



Order F22-42

MINISTRY OF SOCIAL DEVELOPMENT AND POVERTY REDUCTION

Elizabeth Barker
Director of Adjudication

September 12, 2022

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Summary: The applicant requested records related to her deceased mother’s dental care. The public body refused to disclose the requested records on the basis that the applicant was not authorized to make an access request on behalf of her deceased mother in accordance with s. 5(1)(b) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) and s. 5 of the *Freedom of Information and Protection of Privacy Act Regulation* (Regulation). The public body also refused her access to the records on the basis that disclosure would be an unreasonable invasion of the deceased’s personal privacy under s. 22(1) of FIPPA. The adjudicator concluded that the applicant was not acting on behalf of the deceased and disclosing the deceased’s personal information would be an unreasonable invasion of her personal privacy.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, ss. 5(1)(b), 22(1), 22(3)(a), 22(2)(a), 22(2)(f), 22(2)(i), 58 and Schedule 1 (definitions of “personal information” and “contact information”). *Freedom of Information and Protection of Privacy Act Regulation*, B.C. Reg. 155/2012, ss. 5(1) (definition of “appropriate person”), 5(1)(a)(ii) and 5(2)(a). *Interpretation Act* [RSBC 1996] c. 238, s. 29 (definition of “personal representative”).

INTRODUCTION

[1] This inquiry is about records related to the dental care of a deceased individual. The deceased’s adult daughter (applicant) asked the Ministry of Social Development and Poverty Reduction (Ministry) for access to the deceased’s dental billing records under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The Ministry denied the applicant access to the records on the basis she did not meet the requirements of s. 5(1) of the *Freedom of Information and Protection of Privacy Act Regulation* (Regulation) which specifies who can act for a deceased individual.

[2] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the Ministry's decision. During the review, the Ministry clarified that it was also refusing to disclose the records to the applicant under s. 22(1) of FIPPA (unreasonable invasion of third-party personal privacy). Mediation did not resolve the matter and the applicant requested it proceed to inquiry.

[3] While the Ministry provided an inquiry submission, the applicant chose not to do so. She said, "I am confident that I have submitted all of the information to support my request already. There is no reason, and I have no interest to argue my initial stance. As such, I am not submitting a submission and I request to proceed with the inquiry as it is."¹ Therefore, my understanding of the applicant's position is based on what she said in her access request to the Ministry and in her request for review to the OIPC.

ISSUES

[4] There are two issues to be decided in this inquiry:

1. Is the applicant acting on behalf of her deceased mother in accordance with s. 5(1)(b) of FIPPA and s. 5 of the Regulation?
2. Is the Ministry required to refuse the applicant access to the requested records because disclosure would be an unreasonable invasion of third-party personal privacy under s. 22(1) of FIPPA?

[5] Section 57 does not state who has the onus for establishing that an applicant is authorized under FIPPA and the Regulation to act on behalf of another person. In such a case, both parties are responsible for providing argument and evidence to support their positions.²

[6] Section 57 of FIPPA says that the burden is on the applicant to prove that disclosure of any personal information in the records would not be an unreasonable invasion of a third party's personal privacy under s. 22(1). The public body, however, has the initial burden of proving the information is personal information³

DISCUSSION

Background

¹ Applicant's June 23, 2022 email to OIPC registrar.

² Order F21-44, 2021 BCIPC 52 at paras. 13-17; Order F18-08, 2018 BCIPC 10 at para. 7; Order F17-04, 2017 BCIPC 04 at para. 4; Order F15-36, 2015 BCIPC 39 at para. 5.

³ Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9-11.

[7] The Ministry provides basic dental services to eligible recipients of income assistance and disability assistance. These services are available under the *Employment and Assistance Regulation*⁴ and *Employment and Assistance for Persons with Disabilities Regulation*.⁵ If the recipient is an eligible participant in the dental program, their dentist bills the insurance provider based on the Ministry's fee for service schedule. The deceased received dental services through the program during the time period covered by the access request.

