERS

Issues and information no longer in dispute

[4] After mediation, the applicants advised that they are only requesting a review of the Ministry's decision to withhold information on less than 100 of the original 4,020 pages of records, so those are the only pages in dispute in this inquiry.[4] The Ministry is not withholding any information under ss. 14 or 16(1) on the remaining pages in dispute,[5] so those sections are no longer at issue.

[5] Further, after mediation, the applicants withdrew their request for access to certain information withheld by the Ministry[6] and the Ministry disclosed additional information to the applicants.[7] As a result, the information in dispute was further narrowed.

Section 3 and recent FIPPA amendments

[6] In its initial response to the access requests, which was in 2019, the Ministry refused access to some records citing s. 3(1)(c). FIPPA was amended in late 2021, which resulted in s. 3(1)(c) being replaced by s. 3(3)(f). The wording of s. 3(3)(f) is essentially the same as the prior wording in s. 3(1)(c).

[7] The parties did not make submissions about whether I should apply s. 3(1)(c) or s. 3(3)(f) in this inquiry. The Ministry simply applied s. 3(3)(f).

[8] For the purposes of this inquiry, I will apply s. 3(1)(c). When the Ministry responded to the access request in 2019, it cited and applied s. 3(1)(c). That is

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[3] Investigator's Fact Report at para. 2.
[4] Investigator's Fact Report at para. 5.
[5] Ministry's Table of Records (Tab 6 of its initial submissions).
[6] Ministry's initial submissions at para. 7 regarding government employee computer system username information on pp. 3363 and 3368.
[7] Ministry's initial submissions at para. 8 regarding criminal record check information on pp. 3552 and 3557.

the decision under review in this inquiry. I see no prejudice to either party in applying s. 3(1)(c) rather than s. 3(3)(f) because they are substantially the same. I leave open for future cases the question of which version of the Act should apply where the language actually conflicts.

Applicants' submissions and the scope of this inquiry

[9] In their submissions, the applicants did not cite or explicitly refer to any of the FIPPA sections in dispute. Their submissions focus on why they think they have a right to the records given the underlying facts. As I set out further below, the Ministry investigated the applicants' foster home, which resulted in its closure. The applicants say they still do not fully understand that process and the outcome. They say the Ministry may have started an investigation they did not know about and that the Ministry changed its decision at one point, and they want to know why. They state that the process created a significant amount of trauma, sadness and confusion for them and their family.

[10] In its reply submissions, the Ministry provides its version of the background facts, which may or may not be of assistance to the applicants. The Ministry also submits that the applicants raise issues about the investigation into their foster home that are not within my jurisdiction to address.[8]

[11] I can understand why the applicants feel confused and saddened by the investigation process and why they still have concerns about the closure of their foster home. As the courts have recognized, foster parenting is difficult, especially when a child leaves care.[9] That said, in this inquiry, I only have jurisdiction to review the Ministry's decisions under FIPPA, so that is my focus below. I make no comment on the quality of the applicants' foster care or the Ministry's investigation.

ISSUES AND BURDEN OF PROOF

[12] The issues in this inquiry are:

1. whether some of the records are outside the scope of FIPPA pursuant to s. 3(1)(c);
2. whether the Ministry is required under s. 22(1) to refuse to disclose the information it withheld under that section; and
3. whether the Ministry is authorized under s. 15(1)(d) to refuse to disclose the information it withheld under that section.[10]

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[8] Ministry's reply submissions at paras. 16-19.
[9] See, for example, *L.J.G. v. N.B.*, 2017 BCSC 350 at para. 79.
[10] The Ministry withheld under s. 15(1)(d) a subset of the information it withheld under s. 22(1).

[13] The Ministry has the burden to prove that s. 3(1)(c) applies.[11] Section 57(1) places the burden on the Ministry to prove that s. 15(1)(d) applies. According to s. 57(2), the applicant has the burden to prove that disclosure of the disputed information would not be an unreasonable invasion of a third party's personal privacy under s. 22(1). However, the Ministry has the initial burden under s. 22(1) to show that the disputed information is personal information.[12]

BACKGROUND

[14] As mentioned, the applicants operated a foster home under contract to the Ministry.[13] However, only the wife was formally a party to the agreement. The husband resided in the home and says he worked with his wife as a foster parent.

[15] Under the CFCSA, the Minister of Children and Family Development designates a director (Director) to oversee a program called the Family Care Home Program, which provides foster care services to children in the Director's care. The Director delegates to social workers the provision of day-to-day support for foster parents and children in care.

[16] All services provided under the Family Care Home Program must be consistent with provincial legislation, primarily including the CFCSA, which sets out the rights of children. Foster care services are also governed by standards approved under the CFCSA (Standards). The Standards state what children in care, families, caregivers, Ministry staff and the public can expect of foster care services in British Columbia. Social workers are responsible for monitoring compliance with the Standards and other applicable legal requirements.

