



Order F24-05

FRASER HEALTH AUTHORITY

D. Hans Hwang
Adjudicator

January 25, 2024

CanLII Cite: 2024 BCIPC 7
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Summary: An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Fraser Health Authority (FHA) for access to all medical records relating to his mother (the deceased). FHA refused to disclose the requested records on the basis that the applicant was not authorized to make an access request on behalf of the deceased in accordance with s. 5 of FIPPA. FHA also refused him 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(2), 22(2)(i), 22(3), 22(3)(a), 22(4), and Schedule 1 (definitions of "personal information" and "contact information"). *Freedom of Information and Protection of Privacy Regulation*, BC Reg 155/2012, ss. 5(1) (definition of "appropriate person"), 5(1)(a) and 5(2)(a).

INTRODUCTION

[1] An individual (applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Fraser Health Authority (FHA) for all medical records relating to his mother (the deceased).

[2] FHA responded that the applicant was not authorized to make an access request on behalf of the deceased under s. 5 of FIPPA and s. 5(1)(a) of the *Freedom of Information and Protection of Privacy Regulation* (Regulation). FHA also withheld all the information in the responsive records under s. 22(1) of FIPPA (unreasonable invasion of a third party's personal privacy).¹

¹ From this point forward, whenever I refer to section numbers, I am referring to sections of FIPPA unless otherwise specified.

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

Preliminary Issues

Adding s. 5(1)(b) as a new issue

[4] Although s. 5(1)(b) was not set out as an issue in the OIPC investigator's fact report (fact report) or the notice of inquiry (notice), the applicant and FHA made submissions about it.² Having considered the submissions, I found that s. 5(1)(b) was a live issue and should have been included in the fact report and notice. Therefore, I added this to the inquiry.³

[5] I provided the parties with an opportunity to submit an additional submission on this new issue. Neither party provided an additional submission.

Role of the OIPC's registrar of inquiries

[6] The applicant submits that the OIPC's registrar of inquiries (Registrar) should have ordered FHA to provide the responsive records to the applicant. Also, he says that "if the [Registrar] fails to give [the records at issue]," he will sue the OIPC.⁴

[7] What the applicant demands of the Registrar is outside the Registrar's powers under FIPPA. The notice and the OIPC's *Instructions for Written Inquiries* (instructions), both of which were provided to FHA and the applicant at the outset of the inquiry, clearly explain that the Registrar is responsible for administrative aspects of inquiries. I am the Commissioner's delegate assigned to decide whether FHA is required to refuse the applicant access to the information in dispute.

ISSUE

[8] The issues I must decide in this inquiry are:

1. Is the applicant acting on behalf of the deceased in accordance with s. 5(1)(b) of FIPPA and s. 5 of the Regulation?

² FHA's initial submission directly addressed the application of s. 5(1)(b). While the applicant's submission did not specifically mention s. 5(1)(b), he asserted that he was authorized to make the request on behalf of the deceased. This argument suggests the applicant believes s. 5(1)(b) applies.

³ Adjudicator's letter dated December 7, 2023; Amended Notice of Written Inquiry.

⁴ Applicant's response submission.

2. Is FHA required to refuse to disclose the information at issue under s. 22(1) of FIPPA?

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

[10] Section 57(2) places the burden on the applicant to establish that disclosure of any information in the records would not be an unreasonable invasion of a third party's personal privacy. However, FHA, which is the public body in this case,⁶ has the initial burden of proving the information is personal information.⁷

DISCUSSION

Background

[11] The deceased was admitted to a hospital operated by FHA (hospital) in November 2020. She was subsequently transferred to another hospital and then to a long-term care facility operated by FHA. In October 2022, she was readmitted to the hospital where she passed away.⁸

[12] In March 2021, the applicant requested the deceased's medical records related to her hospitalization for the time frame between October 1, 2020, and March 3, 2021.