[8] The deceased passed away in January 2007.⁶

[9] The applicant asked for "all of the dental 'Billing Records' of my late mother... deceased, from the Ministry of Social Development and Poverty Reduction with all of the documentation and payments made to Great West Life for Dental Services during 01/01/2000 to 01/01/2007."⁷

Records at issue

[10] The Ministry provided 15 pages of records for my review in this inquiry. I note that they include records that the applicant did not request in her FIPPA access request, specifically emails that post-date the time period of the access request and are about the administrative steps Ministry staff took to respond to the applicant's FIPPA request. I will make no decision about the Ministry's decision to refuse the applicant access to those emails because I find that they are not records that the applicant requested and they are not responsive to her access request.

[11] The records that I will make a decision about are as follows:

- A time limits summary report (pages 1-2);
- A letter from the Ministry to the deceased (page 3);
- A disabilities benefits checklist (page 4);
- Three statements of account from a dental office (pages 5, 7 and 8);
- A letter from one dentist to another (page 6);
- A list of dental services provided to the deceased (page 11);
- A Pacific Blue Cross member history (pages 13-15).

[12] Three of the records that I will make a decision about have handwriting on them: the Ministry letter, the disability benefits checklist and one statement of account. Based on what is said in the handwritten notes, I conclude these are the

⁴ B.C. Reg. 263/2002.

⁵ B.C. Reg. 263/2002. And B.C. Reg. 265/2002.

⁶ Attachment from notary which accompanied applicant's access request and Ministry's initial submission at para. 69. Ministry's initial submission at para. 69.

⁷ Applicant's September 5, 2019 access request.

deceased's handwritten responses to the information contained on those pages, and that she sent these three records to the Ministry.

Acting on behalf of a deceased person

[13] Section 5(1)(b) of FIPPA explains how an applicant may make an access request on behalf of another person:

5(1) To obtain access to a record, the applicant must make a written request that

...

(b) provides written proof of the authority of the applicant to make the request, if the applicant is acting on behalf of another person in accordance with the regulations, ...

[14] Section 5(2)(a) of the Regulation says that an "appropriate person" may act for a deceased person in relation to a request for access to records under s. 5 of FIPPA.⁸

[15] Section 5(1) of the Regulation defines "appropriate person" as follows:

"appropriate person" means,

(a) in respect of a deceased adult, one of the following:

(i) a committee acting under section 24 of the *Patients Property Act* for the deceased;

(ii) if there is no committee acting for the deceased, the personal representative of the deceased;

(iii) if there is no committee acting for the deceased and no personal representative of the deceased, the nearest relative of the deceased, ...

[16] Therefore, in order to be entitled to exercise the deceased's FIPPA rights, the applicant must establish that she is an "appropriate person" pursuant to s. 5 of the Regulation and she is "acting on behalf of" the deceased pursuant to s. 5(1)(b) of FIPPA.

Appropriate person

[17] After the applicant's access request was received by the Ministry, there was some follow-up communication between the parties. The applicant provided a copy of her mother's death certificate and explained that she and her sister

⁸ Section 5(2) of the Regulation. The appropriate person may also act for the deceased in relation to other sections in FIPPA, which I have not listed here as they are not relevant to the facts of this case.

were co-executors of their mother's estate,⁹ and there had been no committee acting for their mother before her death.

[18] In response, the Ministry confirmed that it was satisfied the applicant had established her mother was deceased and the applicant was her personal representative, but it informed the applicant that she had not shown she was acting on behalf of the deceased.¹⁰ In its inquiry submission, however, the Ministry takes the opposite view. It now submits that the applicant is not an appropriate person to make the request because it is her sister, not the applicant, who is the deceased's personal representative.¹¹ The Ministry's submissions and affidavit evidence do not explain what led it to change its view about the applicant being the deceased's personal representative.

[19] Section 5(1)(a)(ii) of the Regulation says if there was no committee acting for the deceased, an appropriate person to act for the deceased in relation to an access request is someone who is the deceased's personal representative. FIPPA does not define "personal representative"; however, I will apply the meaning found in the *Interpretation Act*. The *Interpretation Act* says that the term "personal representative" includes an executor of a will and an administrator with or without will annexed of an estate.¹²

[20] I find that the information the applicant provided in her communications with the Ministry and in her request for review establishes that her mother is deceased, there was no committee and the applicant is the co-executor of the deceased's estate.

[21] The Ministry's evidence establishes that when it was communicating with the applicant about the access request, the applicant satisfied the Ministry that she was a co-executor of the deceased's estate and she was the deceased's personal representative.¹³ The Ministry's submissions and evidence do not explain why now, in this inquiry, it disputes that the applicant is the deceased's personal representative.

