



Order F22-62

INTERIOR HEALTH AUTHORITY

Elizabeth Vranjkovic
Adjudicator

November 24, 2022

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Summary: The applicant requested all of the records relating to her treatment at the Kootenay Boundary Regional Hospital. The Interior Health Authority (Interior Health) disclosed the responsive records but withheld some information 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 some of the information in dispute but ordered Interior Health to disclose the information that it was not required to withhold under s. 22(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 22(1), 22(2), 22(2)(a), 22(2)(f), 22(3), 22(3)(a), 22(3)(h), 22(4) and 22(4)(e).

INTRODUCTION

[1] The applicant made a request to the Interior Health Authority (Interior Health) for all of the records relating to her treatment at the Kootenay Boundary Regional Hospital (hospital). Interior Health disclosed the responsive records but withheld some information in the records under s. 22(1) (unreasonable invasion of a third party's personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review Interior Health's decision. Mediation by the OIPC did not resolve the matter and it proceeded to inquiry.

ISSUE

[3] At this inquiry, I must decide whether Interior Health is required to refuse to disclose the information in dispute under s. 22(1).¹

[4] Section 57(2) 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).²

PRELIMINARY MATTER

[5] The applicant's submissions include matters not set out in the OIPC investigator's fact report or the notice of inquiry. For example, I understand that the applicant has concerns about her treatment in the hospital and her rights under the *Canadian Charter of Rights and Freedoms*.³ I can see how important these matters are to the applicant. However, as the Commissioner's delegate, my role is limited to determining whether the City was required to refuse access to the information at issue in the record. I have focused my discussion below only on the evidence and submissions relevant to deciding the s. 22(1) issue.

DISCUSSION

Background and information at issue

[6] In 2014, the applicant received medical care at the hospital. She subsequently requested access to all of the records relating to her treatment at the hospital. Interior Health provided the applicant with the responsive records but withheld some information from a log of handwritten notes made by physicians about the applicant (log).⁴

[7] Interior Health withheld several log entries detailing conversations between physicians and third parties (sources).⁵ These log entries are mostly about the applicant but they also contain information about the sources and the physicians. For example, they contain information indicating whether the sources will undertake certain activities and information describing the actions of

¹ Whenever I refer to section numbers in this order, I am referring to sections of FIPPA.

² Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

³ *Constitution Act, 1982, Schedule B to the Canada Act 1982* (U.K.), 1982, c 11.

⁴ The investigator's fact report describes the records as physician handwritten notes. From the handwriting, I can see that the notes were made by more than one individual, so throughout this order I refer to multiple physicians.

⁵ I cannot determine how many sources provided information about the applicant based on the evidence and submissions before me. Throughout this order, I refer to multiple sources, even though it is possible that there is only one source.

physicians.⁶ Interior Health also withheld a physician's signature,⁷ a hospital employee's name,⁸ a third party's name⁹ (Person A) and the date of a log entry.¹⁰ Finally, Interior Health withheld one page of notes about an unnamed person (the other patient) who was treated at the hospital and an explanation indicating that the notes about the other patient (other patient's notes) were incorrectly included in the log.¹¹

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

[8] 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.¹² Numerous orders have considered the application of s. 22, and I will apply those same principles here.¹³

Personal information

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

[10] Personal information is defined in FIPPA as "recorded information about an identifiable individual other than contact information."¹⁴ 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.¹⁵

[11] 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."¹⁶

[12] Interior Health does not say anything about whether the information is personal information. The applicant says that all of the information at issue is her personal information.¹⁷

⁶ Information located on pages 1-5 of the records.

⁷ Information located on pages 3 and 5 of the records.

⁸ Information located on page 6 of the records.

⁹ Information located on page 5 of the records.

¹⁰ Information located on page 2 of the records.

¹¹ Information located on page 7 of the records.

¹² 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.

¹³ See for example, Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.

¹⁴ Schedule 1 of FIPPA.

¹⁵ Order F19-13, 2019 BCIPC 15 at para 16, citing Order F18-11, 2018 BCIPC 14 at para 32.

¹⁶ Schedule 1 of FIPPA.

¹⁷ Applicant's response submission at page 3.

[13] I will first consider whether the information at issue is about identifiable individuals. I will then consider whether any of the information that I find is about identifiable individuals is contact information.

[14] To begin, there is some information that I find is not about an identifiable individual. This information is the explanation that the other patient's notes were incorrectly included in the log and the date of a log entry. In my view, the explanation is about an administrative error and it does not reveal the identity of the other patient or any other identifiable individual. With respect to the date of a log entry, I cannot see, and Interior Health does not explain, how it qualifies as information about an identifiable individual. Therefore, I find that the date of a log entry and the explanation that the other patient's notes were incorrectly included in the log are not personal information.