[17] The Ministry opens and maintains a "Resource File" for each home contracted to foster children. The records in that file are prepared to assist the Director in ensuring that the children are properly cared for. The file includes a wide range of documents, including correspondence, financial records, various reports concerning children in care and documents relating to investigations and reviews.

[18] In 2018, the Ministry received a report from an individual which led it to initiate a "Quality of Care Review" of the applicants' compliance with the Standards. The Ministry initiates Quality of Care Reviews when there is a significant concern about the quality of a child's care in a family care home. A delegated social worker notified the applicants of the report, except for any

[11] See, for example, Order F15-26, 2015 BCIPC 28 at para. 5.
[12] Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 9-11.
[13] The information in this background section is based on the access request documents and the evidence, which I accept, in Affidavit #1 of ND at paras. 5-25 and 29-31.

information that would likely reveal the identity of the person who reported the matter, and conducted the review.

[19] Subsequently, the Ministry initiated a "Protocol Investigation" into the applicants' foster home. The Ministry initiates this kind of investigation when it is concerned about a serious issue of abuse, neglect or emotional harm. Shortly after deciding to initiate the investigation, all children in care were removed from the applicants' foster home. As a result of the investigation, the Ministry closed the foster home in January 2019.

[20] In early February 2019, the wife sought a review of the Ministry's decision to close the foster home.

[21] On February 20, 2019, the applicants made the FIPPA access requests at issue in this inquiry. They each separately requested the "entire content of the file" dealing with their work as foster parents, with a time frame for records of November 1, 1998 to January 31, 2019.[14]

[22] By letter dated April 29, 2019, the Ministry's Director of Quality Assurance responded to the wife's request for review of the Ministry's decision to close the foster home.[15] The Director concluded that the decision was based on sound information and that the allegations were substantiated. The Ministry advised the wife that she could contact the BC Office of the Ombudsperson for an alternative review process.

RECORDS IN DISPUTE

[23] There are 95 pages of disputed records before me. The Ministry says, and I accept, based on my review, that the records are part of the applicants' Resource File and consist of emails from the applicants, various social workers, and other third parties, some social workers' notes, as well as transition and placement planning records for children in the Director's care.[16]

SECTION 3 – SCOPE OF FIPPA

[24] The Ministry is refusing access to two emails under s. 3(1)(c).[17] That section states that FIPPA does not apply to "a record that is created by or for, or is in the custody or control of, an officer of the Legislature and that relates to the exercise of that officer's functions under an Act".

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[14] Investigator's Fact Report at para. 1; access request documents.
[15] The information in this paragraph is based on para. 17 of the Ministry's reply submissions, which I accept.
[16] Ministry's initial submissions at para. 15.
[17] Records at pp. 3341-3342.

[25] Given its wording, s. 3(1)(c) sets out three requirements:

1. the record in dispute must involve an officer of the Legislature;
2. the record must have been created by or for, or be in the custody or control of, the officer of the Legislature;
3. the record must relate to the officer's exercise of functions under an Act.[18]

[26] The Ministry submits that the disputed emails were created by the Ministry for the Representative for Children and Youth (Representative) and relate to the Representative's exercise of functions under the *Representative for Children and Youth Act*.[19] The applicants did not address s. 3(1)(c).

[27] In my view, the first two requirements of s. 3(1)(c) are clearly met. The definition of "officer of the Legislature" in Schedule 1 of FIPPA specifically includes the Representative. Based on my review, I can see that the emails relate to the Ministry's response to a request from the Representative for records relating to the applicants. Since the emails were created by the Ministry in response to a request from the Representative, I am satisfied they were created "for" the Representative within the meaning of s. 3(1)(c).

[28] The final requirement is that the emails must relate to the Representative's exercise of functions under an Act. Past orders say that only "operational", as opposed to "administrative", records relate to the exercise of an officer's functions under an Act.[20] Operational records include case-specific records received or created during the course of a matter. Administrative records do not relate to specific case files, but instead include records such as personnel and office management files.

[29] I find that the disputed emails relate to the Representative's exercise of functions under an Act. The *Representative for Children and Youth Act* states that the Representative's functions include supporting, assisting, informing and advising children and their families respecting "designated services", which includes foster care services provided under the CFCSA.[21] The applicants were foster parents and the Representative requested records relating to them, so I am satisfied the Representative was exercising their functions relating to foster care services as set out in the *Representative for Children and Youth Act*. The emails are clearly about the applicants' specific file and not administrative matters.