[22] Having considered all of the information provided by the parties, I am satisfied that the applicant is a co-executor of the deceased's estate and, thus, the deceased's personal representative. For that reason, I find that the applicant is an "appropriate person" under ss. 5(1)(a)(ii) and 5(2)(a) of the Regulation.

Acting on behalf of – s. 5(1)(b) of FIPPA

⁹ Affidavit of the Ministry's Director of Litigation and Policy (Director) at exhibit D.

¹⁰ Ministry's October 3, 2019 response to access request at exhibit G of Director's affidavit.

¹¹ Ministry's initial submission at para. 31.

¹² *Interpretation Act*, [RSBC 1996] c. 238 at s. 29.

¹³ The Ministry's October 3, 2019 letter to applicant.

[23] The next question is whether the applicant's access request was made "on behalf of" the deceased as required by s. 5(1)(b) of FIPPA. The phrase acting "on behalf of" is not defined in FIPPA but past BC Orders have interpreted it to mean acting to benefit of the other individual, to further the other individual's own goals or objectives, and in the other individual's best interests.¹⁴ Previous orders have also noted that if an applicant is seeking the information in question to further their own interests, they are not acting on behalf of another individual pursuant to s. 5 of FIPPA.¹⁵

[24] To understand the applicant's motive for making the access request, I have considered what she said when she made the request to the Ministry as well as what she said when she asked the OIPC to review the Ministry's decision. In her access request, she wrote: "I am making the FOI request for the dental billing records so that I can then retrieve dental records from the dental office. At present, the purpose of the documents is for personal clarification of dental treatments and procedures."¹⁶ Several days later, in a follow-up communication with the Ministry, the applicant wrote, "The documents I am requesting are potentially to continue with an investigation at the College of Dental Surgeon [sic] of BC."¹⁷ Then, in her request for review the applicant said:

The consequences of negligence from a dentist in a dental procedure was the probable cause of my mother's grave illness.

I am an Executor of my mother's will. My mother gave my sister and I the legal responsibility of her estate; that being concerning settlement with matters from her life, and thereafter.

When she was alive she asked me for help to find what was wrong with her that was causing her to be very sick. I am following through with her will in an investigation at the College of Dental Surgeons of BC File [number].

It is important that the case be put forward into justice so that the law can determine what to do. Without doubt, as much as the dentist be [sic] aware of his wrongdoing, it is also in the 'publics' best interest that he is held accountable.¹⁸

[25] The Ministry says there is no evidence the applicant is acting on behalf of the deceased regarding the access request or that the deceased wished for any

¹⁴ F17-04, 2017 BCIPC 4 (CanLII) at para. 17 at and F18-08, 2018 BCIPC 10 (CanLII) at paras.12-13.

¹⁵ For example, see: Order F17-04, 2017 BCIPC 4 (CanLII) at paras. 18-20; Order F07-16, 2077 CanLII 35477 (BC IPC) at paras. 19-20; Order 02-44, 2002 CanLII 42478 (BC IPC) at paras. 39-40.

¹⁶ Applicant's September 5, 2019 request.

¹⁷ Director's affidavit at exhibits D and E.

¹⁸ Applicant's October 30, 2019 request for review.

investigation to continue after her death.¹⁹ The Ministry argues that the applicant's mere assertion that she is acting on behalf of the deceased, without providing further evidence in this regard, is not sufficient.²⁰ The Ministry also submits the applicant's reasons for accessing the records are personal and for that reason her request ought to be considered as an arm's length request by a third party.²¹

[26] I accept what the applicant says about how when she was alive, the applicant's mother asked her to help find out what was causing her to be so sick. I understand that to be a request for help to regain her health. However, there is nothing in the materials before me to indicate that her mother asked the applicant to continue to examine her medical situation if she were to die. If that was the case, the applicant did not say.

[27] In the access request, the applicant said she wanted to see the records for her own "personal clarification". She later also expressed the view that it is in the public's best interest that the dentist be held accountable for what she believes is his wrongdoing. Based on what she has said about her motives for making the access request, I find that the access request is made in pursuit of the applicant's own suspicions about her mother's dental care and her own beliefs about public accountability. The applicant does not explain how the access request, made approximately 12 years after her mother died, is an action taken on behalf of her mother. She also does not say how her desire to scrutinize the requested records would benefit her mother's interests or how it would further her mother's goals and objectives. The applicant had an opportunity to provide further explanation and information in this inquiry, but she chose not to do so.