Records and Information at issue

[13] In response to the applicant's request, FHA identified 2013 pages of responsive records. FHA has withheld the information in the records in full under s. 22(1). The records are hospital records for the deceased for the period between October 2020 and February 2021.⁹

Acting on behalf of a deceased person, s. 5(1)(b)

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

⁵ Order F23-92, 2023 BCIPC 108 at para 10; Order F21-44, 2021 BCIPC 52 at paras 13-17; Order F18-08, 2018 BCIPC 10 at para 7; Order F17-04, 2017 BCIPC 4 at para 4; Order F15-36, 2015 BCIPC 39 at para 5.

⁶ Schedule 1 "Definition" of FIPPA.

⁷ Order 03-41, 2003 CanLII 49220 (BCIPC) at paras 9-11.

⁸ This information is from the FHA's initial submission at paras 4-7 and Affidavit #1 of an adult protection program manager of FHA (Manager) at paras 4-8.

⁹ FHA's initial submission at para 11.

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 ...

[15] Section 5(1)(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.

[16] Section 5(1)(a) 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; ...

[17] Therefore, in order to be entitled to exercise the deceased’s FIPPA rights, the applicant must establish two requirements: (1) whether he is an “appropriate person” pursuant to s. 5(1)(a) of the Regulation and (2) whether he is “acting on behalf of” the deceased pursuant to s. 5(1)(b).¹⁰

[18] I will first consider whether the applicant is “acting on behalf” of the deceased as required by s. 5(1)(b).

Acting on behalf of – s. 5(1)(b)

[19] The phrase acting “on behalf of” is not identified in FIPPA but past BC orders have interpreted it to mean acting to the benefit of the other individual, to further the other individuals’ own goals or objectives, and in the other individual’s best interest.¹¹ 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. 5.¹²

¹⁰ Order F22-42, 2022 BCIPC 47 at para 16; Order F18-38, 2018 BCIPC 41 (CanLII) at para 9.

¹¹ Orders F17-04, 2017 BCIPC 4 (CanLII) at para 17 and F18-08, 2018 BCIPC 10 (CanLII) at paras 12-13.

¹² 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.

[20] FHA says that the applicant was not acting on behalf of the deceased. FHA says that despite the serious medical condition the deceased was suffering, the applicant did not have insight regarding her care needs. In addition, FHA says that there is nothing to demonstrate the applicant requested access to the deceased's records for the purpose of assisting her to make informed decisions.¹³

[21] The applicant says that he requested the deceased's records because he loved her very much and plans to sue FHA for negligence.¹⁴

[22] Having considered all of the information provided by the parties, I am not satisfied that the applicant was acting on behalf of the deceased.

[23] To understand the applicant's motive for making the access request, I have considered what he said when he made the request to FHA. In his access request, he wrote that he has "authorization for release of health records for [the deceased] which is notarized by my lawyer" and "medical representation agreement Section #9."¹⁵ I also considered the applicant's note provided to FHA (note) in which he said: "complaint doctor that open wound and [the deceased] almost died, get medical records [*sic*]."¹⁶ In addition, in his submission he wrote, "I still request all medical cause I loved my mom Very much and I am planning to sue [FHA] for negligence in her death [*sic*]."¹⁷

[24] I find that the fact that the applicant has the authorization for the release of health records (Authorization) and the representation agreement¹⁸ does not sufficiently demonstrate that the applicant made the access request on behalf of the deceased. I can see that the deceased signed both documents. However, the Authorization did not specify to whom the records were to be released. Also, the representation agreement allows the representative to have access to all information for the purposes of: (1) enabling the representative to assist the deceased to make information decisions or (2) making informed decisions on the deceased's behalf in any situation authorized.

[25] The applicant did not sufficiently explain his motive for making the access request. What the applicant wrote in the note suggests that he wants to know the medical treatments the deceased received. However, he does not explain how his desire to scrutinize the requested records would benefit the deceased's interests or how it would further her goals or objectives in her best interest. Also, he does not explain what the deceased's goals and objectives were.