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[18] Order 01-43, 2001 CanLII 21597 (BC IPC), paras. 13-14.
[19] Ministry's initial submissions at paras. 55-63.
[20] See e.g. Order F20-11, 2020 BCIPC 13 at paras. 14-16. All of the principles in this paragraph are drawn from Order F20-11 and the authorities cited there.
[21] *Representative for Children and Youth Act*, S.B.C. 2006, c. 29, ss. 1 (definition of "designated services") and 6(1).

[30] For the reasons provided above, I conclude that the records the Ministry is withholding under s. 3(1)(c) are outside the scope of FIPPA, so the applicants have no right of access to them.

SECTION 22 – THIRD-PARTY PERSONAL PRIVACY

[31] The Ministry is withholding the rest of the disputed information under s. 22(1).[22] Section 22(1) 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. The analytical approach to s. 22 is well established and has several steps.[23] I apply it below.

Is the disputed information "personal information"?

[32] Section 22(1) only applies to personal information, so the first step is to determine whether the disputed information is personal information. FIPPA defines personal information as "recorded information about an identifiable individual other than contact information".[24] 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."[25]

[33] 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".[26] Contact information is the kind of information commonly found in an employee directory or on a business card.[27]

[34] Based on my review of the records, I find the information in dispute under s. 22(1) is:

- email communications between Ministry employees, and in some cases third parties, regarding children in care and the applicants;[28]
- some email headers (i.e., the top parts of the emails containing, for example, the "to" and "from" fields) and email signature blocks;[29]
- emails between the applicants and the Ministry about children in care;[30]

[22] The Ministry is also withholding some of the same information under s. 15(1)(d).
[23] See, for example, Order F15-03, 2015 BCIPC 3 at para. 58.
[24] Schedule 1 of FIPPA.
[25] Order F19-13, 2019 BCIPC 15 at para. 16 citing Order F18-11, 2018 BCIPC 14 at para. 32.
[26] Schedule 1 of FIPPA.
[27] Order F08-03, 2008 CanLII 13321 (BC IPC) at para. 82.
[28] Records at pp. 2532-2535, 2546-2548, 3109-3114, 3339, 3343-3357, 3361-3362, 3364-3365 and 3369.
[29] Records at pp. 2532-2543, 3109-3113, 3338, 3343-3344, 3350, 3357, 3361-3362, 3364 and 3369.
[30] Records at pp. 2536-2543 and 3340.

- a Ministry report relating to a particular child;[31]
- a Ministry plan relating to a particular child;[32]
- two handwritten file labels each containing the name and birthdate of a child in care;[33] and
- notes from calls, meetings or interviews with the applicants or third parties.[34]

[35] The Ministry submits that all of the disputed information is personal information because it is about and would identify, directly or through inference, children in care, individuals who made child protection reports to the Ministry and other third parties such as foster parents other than the applicants, relief/respite caregivers and prospective adoptive parents.[35] The Ministry says it has applied s. 22(1) to the applicants' personal information where that information is also simultaneously the personal information of one or more third parties.

[36] Based on my review, I find that the vast majority of the disputed information is personal information. The information is about and identifies the applicants, children in care and various third parties involved in the children's lives. Most of the disputed information is simultaneously the personal information of children in care and the applicant or other third parties because it involves their relationships, interactions and opinions. The disputed information also includes the wife's email address, which I accept is a personal address, so it is the wife's personal information and not contact information.

[37] However, I find that the email signature blocks and parts of the email headers relating to Ministry employees is contact information, so it is not personal information and cannot be withheld under s. 22(1).[36] This information appears on emails that clearly involve Ministry employees conducting Ministry business and it enables those individuals to be contacted at their place of business. I note that the Ministry disclosed some signature blocks and email headers, but not others.[37] The Ministry did not explain why and I am not persuaded that the same kinds of information should be dealt with differently in the records.

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[31] Records at pp. 3101-3103.
[32] Records at pp. 3358-3360 and 4017-4020.
[33] Records at pp. 3572 and 3574.
[34] Records at pp. 3502-3514 and 4000-4016.
[35] Ministry's submissions at paras. 92-101.
[36] Records at pp. 2532-2543, 3109-3113, 3338, 3343-3344, 3350, 3357, 3361-3362, 3364 and 3369.
[37] For example, the Ministry disclosed a signature block in the Records at p. 2546-2548, but then withheld the exact same signature block at p. 2542. Also, for example, the Ministry withheld some email headers and signature blocks in the Records at p. 3338, but disclosed the same kind of information elsewhere in the same email chain. The Ministry also disclosed email headers and signature blocks in the Records at pp. 3345-3356.

[38] I also find that template language in a Ministry report describing information to be inputted into the report is not, on its own, personal information.[38] The personal information is the inputted information understood in combination with the template language, but the template language alone is not about an identifiable individual, so it is not personal information and cannot be withheld under s. 22(1).