[28] In conclusion, I find that what the applicant has said about why she is making the access request is not sufficient to establish that she is "acting on behalf of" the deceased as s. 5(1)(b) of FIPPA requires.

[29] Past orders have said that where an applicant is not truly acting "on behalf" of an individual, the FIPPA access request is to be treated as an ordinary, arm's-length request by one individual for another's personal information.²² For that reason, I will consider whether giving the applicant access to the information in dispute would be an unreasonable invasion of third-party personal privacy under s. 22(1).

¹⁹ Ministry's initial submission at para. 31.

²⁰ Ministry's initial submission at paras. 32 and 41.

²¹ Ministry's initial submission at paras. 38 and 45.

²² Order 00-40, 2000 CanLII 14405 (BC IPC) at p. 8.

Unreasonable invasion of third-party personal privacy, s. 22*Personal Information*

[30] Section 22 only applies to personal information, so the first step in a s. 22 analysis is to determine if the information in dispute is personal information. Personal information is defined in FIPPA as “recorded information about an identifiable individual other than contact information.” Contact information is defined 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.”²³

[31] The Ministry withheld the entirety of the records and says that all of the information is the deceased’s personal information because it is her medical dental records, outlining dental evaluation and treatment.²⁴

[32] The applicant asked for information about her deceased mother’s dental billing records and the records are about that, so I find all of the information in dispute is about the deceased and qualifies as her personal information. Given the subject matter of the request and the context of the records, all of the information in the records reveals information about the nature of the deceased’s interactions with the Ministry and her health and medical treatment.

[33] There are a few instances where I find the deceased’s personal information is simultaneously the personal information of Ministry staff and dentists. Those individuals are identified by name and were involved in providing the deceased with income assistance and medical care. Given the context of the records, I find that their personal information cannot be teased-apart from the deceased’s personal information. Thus, only if I find that s. 22(1) does not prohibit disclosure of the deceased’s personal information, will I need to move on and decide if s. 22(1) prohibits disclosure of the Ministry staff and dentists’ personal information.

Not an unreasonable invasion, s. 22(4)

[34] 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 s. 22(4) applies, disclosure would not be an unreasonable invasion of a third party’s personal privacy. The Ministry submits that s. 22(4) does not apply. The applicant made no submission about this.

²³ See Schedule 1 of FIPPA for the definitions of personal information and contact information. There is no contact information in the records.

²⁴ Ministry’s initial submission at para. 50.

[35] I find that s. 22(4) does not apply in this case. In particular, I considered whether any of the personal information of the dentists and Ministry staff is the type of information that s. 22(4)(e) might apply to, namely information that is about their position or functions as an officer, employee or member of a public body. In the context of these records, which includes that these individuals' personal information is simultaneously about the deceased and reveal that she was communicating with them, I find that s. 22(4)(e) does not apply.

Presumptions, s. 22(3)

[36] 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 third-party personal privacy. The following parts of section 22(3) are relevant here:

22(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,

...

(c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels,

[37] The Ministry submits that s. 22(3)(a) applies because the information relates to the deceased's medical history.²⁵ The applicant makes no submission about s. 22(3).

[38] All of the personal information relates to the deceased's dental/medical treatment and, for that reason, I find that s. 22(3)(a) applies.

[39] I can also see that the deceased was a recipient of income assistance and/or disability assistance and a client of the Ministry. Therefore, I find that some of the information relates to the determination of the deceased's level of entitlement to dental care and benefits, so s. 22(3)(c) also applies.

[40] Because ss. 22(3)(a) and (c) apply, I find disclosure of the information in dispute is presumed to be an unreasonable invasion of the deceased's personal privacy.

Relevant circumstances, s. 22(2)

²⁵ Ministry's initial submission at para. 54.

[41] 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.

[42] The applicant makes no submissions about any of the s. 22(2) circumstances. The Ministry submits that ss. 22(2)(a), (f) and (i) are relevant to this inquiry, so I will consider those circumstances. I will also consider the sensitivity of the information and the applicant's relationship with the deceased.