¹³ FHA's initial submission at para 32.

¹⁴ Applicant's submission.

¹⁵ Applicant's access request.

¹⁶ Applicant's hand-written note.

¹⁷ Applicant's submission.

¹⁸ When the applicant made the request, he provided the representation agreement and "Authorization for the release of health records" (Authorization).

[26] Based on what he said, in my view, the access request is made in pursuit of the applicant's own suspicions about his mother's care and treatment. I accept that the applicant was a primary care giver for the deceased prior to her admission to the hospital. However, there is nothing in the materials before me to indicate that the deceased asked the applicant to examine her medical situation to make informed decisions for her while she was in hospital or if she were to die. The applicant had an opportunity to provide further explanation and information in this inquiry, but he chose not to do so.¹⁹

[27] In conclusion, I find that what the applicant said about why he is making the access request is not sufficient to establish that he requests the records to further the deceased's own goals or objectives and is acting in her best interest. Therefore, he is not "acting on behalf of" the deceased as s. 5(1)(b) requires.

[28] Given my conclusion that the applicant is not acting on behalf of the deceased, I do not need to decide whether he is an "appropriate person."

[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.²⁰ 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).

Unreasonable invasion of a third party's personal privacy, s. 22

[30] 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.²¹ Numerous orders have considered the application of s. 22, and I will apply those same principles here.²²

Personal information

[31] Section 22(1) only applies to personal information; therefore, the first step in any s. 22 analysis is to determine whether the information in dispute is personal information.²³

¹⁹ As I determined to add s. 5(1)(b) to the inquiry, I provided the parties with an opportunity to submit an additional submission on s. 5(1)(b) but neither party provided it.

²⁰ Order 00-40, 2000 CanLII 14405 (BC IPC) at p 8.

²¹ 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.

²² For example, see Order F15-03, 2015 BCIPC 3 at para 58.

²³ *Ibid.*

[32] Personal information is defined in FIPPA as “recorded information about an identifiable individual other than contact information.” 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.”²⁴ 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.”²⁵

[33] FHA says that the information contained in the records is the deceased’s personal information. Specifically, FHA submits that disclosure of the information would reveal aspects of the deceased’s social and family history, health condition, and medical treatment.²⁶ The applicant’s submission does not address whether the information in dispute is personal information.

Analysis and findings, personal information

[34] For the reasons that follow, I find that all of the information at issue is personal information.

[35] First, none of the information in dispute is contact information.

[36] All of the information at issue is clearly about the deceased, who is identified by name in the records and whose identity is known to the applicant. I also find the headings of some records are about the deceased even though her name is not mentioned. The headings describe medical conditions or treatments²⁷ and things social workers did.²⁸ Given the context of these records, it is obvious that the information in the headings is about the deceased. I find that all of this information is the deceased’s personal information.

[37] Finally, some of the information in dispute is simultaneously the personal information of the deceased and one or more identifiable individuals.²⁹ For

²⁴ Order F19-13, 2019 BCIPC 15 at para 16, citing Order F18-11, 2018 BCIPC 14 at para 32.

²⁵ Schedule 1 of FIPPA.

²⁶ FHA’s initial submission at para 41.

²⁷ For example, information located on pages 175, 179, 553, 560, 589-1297, 1335-1342, 1343-1354, 1370-1497, 1498-1503, 1504-1505, 1506-1559, 1560-1763, 1764-1779, 1780-1788, 1794-1809, 1846-1877 of the records in dispute.

²⁸ For example, information located on pages 208-546, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877 of the records in dispute.