[39] To summarize, I conclude most of the information at issue qualifies as personal information. However, I find there is a small amount of information in some emails and a report that is not personal information because it qualifies as contact information or is not about an identifiable individual.

Not an unreasonable invasion of privacy – s. 22(4)

[40] Having found that most of the disputed information qualifies as personal information, the next step is to consider s. 22(4), which sets out various circumstances in which disclosure of personal information is not an unreasonable invasion of a third party's personal privacy.

[41] The Ministry submits that none of the circumstances in s. 22(4) apply to any of the disputed information.[39] In particular, the Ministry submits that ss. 22(4)(a) and 22(4)(e) do not apply.

[42] Section 22(4)(a) states that a 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 says that no third parties consented to the disclosure of their personal information.[40] I see no evidence of written consent from any of the third parties, so I find s. 22(4)(a) does not apply.

[43] Turning to s. 22(4)(e), it states that a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff. The context in which personal information appears plays a significant role in determining whether s. 22(4)(e) applies.[41] Past orders state that, depending on the context, s. 22(4)(e) may apply to "objective, factual statements about what the third party did or said in the normal course of discharging her or his job duties".[42]

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[38] Records at pp. 3101-3013; see, for example, Order F21-68, 2021 BCIPC 79 at para. 47.
[39] Ministry's initial submissions at paras. 102-107.
[40] Ministry's initial submissions at para. 103.
[41] Order F14-45, 2014 BCIPC 48 at para. 45.
[42] Order 01-53, 2001 CanLII 21607 (BC IPC) at para. 40. See also Order 02-57, 2002 CanLII 42494 (BC IPC) at para. 36; Order F10-21, 2010 BCIPC 32 at paras. 22-24.

[44] I accept that Ministry employees are third parties for the purposes of s. 22(4)(e). Schedule 1 of FIPPA defines "third party" as any person other than the access applicant or the public body. Ministry employees are neither, so they qualify as third parties for the purposes of s. 22(4)(e).

[45] The question is whether the disputed information relates to the third parties' "position, functions or remuneration" as Ministry employees. In my view, it does not. Some of the information is about what Ministry social workers did or said in the course of their work. However, that work involves children in care and the information is the children's personal information because it relates to them and their situations in care. In this particular context, I am not persuaded that the disputed information is about the Ministry employees' "position, functions or remuneration" within the meaning of s. 22(4)(e).

[46] The Ministry did not explicitly address any of the other circumstances in s. 22(4). The applicants did not argue any particular subsection. I have reviewed the information in light of s. 22(4) and I am satisfied that none of the subsections apply.

Presumptions of unreasonable invasion of privacy – s. 22(3)

[47] The third step in the s. 22 analysis is to determine if any of the presumptions in s. 22(3) apply. Section 22(3) sets out various circumstances in which a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy.

[48] The Ministry submits that ss. 22(3)(a), 22(3)(b) and 22(3)(d) apply to some of the information in dispute.[43] I will address each of these sections in turn. I am satisfied that none of the other presumptions in s. 22(3) apply on the facts of this case.

Section 22(3)(a) – medical, psychiatric or psychological information

[49] 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".

[50] I can see that some of the personal information in the records relates to certain children's or other third parties' medical and psychological conditions, medical care needs and medical appointments.[44] In my view, this information clearly relates to a medical or psychological condition or evaluation within the meaning of s. 22(3)(a). As a result, disclosure of this information is presumed to

[43] Ministry's initial submissions at paras. 108-127.
[44] Records at pp. 3252-3253, 2536, 2538-2543, 3102, 3505, 4000-4001, 4008 and 4010.

be an unreasonable invasion of the children's and the other third parties' personal privacy.

Section 22(3)(b) – investigation into a possible violation of law

[51] Section 22(3)(b) 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 "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".

[52] The Ministry submits that s. 22(3)(b) applies to the disputed information in the records compiled as part of the Quality of Care Review and Protocol investigations into the applicants' foster care.[45] It says these investigations were into a possible violation of the Standards and s. 70 of the CFCSA, which sets out the rights of children in care. The Ministry submits that past orders, such as Order F06-06, have applied s. 22(3)(b) in similar circumstances.[46]

[53] The first question is whether the investigations into the applicant's foster care were investigations into a "possible violation of law". Past orders define "law" as including a legislative provision the violation of which could result in a penalty or sanction.[47] Section 70 of the CFCSA is clearly a legislative provision, so the only issue is whether its violation could result in a penalty or sanction.

