



Order F23-10

## BC PAVILION CORPORATION

Jay Fedorak  
Adjudicator

February 16, 2023

CanLII Cite: 2023 BCIPC 12  
Quicklaw Cite: [2023] B.C.I.P.C.D. No. 12

**Summary:** A journalist requested access to CCTV recordings from two cameras at a BC Pavilion Corporation (PavCo) facility. The recording included the last 23 seconds of the life of a film production motorcycle stunt driver. PavCo withheld the recordings under s. 22(1) on the grounds that disclosure would constitute an unreasonable invasion of third-party privacy. The adjudicator upheld the decision of PavCo to deny access to the records.

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

### INTRODUCTION

[1] A journalist (applicant) requested access to CCTV recordings at a particular date and time from two cameras at a facility that the BC Pavilion Corporation (PavCo) owns. The applicant was seeking access to images of what turned out to be the last 23 seconds of the life of a film production motorcycle stunt driver. PavCo denied access under s. 15 (harmful to law enforcement) on the grounds that there were active law enforcement investigations. The applicant made a new request after the investigations concluded. PavCo offered to permit the applicant to view the files at one of its facilities. Regulations relating to the COVID-19 pandemic postponed the viewing. During this delay, PavCo changed its decision and applied s. 22(1) (unreasonable invasion of personal privacy) to the video files, as they contained images of an individual riding a motorcycle immediately prior to their death from an accident.

[2] The applicant requested a review from the Office of the Information and Privacy Commissioner (OIPC). Mediation failed to resolve the matter and it proceeded to an inquiry. PavCo requested that the OIPC decline hold the inquiry, under s. 56, on the grounds that it was plain and obvious that s. 22(1) applied to

the records. The OIPC dismissed this application in Order F21-13, and the inquiry proceeded.<sup>1</sup>

## ISSUE

[3] The issue to be decided in this inquiry is whether s. 22(1) requires PavCo to refuse access to the video files.

[4] Section 57(2) stipulates that the applicant has the burden to prove that disclosure would not be an unreasonable invasion of the personal privacy of a third party under s. 22(1).<sup>2</sup>

## DISCUSSION

[5] **Background** – PavCo permitted a film production company to film scenes from a feature film on one of the properties that PavCo owns. PavCo operates CCTV cameras on the property. One of the scenes involved an individual riding a motorcycle. During the filming of the scene the motorcycle was involved in an accident that caused the death of the rider. Three CCTV cameras recorded video of the motorcycle and rider immediately preceding and after the accident. In effect, the video clips disclose the last 23 seconds of the life of the rider. One of the video clips shows the motorcycle colliding with a building, but trees and parked cars obscure the view of the rider. The applicant originally requested a copy of the footage on the day that the accident occurred.

[6] The accident led to a police investigation and an investigation by WorkSafeBC under the *Workers Compensation Act*.<sup>3</sup> The WorkSafeBC investigation led to an adverse finding against the film production company. The applicant also obtained a copy of the investigation report from WorkSafeBC.

[7] **Records at issue** – PavCo has provided me with access to the three video files that are responsive to the request. It has not disclosed any footage to the applicant. The video files are brief and include images of the deceased motorcycle stunt rider (deceased), as well as other actors, film crew and other individuals.

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<sup>1</sup> Order F21-13, 2021 BCIPC 17 (CanLII).

<sup>2</sup> However, the public body has the initial burden to show that the information it is withholding under s. 22(1) is personal information: Order 03-41, 2003 BCIPC 49220 (CanLII), paras. 9-11.

<sup>3</sup> RSBC 2019, c. 1.

**Section 22(1) – unreasonable invasion of third-party privacy**

[8] The proper approach to the application of s. 22(1) of FIPPA is described in Order F15-03, where the adjudicator stated the following:

This section only applies to “personal information” as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party’s personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party’s personal privacy.<sup>4</sup>

[9] I have taken the same approach in considering the application of s. 22(1) here.

**Step 1: Is the information “personal information”?**

[10] Under FIPPA, “personal information” is recorded information about an identifiable individual, other than contact information. “Contact information” is “information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”<sup>5</sup>

[11] PavCo submits that the information it has withheld under s. 22(1) consists of the personal information of individuals other than the applicant.

[12] The applicant does not contest PavCo’s assertion that this information constitutes personal information.

[13] I can confirm that the information to which PavCo has applied s. 22(1) constitutes recorded information about identifiable individuals other than contact information. Therefore, I find that it meets the definition of personal information.

**Step 2: Does s. 22(4) apply?**

[14] PavCo submits that s. 22(4) does not apply to any of the personal information at issue. The applicant does not contest this point.