[43] Section 22(2)(a) - Section 22(2)(a) states that a circumstance to consider is whether disclosure of the personal information is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny.

[44] The Ministry submits that the personal information at issue would, at most, subject third parties to public scrutiny and it would not subject the Ministry to scrutiny, so s. 22(2)(a) is not a factor in favour of disclosure.²⁶ The Ministry adds: "...while it may be in the applicant's interests to receive the withheld information, it is not in the public interest to disclose records that are understood to contain such information as confidential medical treatment information that FOIPPA presumes to be quite sensitive in nature."²⁷

[45] I conclude that the only thing the information in dispute reveals are details of the deceased's particular health challenges and treatment and some information about her income assistance benefits. I also note that all of the information in dispute relates to events that occurred 2-4 years before the deceased passed away. I cannot see how disclosing that information could conceivably serve any useful role in subjecting the activities of the government of British Columbia or a public body to public scrutiny.

[46] Section 22(2)(f) – Section 22(2)(f) says that a circumstance to consider is whether the personal information was supplied in confidence.

[47] The Ministry submits that s. 22(2)(f) is a relevant factor in favour of withholding the records. The Ministry says it treats client information relating to the delivery of the dental program as highly confidential and it has strict controls regarding the release of clients' personal information. The Ministry's Director of Litigation and Policy (Director) says that Ministry staff may share a client's information only with a person or agency who has a contract with the Ministry to administer the client's assistance benefits or provide services to the client. Disclosure to anyone else, the Director says, requires the client provide a current consent that specifies what information may be released and to whom.²⁸ The

²⁶ Ministry's initial submission at para. 57.

²⁷ Ministry's initial submission at para. 58.

²⁸ Director's affidavit at paras. 9-11.

Director describes the training Ministry staff receive about maintaining client confidentiality and the process staff must follow when collecting or disclosing clients' personal information.

[48] I find that some of the information in dispute was not *supplied* to the Ministry but was *generated* by the Ministry, so s. 22(2)(f) does not apply to that information. That information is in the time limits summary report which I can see is a report generated from a data base for matters related to Ministry client benefits. The report consists of information like Ministry file numbers, office and caseload codes, dates and monthly counts.

[49] However, I am satisfied that the balance of the personal information was supplied in confidence to the Ministry. It was supplied by the deceased in the three records that have her handwritten responses on them. It was also supplied by the dentists who evaluated her and provided her treatment and by Pacific Blue Cross who recorded details about the dental treatment she received. While there are no express statements of confidentiality in the records, given their content and context, it is reasonable to conclude that the personal information was supplied in confidence. The personal information is about medical matters which is the type of personal information that is generally understood to be provided with an expectation that it will be kept confidential by the recipient.²⁹ There is nothing in the records and the parties' inquiry submissions and evidence to suggest that when the personal information was supplied to the Ministry it was intended to be shared with anyone other than the Ministry staff working on the deceased's case.

[50] Section 22(2)(i) – Section 22(2)(i) says that a circumstance to consider is whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased's personal privacy.

[51] A person's privacy rights continue after their death, although they diminish over time to a degree that varies with the particular circumstances.³⁰ FIPPA does not specify a set number of years after which a deceased's personal information may be disclosed. Instead, s. 22(2)(i) requires an assessment of the specifics of each case to determine whether the length of time a person has been deceased indicates the disclosure would not be an unreasonable invasion of the deceased's personal privacy.³¹ In previous BC Orders where an adjudicator determined a sufficient amount of time had passed since the person died all involved timeframes of 34, 42, 45 and 53 years.³² In the Orders involving shorter

²⁹ *R. v. Spencer*, 2014 SCC 43 at para. 39 where the Supreme Court of Canada recognized that a patient has a reasonable expectation that their medical information will be held in trust and confidence by the patient's physician.

³⁰ Order F18-08, 2018 BCIPC 10 at para. 7; Order 04-16, 2004 CanLII 7058 (BC IPC) at para. 19

³¹ Order F12-08, 2012 BCIPC 12 (CanLII) at para. 42.