[54] The terms "penalty" and "sanction" are not used in s. 22(3)(b) and not defined in FIPPA, but past orders have interpreted them. For example, in Order 01-12, former Commissioner Loukidelis found that the revocation of a bingo licence for violation of terms and conditions established under the *Lottery Act* qualified as a sanction.[48]

[55] In my view, there is a sanction for breach of s. 70 of the CFCSA. Based on the Ministry's evidence, I find that the Standards explicitly incorporate s. 70, the agreement between the Ministry and the applicants require the applicants to comply with the Standards, and the Ministry may terminate the agreement if the applicants breach the Standards, resulting in cessation of foster care and payment.[49] In my view, termination of foster care services is clearly a negative consequence imposed on the applicants as a result of their conduct and I consider it akin to a licence revocation, as in Order 01-12.

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[45] Ministry's initial submissions at paras. 110-125.
[46] Order F06-06, 2006 CanLII 17222 (BC IPC) at paras. 25-26. See also Order 00-03, 2000 CanLII 8520 (BC IPC).
[47] Order 01-12, 2001 CanLII 21566 (BC IPC) at para. 17.
[48] Order 01-12, *ibid* at paras. 24-25.
[49] Affidavit #1 of ND, Exhibit "B" (the Standards) at pp. 3-6 and 11; Affidavit #1 of ND, Exhibit "A" (the agreement) at pp. 3-4 and 7-8 (ss. 3.01-4.08 and 11.01-11.05) and Schedule "A".

[56] I recognize that the sanction for breach of s. 70 of the CFCSA (termination of the foster care agreement) is not itself set out in the CFCSA. However, the Standards were approved under the authority of the CFCSA[50] and the Director's power to enter into the applicant's foster care agreement, which incorporates the Standards, is explicitly set out in the CFCSA.[51] I consider this sufficient to establish, for the purposes of s. 22(3)(b), that there is legal connection between breach of s. 70 of the CFCSA and a "sanction", namely termination of the foster care agreement.

[57] In this regard, I also note Order F06-06, which the Ministry cited. That case dealt with an access request by former foster parents. The Ministry removed children from their care after an investigation. The adjudicator had no difficulty finding that s. 22(3)(b) applied to part of a Ministry report relating to the investigation into the applicants' foster care. I see no basis to depart from that conclusion in essentially the same circumstances here.

[58] Having found that the investigations into the applicant's foster care were investigations into a "possible violation of law", the next question is whether the disputed information was compiled and is identifiable as part of those investigations. I can see that some of the information the Ministry says s. 22(3)(b) applies to was compiled by the Ministry as part of its investigations.[52] This information consists of allegations and information the Ministry compiled from third parties regarding children in the applicants' care. I see no evidence that disclosure of this information is "necessary to prosecute the violation or to continue the investigation" of the applicants, so s. 22(3)(b) applies.

[59] However, I am not persuaded that s. 22(3)(b) applies to the other information in dispute.[53] This information was created by the Ministry to deal with the factual implications of the investigations, but was not compiled by the Ministry as part of the investigations. For example, the information is not evidence gathered in the investigations.

[60] I conclude that s. 22(3)(b) only applies to the disputed information that consists of information and allegations the Ministry compiled from third parties regarding children in care. As a result, disclosure of this information is presumed to be an unreasonable invasion of third-party personal privacy.

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[50] I note that s. 103(2)(h) of the CFCSA grants the Lieutenant Governor in Council the power to make regulations respecting the standards for foster homes.
[51] Section 94 of the CFCSA states that a director may, by agreement, authorize a caregiver to carry out any of the director's rights and responsibilities with respect to the care, custody or guardianship of a child placed with the caregiver.
[52] Records at pp. 2546-2547 and 3350-3352.
[53] Records at pp. 3101-3103 and 3109-3114.

Section 22(3)(d) – employment, occupational or educational history

[61] Section 22(3)(d) 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 employment, occupational or educational history.

[62] The Ministry submits that s. 22(3)(d) applies to information in the records relating to the educational and occupational history of third parties including children and caregivers other than the applicants.[54]

[63] Based on my review, I find that some of the disputed information relates to the occupational and educational history of certain third-party caregivers and the educational history of a particular child.[55] Accordingly, s. 22(3)(d) applies and this information is presumed to be an unreasonable invasion of the third parties' personal privacy.

All relevant circumstances – s. 22(2)

[64] The next step in the analysis is to determine whether disclosure of the disputed information would be an unreasonable invasion of a third party's personal privacy, considering all relevant circumstances including those listed in s. 22(2). This stage considers factors that, when weighed in the balance, may or may not rebut the s. 22(3) presumptions.

[65] The Ministry made submissions about ss. 22(2)(a) and 22(2)(f), as well as the applicant's pre-existing knowledge and the sensitivity of the disputed information. I agree that these factors are relevant to consider. I also find it relevant in this case to consider s. 22(2)(c) and whether the information is the applicants' personal information.