[15] There is no evidence before me that any of the provisions of s. 22(4) apply in this case. Therefore, I find that none of the information falls within s. 22(4).

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<sup>4</sup> Order F15-03, 2015 BCIPC 3 (CanLII), para. 58.

<sup>5</sup> FIPPA provides definitions of key terms in Schedule 1.

*Step 3: Does s. 22(3) apply?*

[16] The relevant provisions read as follows:

**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

[17] **Section 22(3)(a)** – PavCo submits that information relating to the final moments before an individual's death constitute information about a deceased third party's medical information, including fatal injuries and death.<sup>6</sup> PavCo describes the records as follows:

the Records are, in essence, a visual recording of the medical condition and injury causing the medical condition. They show the moments leading up to the Fatal Accident, which are inherently connected to the injury and death of the third party.<sup>7</sup>

[18] PavCo argues that wording of s. 22(3)(a), which includes the phrase "relates to a medical ..." demonstrates that the legislature intended it to cover more than just formal medical records. It should also include other types of records containing information relating to a medical condition. PavCo submits that fatal injuries and death are medical conditions and that the video recording discloses the sequence of events that led to the accident that caused her death.<sup>8</sup>

[19] The applicant does not contest the assertion that the records contain the medical information for the deceased.

***Analysis***

[20] I note that previous orders have found that information about the cause of death of an individual constitutes their medical history for the purposes of s. 22(3)(a).<sup>9</sup> It is clear that the death of an individual is part of the medical history of that individual. Images of an individual engaging in the activity that caused their death is information relating to their death. Therefore, such images also relate to the medical history of the individual.

[21] The information at issue shows the last 23 seconds of the life of the deceased and discloses the activity that led to her injury and death.

[22] Consequently, I find that the images recording the last 23 seconds of the life of the deceased constitute information relating to her medical history in accordance with

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<sup>6</sup> PavCo's initial submission, para. 32.

<sup>7</sup> PavCo's initial submission, para. 33.

<sup>8</sup> PavCo's initial submission, para. 32.

<sup>9</sup> See for example Order F22-29, 2022 BCIPC 32 (CanLII), para. 47.

s. 22(3)(a). Disclosure of that information is presumed to be an unreasonable invasion of the personal privacy of the deceased.

*Step 4: do the relevant circumstances in s. 22(2) rebut the presumption of unreasonable invasion of privacy?*

[23] The relevant provision reads as follows:

**22 (2)** In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,

[24] **Section 22(2)(a) (public scrutiny)** – The applicant submits that disclosure of the video files is desirable for subjecting PavCo to public scrutiny. The applicant argues that PavCo may share some responsibility for the accident because it had failed to ensure that the party that rented its facilities operated in a safe manner. The applicant has obtained a copy of the agreement between PavCo and the film production company, which stipulates that the later must comply with safety regulations. The applicant raises the question as to whether PavCo could have done more to ensure that the film production company followed safety regulations, such as requiring that the rider of the motorcycle wear a safety helmet. Therefore, the applicant suggests that PavCo may share liability for the accident. The applicant argues that disclosure of the video files will assist in holding PavCo accountable.<sup>10</sup>

[25] PavCo submits that the applicant has failed to demonstrate how disclosure of the records will subject it to public scrutiny. It asserts that WorkSafeBC, the Vancouver Police Department and the Coroner's Office have all conducted investigations into the incident and PavCo disclosed the records to the police for its investigation. The applicant submits that disclosure of the records would assist the public in deciding whether the three investigations came to the correct conclusions.<sup>11</sup>

### **Analysis**

[26] The applicant argues that PavCo may be accountable for the death of the deceased. It is clear from the WorkSafeBC report, which the applicant submitted, that the film production company had contravened its own safety policies, WorkSafeBC regulations and the law. The applicant submits that the requirement in the contract between PavCo and the film production company for the latter to

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<sup>10</sup> Applicant's response submission, paras. 11-17, 25-30.

<sup>11</sup> PavCo's reply submission, para. 12; Applicant's response submission, para. 17.

follow health and safety regulations placed an obligation on PavCo to enforce that provision of the contract. He argues:

The public interest is served by the disclosure of the video record, so that there can be scrutiny of the public body. Did the investigations that occurred reach the correct conclusion? What can be learned of this incident that can change public behaviour or reinforce the message that helmets save lives?<sup>12</sup>

[27] He submits that, if he were to obtain access to the records, he would continue the investigation and consult independent experts to determine “whether justice was served”.<sup>13</sup> Without stating explicitly, he appears to be implying that disclosure is also desirable for holding the WorkSafeBC and Vancouver Police Department investigations to public scrutiny.