[15] In my view, the balance of the information at issue is about identifiable individuals.

[16] Some of the information is about individuals who are identified by name. Some of the information does not directly identify an individual (i.e. by name) but given the context, it is reasonable to conclude that the applicant or other members of the public would be able to identify the individuals. Therefore, this information is about identifiable individuals. For example, some of the information at issue is the sources' opinions and comments about the applicant. An individual's opinions and comments are their personal information if their identity is known or can be accurately inferred.¹⁸ Some of the sources are identified by name or by their relationship to the applicant. Where the sources are not identified, I am satisfied that the applicant could accurately infer their identities because their opinions and comments relate to incidents and interactions involving the applicant. I conclude, therefore, that the sources' opinions and comments are the personal information of those sources. These opinions and comments are simultaneously the personal information of the applicant because they are about her.

[17] As another example, the name of Person A is at issue. There is also some information next to the name of Person A that is at issue. I cannot read any of this information because of the handwriting. I am satisfied that Person A's name is a name because it consists of two words with the first letter of each word capitalized. I am also satisfied, based on the location of this information in the records, that the information next to the name of Person A is information about Person A. I am of the view that, based on the applicant's knowledge of events documented in the log and the individuals involved in her care, it is more likely than not that the applicant would be able to read the name and the associated

¹⁸ Order F17-01, 2017 BCIPC 1 at para 48.

information. Therefore, I find that all of this information is about an identifiable individual.

[18] I turn now to whether any of the information that I have found about identifiable individuals is contact information. If so, under the definitions in Schedule 1 of FIPPA, it is not personal information. Whether information is contact information depends on the context in which it appears.¹⁹

[19] Most of the information about identifiable individuals is clearly personal information. I have considered whether some of the information about identifiable individuals, in particular an employee's name and a physician's signature,²⁰ is the type of information that may be contact information.

[20] Given the context in which this information appears, I find that the employee's name and the physician's signature are personal information. I am satisfied that the signature appears in the log to identify the physician who made certain log entries and that the employee's name appears in the log to document a conversation between a physician and that employee. I am not satisfied that the physician's signature or the employee's name appear in the log entries to enable others to contact the physician or the employee at their places of work, so they are not contact information in this context.

[21] I find that all of the information about identifiable individuals is personal information.

Summary

[22] To summarize, I find that the date of a log entry and the explanation that the other patient's notes were incorrectly included in the log are not personal information. I find that the balance of the information at issue is personal information. I find that some of the personal information is the personal information of third parties while some is simultaneously the personal information of the applicant and the sources.

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

[23] 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 and the information cannot be withheld under s. 22(1).

¹⁹ Order F20-13, 2020 BCIPC 15 at para 42.

²⁰ Interior Health withheld the same physician's signature on two occasions. For ease of reference, I refer throughout this order to the physician's signature and do not distinguish between the two signatures.

[24] Neither Interior Health nor the applicant say anything about s. 22(4). I have considered whether any of the subsections in s. 22(4) apply and I find that s. 22(4)(e) applies to some of the personal information.

Positions, functions or remuneration as an officer, employee or member of a public body, s. 22(4)(e)

[25] Section 22(4)(e) says that disclosing information about a third party's position, functions or remuneration as an officer, employee or member of a public body is not an unreasonable invasion of that third party's personal privacy.

[26] Based upon my review of the records, I find that the only information that potentially falls within the scope of s. 22(4)(e) is the employee's name, the physician's signature and information describing the actions of physicians.

[27] Previous OIPC orders have found that objective, factual statements about what an individual said or did in the ordinary course of discharging their job duties for the public body falls under s. 22(4)(e).²¹ It also applies to their names and signatures when they appear in that same context.²²

[28] I am satisfied that s. 22(4)(e) applies to the employee's name and the physician's signature given the context. I am also satisfied that s. 22(4)(e) applies to the information describing physicians' actions because it comprises objective, factual statements about what physicians did in the ordinary course of discharging their job duties for Interior Health. The only exception is where some of this information is simultaneously the personal information of one of the sources. Section 22(4)(e) clearly does not apply to the personal information of individuals who are not officers, employees or members of Interior Health, and I have no evidence or submissions before me which suggest that the sources are officers, employees or members of Interior Health.

[29] Therefore, the employee's name, the physician's signature and most of the information describing physicians' actions fall under s. 22(4)(e) and disclosure would not result in an unreasonable invasion of a third party's personal privacy. Interior Health cannot withhold this information under s. 22(1).

[30] I have considered the other types of information and circumstances listed under s. 22(4) and I find that none apply.

²¹ Order 01-53, 2001 CanLII 21607 (BC IPC) at para 40; Order F18-38, 2018 BCIPC 41 at para 70.