³² F14-32, 2014 BIPC 35 at para. 37; F14-09, 2014 BCIPC 11 at para. 34; Order 200-1997, 1997 CanLII 719 (BC IPC); Order 96-1996, [1996] B.C.I.P.C.D. No. 22.

periods, the adjudicators found that not enough time had elapsed to diminish the deceased's right to privacy over their medical information.³³

[52] The Ministry says the deceased passed away in January 2007, and it contends that her right to privacy must be respected and there has been an insufficient passage of time to warrant releasing the records. The applicant does not make a submission about this.

[53] In this case, I find that the deceased passed away approximately 12 years ago, a relatively short period of time. In my view, this is an insufficient amount of time to negate her right to privacy over her personal information, in particular when the information is about matters such as medical care and disability benefits.

[54] Sensitivity of the information - The deceased's personal information relates to her health and medical care and I find that much of it is sensitive, specifically details about her health condition and the specific treatments she received, as well as her handwritten notes that reveal what she thought about her health and disability benefits.

[55] However, I find that some of the personal information is not sensitive. That is because it is administrative and payment-processing information, for instance: general information about disabilities benefits; the deceased's name and address on invoices; microfilm numbers; approval codes; generic terms for medical treatment; co-insurance percentages; fees and deductible amounts.

[56] Applicant's relationship to deceased - I also think that it is appropriate in a case of access to a deceased person's personal information to consider the applicant's relationship to the deceased. Past orders have done the same.³⁴

[57] In this case there was a familial relationship between the applicant and the deceased. What the deceased said to the applicant during the course of her illness satisfies me that the two had a caring relationship that involved a level of trust. The mother was willing to share at least some information about her health with the applicant, which is demonstrated by the fact that she asked for her to help find out why she was ill. In addition, the deceased made the applicant an executor which suggests she trusted the applicant. However, the information provided to me in this inquiry does not reveal enough detail about their relationship for me to comfortably determine what level of disclosure to her daughter the deceased would have been comfortable with. For that reason, this circumstance does not weigh strongly in favour of disclosure.

³³ Even in the context where the access applicant was a close relative of the deceased.

³⁴ Order 96-1996, [1996] B.C.I.P.C.D. No. 22; Order 00-11, 2000 CanLII 10554; Order F14-09, F14-32, 2014 BCIPC 35.

Conclusion, s. 22

[58] For the reasons that follow, I find that disclosing the information in dispute would be an unreasonable invasion of the deceased's personal privacy.

[59] I find that all of the information in dispute is about the deceased and is her personal information.

[60] I find that disclosing the deceased's personal information is presumed to be an unreasonable invasion of her personal privacy under s. 22(3)(a) and (c) because the information relates to her medical/dental treatment and her benefit entitlement as a client of the Ministry.

[61] There are several relevant circumstances to consider in assessing whether the s. 22(3)(a) and (c) presumptions have been rebutted in this case. The circumstances under ss. 22(2)(a) and (i) weigh against disclosure of all of the deceased's personal information and reinforce the presumptions. In addition, some of the personal information is sensitive and some was supplied in confidence under s. 22(2)(f), and those circumstances also weigh against disclosure and also bolster the presumptions.

[62] However, I recognize that there are also circumstances that weigh in favour of disclosure. For instance, I find that not all of the information is sensitive or was "supplied" in confidence under s. 22(2)(f). I also find that the applicant's relationship with the deceased is a factor that weighs somewhat in favour of disclosure, but not strongly so.

[63] In the end, having considered the relevant circumstances as a whole, I find that the circumstances that weigh in favour of disclosure are not sufficient to rebut the ss. 22(3)(a) and (c) presumptions. Those presumptions say that disclosure of the deceased's personal information would be an unreasonable invasion of her personal privacy.

[64] In conclusion, I find that disclosing the deceased's personal information would be an unreasonable invasion of her personal privacy under s. 22(1) of FIPPA and the Ministry must refuse to give the applicant access.³⁵

ORDER

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

³⁵ Because the information must not be disclosed, it was not necessary to also decide if disclosure would be an unreasonable invasion of the Ministry staff and dentists' personal privacy.

- a) I confirm the Ministry's decision that the applicant is not acting on behalf of her deceased mother in accordance with s. 5(1)(b) of FIPPA and s. 5 of the Regulation.

- b) I confirm the Ministry's decision that it is required to refuse to disclose the information in dispute under s. 22(1) of FIPPA.

September 12, 2022

ORIGINAL SIGNED BY

Elizabeth Barker, Director of Adjudication

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