[28] This argument is not persuasive. WorkSafeBC and the police have public mandates to conduct investigations into workplace accidents to determine legal and criminal liability. There are existing avenues of recourse for interested parties who are dissatisfied with the outcomes of their investigations. Barring the identification of some credible reason to find fault with these investigations, I see no justification to disclose the personal information at issue for the purpose of holding a public body to public scrutiny. Section 22(2)(a) does not apply to the examination of the records by the applicant and other members of the public for the purposes of giving their opinions.

[29] Therefore, I find that disclosure of the records is not desirable for the purpose of holding PavCo, or any other public body, accountable and this is not a factor that favours disclosure.

[30] **Other relevant considerations** – PavCo argues that the records at issue include sensitive personal information and that this is a relevant circumstance favouring withholding the information. It states:

Visual information capturing the moments leading up to and of an individual's death are [sic] deeply personal, intimate, and deserving of protection.<sup>14</sup>

[31] PavCo submits the records are similar in nature to forensic photographs and autopsy reports, and that individuals have a right to dignity in death. It argues that disclosure of the records will sensationalize the death of the deceased third party, which would rob her of her dignity and harm the wellbeing of her family.<sup>15</sup>

[32] The applicant does not contest this point, other than to highlight the fact that the events occurred in a public place. He argues that the film production company made no attempt to obscure the public from viewing these events. He

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<sup>12</sup> Applicant's response submission, para. 17.

<sup>13</sup> Applicant's response submission, para. 36.

<sup>14</sup> PavCo's initial submission, para. 18.

<sup>15</sup> PavCo's initial submission, para. 40.

also argues that photographing public spaces or government facilities is not illegal.<sup>16</sup>

### ***Analysis***

[33] FIPPA protects the privacy rights of the deceased. FIPPA does not restrict the definition of personal information to that of living persons. Previous orders have upheld the application of s. 22(1) to the personal information of the deceased.<sup>17</sup>

[34] While disclosure of the personal information of a deceased person cannot cause them material harm, it can harm their dignity. This is a key point at issue in this case. While prior to the accident, the deceased may have had no expectation of privacy in the recording of her acting in a film production, she did not expect that anyone would be filming her death in the process.

[35] I have found that there is no value to disclosing the records from the perspective of public scrutiny. There is nothing of significance from the perspective of safety that the WorkSafeBC report does not already reference. There would be no public benefit to the disclosure of the records. It would merely provide viewers with an opportunity to watch, for their own personal interest, the final seconds of the life of a woman. This would deprive her of her dignity.

[36] This case does not engage the issue the applicant raised about it being legal for individuals to record images in a public place. It has no bearing on the practices of journalists or other individuals. It concerns only the video security equipment of a public body that incidentally captured the final seconds of the life of a third party and whether the applicant is entitled to view the images of her death.

[37] Therefore, I find that disclosure of the information would deprive the deceased third party of her dignity and that this is a relevant circumstance favouring withholding the information.

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

[38] I found above that all the information in dispute is personal information. I have found that none of the provisions in s. 22(4) apply that would have excluded the application of s. 22(1).

[39] I have found that the records at issue contain information relating to the medical history of the deceased and that disclosure is presumed to be an unreasonable invasion of her personal privacy under s. 22(3)(a).

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<sup>16</sup> Applicant's response submission, paras. 12 and 32.

<sup>17</sup> See for example Order F18-08, 2018 BCIPC 10 (CanLII); Order F15-36, 2015 BCIPC 39 (CanLII); Order 02-44, 2002 BCIPC 44 (CanLII).

[40] I have found that disclosure is not desirable for the purposes of holding PavCo or any other public body accountable and that this is not a relevant consideration favouring disclosure.

[41] I have found that disclosure would harm the dignity of the deceased and that this is a relevant circumstance favouring withholding the information.

[42] In summary, I find that there are relevant circumstances that support withholding the information and none that support disclosing it. Therefore, the relevant circumstances in this case do not rebut the presumption that disclosure would be an unreasonable invasion of the deceased's personal privacy.

[43] I also find that the applicant did not make a case that disclosure of the personal information of the deceased and other third parties would not be an unreasonable invasion of privacy of the third party. The burden of proof lies with the applicant on this issue, and he has not met his burden of proof.

[44] In conclusion, I find that s. 22(1) applies to the personal information at issue and PavCo must withhold it.

## **CONCLUSION**

[45] For the reasons given above, under s. 58 of FIPPA, I confirm the decision of PavCo to refuse to disclose the information in the records at issue in accordance with s. 22(1).

February 16, 2023

## **ORIGINAL SIGNED BY**

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Jay Fedorak, Adjudicator

OIPC File No.: F20-83447