²² Order F18-04, 2018 BCIPC 4 at para 121; Order F20-13, 2020 BCIPC 15 at para 46.

Presumptions of Unreasonable Invasion of Privacy, s. 22(3)

[31] 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.

[32] The public body says that s. 22(3)(h)(ii) applies to the personal information.²³ The applicant does not make any submissions about s. 22(3).

[33] I have considered whether any of the subsections in s. 22(3), including s. 22(3)(h)(ii) apply, and I find that only s. 22(3)(a) is relevant in this case.

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

[34] Section 22(3)(a) creates a presumption that disclosure of personal information relating to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation is an unreasonable invasion of a third party's personal privacy.

[35] Interior Health describes the other patient's notes as "incorrect patient charting."²⁴

[36] Based on this description, the explanation that the other patient's notes were incorrectly included in the log, and my review of the other patient's notes, I am satisfied that the other patient's notes relate to the other patient's medical, psychiatric or psychological history, condition, treatment or evaluation.

[37] As a result, I find that s. 22(3)(a) applies and disclosure of the other patient's notes is presumed to be an unreasonable invasion of their personal privacy.

Contents of a personal evaluation or personnel evaluation, s. 22(3)(h)(ii)

[38] Section 22(3)(h)(ii) says that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if it would reveal the content of a personal recommendation or evaluation, character reference or personnel evaluation supplied, in confidence, by a third party, if the applicant could reasonably be expected to know the identity of the third party.

[39] I cannot see, and Interior Health does not explain, how s. 22(3)(h)(ii) applies to any of the personal information.

²³ Public body's submission at pages 1-2.

²⁴ Public body's submission at page 2.

[40] Past orders have found s. 22(3)(h) to apply in the context of a formal workplace investigation or human resources matter.²⁵ That is not the context of the records in this inquiry. Moreover, I am not satisfied that any of the personal information is a personal recommendation or evaluation, a character reference or a personnel evaluation as those terms have been interpreted in previous orders.²⁶ Therefore, I find that s. 22(3)(h)(ii) does not apply to any of the personal information.

Relevant Circumstances, s. 22(2)

[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 public body says that s. 22(2)(f) applies.²⁷ The applicant does not make any submissions about s. 22(2).

[43] I will consider s. 22(2)(f) 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, s. 22(2)(a)

[44] 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.²⁸

[45] Although the applicant does not say that s. 22(2)(a) applies, her submission indirectly raises the relevance of this section. The applicant says that her treatment at the hospital was abusive, traumatizing and infringed on her rights. The applicant also says that she hopes to use the personal information at issue for educational purposes so that future patients are not treated in the same way she was. Finally, the applicant says the information that the sources provided about her affected how she was treated in the hospital.²⁹

²⁵ F10-08, 2010 BCIPC 12 at para 33.

²⁶ See for example, Order F10-08, 2010 BCIPC 12 at para 33; Order F17-46, 2017 BCIPC 51 at para 16; and Order F20-13, 2020 BCIPC 15 at paras 60-61.

²⁷ Public body's submission at pages 1-2.

²⁸ Order F05-18, 2005 CanLII 24734 (BC IPC) at para 49.

²⁹ The information in this paragraph is from the applicant's response submission at pages 3 and 5.

[46] Although I can see that the applicant has concerns about her treatment in the hospital, in my view, the specific personal information at issue does not reveal anything meaningful about the activities of the public body. I do not see how disclosing any of the personal information would foster accountability of Interior Health in the circumstances.

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

[47] 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.³⁰

[48] Interior Health says that “the information redacted was obtained by a third party, in confidence, whereupon the applicant could reasonably know the identity of the third party.”³¹ The applicant does not any make submissions about s. 22(2)(f).

[49] There are no express indicators of confidentiality in the records and Interior Health has not provided any evidence in support of its position that s. 22(2)(f) applies.

[50] Having reviewed the records, I find that the only personal information that potentially falls within the scope of s. 22(2)(f) is the sources’ personal information. This includes both their opinions and comments about the applicant and the information that is solely their personal information.

[51] I am mindful that information provided to physicians is generally provided in confidence. As a result, I find that it is reasonable to conclude that the sources would expect all of the personal information they supplied to the physicians to be kept confidential. For this reason, I find that s. 22(2)(f) applies and weighs against disclosing the sources’ personal information because of the context in which it was supplied.

[52] However, I give minimal weight to this factor in relation to some of the sources’ opinions and comments. For example, there are general comments about the applicant’s education and spirituality, the substance of which would likely be known by many third parties. There are also descriptions of the applicant and her actions that do not reveal anything particularly sensitive. All of these opinions and comments are, in my view, the sort of opinions and comments that the sources might openly say to the applicant. Therefore, I afford

³⁰ Order F11-05, 2011 BCIPC 5 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).