Section 22(2)(a) – public scrutiny

[66] Section 22(2)(a) asks whether disclosure of the disputed personal information is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny. This section is about fostering accountability.[56]

[67] The Ministry submits that s. 22(2)(a) does not weigh strongly, or at all, in favour of disclosure.[57] It says the information in dispute in this inquiry does not reveal all the steps the Ministry took in its investigations or how it arrived at its

[54] Ministry's initial submissions at paras. 126-127.
[55] Records at pp. 2532-2533 and 2536-2537.
[56] See, for example, Order F05-18, 2005 BCIPC 24734 at para. 49.
[57] Ministry's initial submissions at paras. 129-134.

decisions, so disclosure would not be desirable for subjecting the Ministry's activities to public scrutiny. The Ministry adds that it already disclosed all the information relating solely to the applicants, which allows for accountability.

[68] I accept that some of the disputed information would shed light on how the Ministry conducted the investigation relating to the applicants including, for example, what information it gathered and who it consulted with.[58] I can see how the applicants would find disclosure of this information desirable so that they can scrutinize the Ministry's activities. As a result, I give this factor some weight in favour of disclosure.

[69] However, in my view, s. 22(2)(a) does not weigh strongly in favour of disclosure in this case. Based on my review, the disputed information does not reveal anything negative, controversial or suspect about the Ministry's activities the disclosure of which would be desirable for the purposes of allowing the public, and not just the applicants, to hold the Ministry accountable.

[70] For these reasons, I conclude that s. 22(2)(a) weighs minimally in favour of disclosing some of the information relating to the Ministry's activities in the investigation of the applicants.

Section 22(2)(c) – fair determination of the applicants' rights

[71] Section 22(2)(c) says that it is relevant to consider whether the personal information is relevant to a fair determination of the applicants' rights. For this section to apply, the rights in question must be legal and at issue in an ongoing or contemplated proceeding.[59] In addition, the personal information must have some bearing on the determination of the rights in question and the information must be necessary to prepare for the proceeding or to ensure a fair hearing.

[72] As noted above, the wife sought a review of the Ministry's decision to close her and her husband's foster home. However, the Ministry already issued a decision in that review and I see no evidence that there are any other related proceedings pending. Accordingly, I conclude that the review matter has concluded and s. 22(2)(c) does not apply.

Section 22(2)(f) – supplied in confidence

[73] Section 22(2)(f) asks whether the personal information has been supplied in confidence.

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[58] For example, Records at pp. 3350-3352, 3354-3356, 3510-2511, 4011-4012,
[59] Order F20-37, 2020 BCIPC 43 at para. 116, citing Order 01-07, 2001 CanLII 21561 (BC IPC) at para. 31.

[74] The Ministry submits that the disputed information was supplied in confidence and that this weighs in favour of withholding the information.[60] The Ministry provided sworn evidence that it treats as confidential the identities of sources of information relating to children in care and the information they provide.[61] The Ministry says its policies, the CFCSA and the Standards all highlight the importance of confidentiality for children in care and set out privacy protections for them.[62] The Ministry also says child welfare investigations are very serious and sensitive matters, so it would be reasonable to conclude that information provided in this context is supplied in confidence.

[75] Based on my review of the disputed information, I find that some of it was not "supplied" to the Ministry, but rather was created by the Ministry or known to the Ministry. For example, some of the disputed information involves Ministry employees relaying facts to each other and coordinating matters, but none of this information was supplied to the Ministry from a third party or the applicants.[63] In my view, s. 22(2)(f) does not apply to this information.

[76] However, I accept that a significant amount of the disputed information was supplied in confidence.[64] This is information about children in care that the applicants or third parties supplied to the Ministry, including reports concerning the children's care and the identities of the reporters. Given the nature of this information, I find it reasonable to conclude that it was supplied in confidence. The information concerns the welfare and personal details of children in care, which is highly sensitive. Further, s. 75 of the CFCSA prohibits a person from disclosing information obtained under that Act except in limited circumstances. In my view, this section clearly supports a reasonable expectation of confidentiality when sharing information under the CFCSA.

[77] To summarize, I conclude that some, but not all, of the disputed personal information has been supplied in confidence under s. 22(2)(f) and this weighs strongly against disclosing the information.

Degree to which the information is already known

[78] Although not listed in s. 22(2), past orders have considered the degree to which the disputed information is already known, to the applicant or the public, as a relevant circumstance under s. 22(2).[65] For example, if the information is not

[60] Ministry's initial submissions at paras. 135-147.
[61] Affidavit #1 of ND at paras. 26-28 and 32.
[62] Ministry's initial submissions at paras. 40-52.
[63] For example, Records at pp. 3109-3114 (with some exceptions such as some information provided by third parties on pp. 3111-3112).
[64] Records at pp. 2536-2543, 2546-2547, 3102, 3343 (bottom), 3350-3352, 3355, 3502-3505, 3507-3514 and 4000-4016.
[65] See, for example, Order F21-08, 2021 BCIPC 12 at para. 192 (and the cases cited there); Order F21-28, 2021 BCIPC 36 at paras. 53-69.

publicly known, even to the applicants, then that may weigh against disclosure. However, if the applicant or the public already knows the information, then it is not private and this may weigh in favour of disclosure. In general, it would not be an unreasonable invasion of third party's personal privacy to disclose under FIPPA information that is already publicly known.

[79] The Ministry submits that if the applicants know some of the disputed information, this does not weigh in favour of disclosure in this case.[66] The Ministry says it is not clear what the applicants already know. Further, the Ministry says that disclosure under FIPPA is presumed to be disclosure to the world. The Ministry argues that the applicants may know some of the information because of their roles as foster parents, but that knowledge is confidential and does not support making the information, in effect, public.

[80] I accept the Ministry's point that, under FIPPA, disclosure of information to an applicant in response to an access request is, in effect, disclosure to the world. This is a well-established principle.[67] It is based on the fact that there are no restrictions in FIPPA prohibiting an applicant from disclosing the information publicly. Even if an applicant does not in fact disclose the information publicly, they could do so, so the FIPPA analysis assumes that disclosure is to the world and not just to the applicant.

[81] In this case, I find that the applicants already know some of the disputed information. For example, some of the information is in emails sent by or to the applicants.[68] Surely the applicants already know the contents of emails they either sent or received. However, some of the information consists of Ministry employees' notes from calls or meetings with the applicants. Even though the applicants were involved, I am not persuaded that they know what these Ministry employees wrote down.

[82] With respect to the information that the applicants already know, I find, with one exception, that their knowledge weighs only minimally in favour of disclosure. The applicants know some of the information, but I am not persuaded that the world knows it and disclosure under FIPPA is disclosure to the world. Accordingly, I conclude that the applicants' knowledge merits only minimal weight in favour of disclosure.

[83] The exception is disputed information that I find is already revealed elsewhere in the records that have already been disclosed to the applicants. The Ministry disclosed a particular third party's name and information about them in some places, but then withheld that information elsewhere in the records.[69] The

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[66] Ministry's initial submissions at paras. 148-151.
[67] See, for example, Order 03-35, 2003 CanLII 49214 (BC IPC) at para. 31.
[68] Records at pp. 2536-2543.
[69] Records at pp. 3354-3355 and 3509-3511.

Ministry did the same with some email subject lines.[70] In my view, the fact that this information has already been revealed weighs strongly in favour of its disclosure.

Applicants' personal information

[84] Previous orders have considered as a relevant circumstance under s. 22(2) whether the disputed information is the applicant's personal information.[71] In general, an applicant is entitled to their own personal information.

[85] Some of the disputed information is the joint personal information of the applicant and third parties, including children in care and other individuals involved in the children's lives. I find the fact that some of the disputed information is the applicants' personal information weighs in favour of disclosure of that information; however, the weight I give to this factor is significantly diminished because the information is not solely the applicant's personal information.[72]

[86] The disputed information also includes the wife's personal email address. This information is solely the wife's personal information, which is a factor that I find weighs strongly in favour of disclosing the email address.

Sensitivity of the information

[87] Finally, another relevant factor that previous orders have considered under s. 22(2) is the sensitivity of the disputed information.[73]

[88] The Ministry submits that the disputed information is sensitive because it relates to personal intimate details about the lives of foster children cared for by the applicants, investigations into the safety and well-being of some of those children, and the opinions of third parties about the applicants or others.[74]

[89] In my view, most of the disputed information is sensitive and this weighs strongly against disclosure of that information. In general, the records relate to children in foster care, which is a sensitive area concerning intimate and detailed aspects of children's lives. The information in the records includes the identities of children in care and third parties involved in their lives, as well as details about

[70] Records at pp. 3338 and 3349-3350.
[71] See, for example, Order F18-30, 2018 BCIPC 33 at para. 41; Order F20-13, 2020 BCIPC 15 at para. 73.
[72] See, for example, Order F15-52, 2015 BCIPC 55 at para. 45.
[73] See, for example, Order F18-30, 2018 BCIPC 33 at para. 43; Order F20-13, 2020 BCIPC 15 at para. 74.
[74] Ministry's initial submissions at paras. 152-154.

the children's lives, including their well-being and care. In my view, all of this information is clearly sensitive.

[90] However, there are small pieces of information that I do not consider sensitive. This information is generic, administrative and non-substantive parts of emails between Ministry employees and Ministry employees' notes, as well as the title, headings and dates in plans related to a specific child.[75] This information relates to the Ministry's work with children in care, but it does not reveal anything substantive about the children's situations. For example, some of this information reveals that a Ministry employee or the applicants said something about a child in care, but it does not reveal what they said. Where the information does reveal what someone said or did, I do not consider what they said or did to be sensitive. In my view, the lack of sensitivity of this information weighs in favour of its disclosure.