³¹ Public body’s submission at pages 1-2.

less weight to s. 22(2)(f) in relation to these opinions and comments than I do to the rest of the sources' personal information.

Applicant's personal information

[53] Previous orders have considered as a relevant circumstance under s. 22(2) whether the disputed information is the applicant's personal information.³² In general, an applicant is entitled to their own information. Previous orders have stated that it would only be in rare circumstances where disclosure to an applicant of their own personal information would be an unreasonable invasion of a third party's personal privacy.³³

[54] The sources' opinions and comments about the applicant are simultaneously the personal information of the applicant and the sources. I find that the fact that the applicant is seeking her own personal information is a factor in favour of disclosing the sources' opinions and comments.

Summary, s. 22(1)

[55] I find that most, but not all of the information at issue is "personal information" under FIPPA. Specifically, I find that the date of a log entry and the explanation that the other patient's notes were incorrectly included in the log are not personal information. Interior Health is not required or authorized to withhold this information under s. 22(1).

[56] I find that the remainder of the information at issue is personal information. I will explain my findings with respect to the specific personal information below in light of any relevant circumstances and presumptions that apply.

[57] To begin, I find that disclosing some of the personal information would not be an unreasonable invasion of a third party's personal privacy.

[58] I find that s. 22(4)(e) applies to the physician's signature, the employee's name, and some of the information describing physicians' actions. I find that disclosing this information would not be an unreasonable invasion of a third party's personal privacy. Interior Health is not required or authorized to withhold this information under s. 22(1).

[59] I find that s. 22(2)(f) has minimal weight in relation to some of the sources' opinions and comments about the applicant. As a result, I find that the applicant's interest in her personal information outweighs the fact that this information was

³² See for example, Order F18-30, 2018 BCIPC 33 at para 41; Order F20-13, 2020 BCIPC 15 at para 73.

³³ Order F14-47, 2014 BCIPC 51 at para 36, citing; Order F10-10, 2010 BCIPC 17 at para 37 and Order F06-11, 2006 CanLII 25571 (BC IPC) at para 77.

supplied in confidence. I find that disclosing this information would not be an unreasonable invasion of a third party's personal privacy. Interior Health is not required or authorized to withhold this information under s. 22(1).

[60] However, I find that disclosing all of the other personal information would be an unreasonable invasion of a third party's personal privacy.

[61] First, no factors weigh for or against disclosure of Person A's name or personal information. The applicant has not met her burden to establish that disclosing this information would not be an unreasonable invasion of a third party's personal privacy. Considering that this information is located in a medical record and that I cannot read it, I have chosen to err on the side of caution in relation to this information. I find that disclosing this information would be an unreasonable invasion of Person A's personal privacy. Interior Health must refuse to disclose this information under s. 22(1).

[62] Additionally, I find that the s. 22(3)(a) presumption applies to the other patient's notes. There are no relevant circumstances that weigh in favour of disclosing this information, so the presumption has not been rebutted. I find that disclosing this information would be an unreasonable invasion of the other patient's personal privacy. Interior Health must refuse to disclose this information under s. 22(1).

[63] I find that s. 22(2)(f) applies to the balance of the sources' opinions and comments and outweighs the applicant's interest in her personal information. I find that disclosing these opinions and comments would be an unreasonable invasion of the sources' personal privacy under s. 22(1). Interior Health must refuse to disclose this information under s. 22(1).

[64] Finally, I find that the information that is solely the personal information of the sources was supplied in confidence and no factors weigh in favour of disclosing this information. I find that disclosing this information would be an unreasonable invasion of the sources' personal privacy. Interior Health must refuse to disclose this information under s. 22(1).

Summary of personal information supplied in confidence about the applicant, s. 22(5)

[65] Section 25(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.

[66] Neither party specifically addressed whether Interior Health could prepare such a summary under s. 22(5).

[67] I found above that Interior Health was required to refuse to disclose some of the sources' opinions and comments about the applicant because that information was supplied in confidence. In my view, this information cannot be meaningfully summarized without disclosing the identity of the sources. Therefore, Interior Health is not required to provide a summary under s. 22(5).

CONCLUSION

[68] 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, Interior Health's decision to refuse to disclose information to the applicant under s. 22(1) of FIPPA.
2. I require Interior Health to give the applicant access to the information I have highlighted in the copy of the records provided to the public body with this order.
3. The public body must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records it provides to the applicant.

Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by January 9, 2023.

November 24, 2022

ORIGINAL SIGNED BY

Elizabeth Vranjkovic, Adjudicator

OIPC File No.: F20-82754