Unreasonable invasion of privacy – s. 22(1)

[91] I found above that template language in a Ministry report, the Ministry employee email signature blocks and parts of email headers relating to Ministry employees are not personal information, so that information cannot be withheld under s. 22(1).

[92] As for the balance of the disputed information, given my analysis above and having regard to all relevant circumstances, I come to the following conclusions.

[93] I am satisfied that it would be an unreasonable invasion of the personal privacy of children in care to disclose the disputed personal information about them, including their identities, biographical details, opinions about them and details about their health, living situations, care and events in their lives. In my view, it would be an unreasonable invasion of the children's personal privacy to disclose any personal information that even reveals, by inference, that they are in the Ministry's care. All of this information is highly sensitive and most of it is covered by at least one of the presumptions in ss. 22(3)(a), (b) or (d), as I found above. Some of this information is the applicants' personal information or already known by the applicants, and some of it would be desirable for allowing the applicants to scrutinize the Ministry's activities. However, in my view, the s. 22(3) presumptions and the highly sensitive nature of the information are stronger factors that, on balance, require refusing access.

[94] I am also satisfied that it would be an unreasonable invasion of the personal privacy of several third parties involved in the children's lives to disclose

[75] Records at pp. 2532-2545, 3109-3114, 3338, 3343-3344, 3350, 3355, 3357-3360, 3361-3362, 3364, 3369, 3504, 3508-3513, 4005, 4008 and 4017-4020.

the disputed information about them, including their identities.[76] Some of this information, such as the reports, allegations or opinions they provided to the Ministry is simultaneously the children's personal information and, to that extent, I find it must be withheld. Other information is solely the occupational or educational history of third-party caregivers, which I found above is presumed to be an unreasonable invasion of privacy under s. 22(3)(d), and I see no basis to rebut the presumption in this case.

[95] However, I find that disclosure of some of the disputed information would not unreasonably invade a third party's personal privacy. This is the wife's email address and the information in Ministry emails, plans and notes that I found above is not sensitive or that has already been revealed elsewhere in the records. No s. 22(3) presumptions apply to this information and no factors weigh in favour of withholding it, so I am not persuaded that its disclosure would unreasonably invade a third party's personal privacy.

Summary of the information – s. 22(5)

[96] Section 22(5)(a) of FIPPA states that if a public body refuses to disclose personal information supplied in confidence about an applicant, the public body must give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information.

[97] The disputed information includes some reports and views that third parties provided to the Ministry about the applicants, which I found above were supplied in confidence. However, I am satisfied that a summary of that information cannot be prepared without disclosing the identity of the complainant. The applicants were deeply involved in the children's lives. The information in question here is fact-specific and only involves a few select individuals. I am satisfied that the applicants could accurately infer the third parties' identities even from a summary. As a result, I conclude the Ministry is not required to provide a summary under s. 22(5) in this case.

SECTION 15 – HARM TO LAW ENFORCEMENT

[98] The Ministry is also withholding under s. 15(1)(d) some of the same information that it withheld under s. 22(1).[77] Section 15(1)(d) says that a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to reveal the identity of a confidential source of law enforcement information.

[76] Except for the one third party whose personal information and identity has already been revealed elsewhere in the records.
[77] Records at pp. 2546-2548, 4001-4002 and 4011-4012; Ministry's initial submissions at para. 64.

[99] The information in dispute under s. 15(1)(d) is information that I already found above must be withheld under s. 22(1). I found that the s. 22(3)(b) presumption applies and that it is not rebutted. Given that finding, I do not consider it necessary to also consider s. 15(1)(d).

CONCLUSION

[100] For the reasons given above, under ss. 54 and 58 of FIPPA, I make the following orders:

1. Under s. 58(2)(b), I confirm the Ministry's decision that the records it withheld under s. 3(1)(c) are outside the scope of FIPPA pursuant to s. 3(1)(c), so the applicants have no right of access to them under FIPPA.
2. Under s. 58(2)(c), I require the Ministry to refuse access to the information it withheld under s. 22(1) that I have not highlighted in a copy of the records that the OIPC will provide to the Ministry with this order.
3. Under s. 58(2)(a), I require the Ministry to give the applicants access to the information in dispute that I have highlighted in a copy of the records that the OIPC will provide to the Ministry with this order. The Ministry must concurrently copy the OIPC registrar of inquiries on its cover letter or email to the applicant, together with a copy of the records.

Pursuant to s. 59 of FIPPA, the Ministry must comply with this order by July 28, 2022.

June 15, 2022

ORIGINAL SIGNED BY

Ian C. Davis, Adjudicator

OIPC File No.: F19-81152