²⁹ Information located on pages 11, 14, 15, 19, 21, 27, 28, 29, 31, 32, 36, 43, 45, 48, 62, 67, 68, 70, 71, 72, 73, 78, 79, 82, 87, 90, 92, 95, 96, 97, 129, 131, 132, 197, 204, 208, 209, 210, 213, 214, 217, 218, 221, 222, 225, 226, 227, 229, 230, 233, 234, 237, 238, 241, 242, 245, 246, 248, 251, 252, 255, 256, 259, 260, 263, 264, 267, 268, 271, 272, 275, 276, 279, 281, 282, 283, 286, 288, 290, 291, 294, 297, 301, 302, 303, 305, 306, 307, 309, 310, 313, 314, 316, 317, 320, 321, 324, 325, 328, 329, 331, 332, 333, 335, 336, 337, 339, 340, 341, 343, 344, 345, 348, 349, 352, 353, 355, 360, 362, 363, 369, 370, 371, 373, 374, 375, 378, 382, 383, 384, 386, 387, 389, 390,

example, there is information about individuals who interacted with the deceased, specifically FHA healthcare providers, the RCMP,³⁰ the Public Guardian and Trustee³¹, and the deceased's children.³² Lastly, there is a representation agreement signed by the deceased and the applicant so it contains information about both of them.³³ I find that this information is simultaneously the personal information of the deceased and other third parties or the applicant as the case may be.

Disclosure not an unreasonable invasion of privacy, s. 22(4)

[38] The second step in the s. 22 analysis is to consider s. 22(4), which sets out circumstances where disclosure is not an unreasonable invasion of a third party's personal privacy. If information falls into one of the circumstances enumerated in s. 22(4), s. 22(1) does not apply.

[39] FHA submits that none of the s. 22(4) circumstances apply here.³⁴ The applicant's submission does not address the application of s. 22(4) to the information in dispute.

[40] I have considered whether any of the subsections in s. 22(4) apply and I find none apply.

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

[41] The third step in the s. 22 analysis is to determine whether any of the circumstances listed in s. 22(3) apply to the personal information. If one or more do apply, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy.

[42] FHA submits that s. 22(3)(a) applies to the information at issue.³⁵ The applicant does not say anything about whether s. 22(3)(a) applies.

392, 394, 395, 397, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 417, 421, 422, 424, 425, 426, 428, 429, 430, 431, 433, 436, 438, 439, 441, 442, 443, 445, 446, 447, 449, 450, 453, 454, 456, 460, 461, 464, 465, 468, 469, 472, 474, 475, 477, 479, 482, 486, 487, 489, 490, 491, 493, 493, 494, 496, 497, 498, 499, 500, 501, 503, 504, 505, 509, 510, 511, 512, 514, 515, 518, 519, 521, 522, 526, 527, 529, 530, 531, 533, 536, 542, 543, 545, 555, 559, 570, 571, 572, 573, 577, 1298, 1317, 1321, 1323, 1324, 1325, 1326, 1327, 1819, 1827, 1838, 1839, 1841, 1843, 1878, 1882, 1885, 1890, 1892, 1896, 1899, 1901, 1902, 1903, 1904, 1908, 1937, 1946, 1953, 1954, 1955, 1956, 1959, 1962, 1964, 2010, 2013 of the records in dispute.

³⁰ Page 2013 of the records in dispute.

³¹ Pages 1836-1837 of the records in dispute.

³² Pages 570-571 of the records in dispute.

³³ Pages 1828-1835 of the records in dispute.

³⁴ FHA's initial submission at para 42.

³⁵ FHA's initial submission at para 43.

[43] Section 22(3)(a) creates a presumption against disclosing personal information related to a third party's medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation.

[44] I can see that all of the personal information clearly relates to the deceased's medical history, diagnosis, condition or treatment. As a result, I find that s. 22(3)(a) applies to the information and disclosure is presumed to be an unreasonable invasion of the deceased's personal privacy.

Relevant circumstances, s. 22(2)

[45] 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). Some circumstances weigh in favour of disclosure and some against. Relevant circumstances that weigh in favour of disclosure may rebut any applicable presumptions under s. 22(3).

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

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

[47] FHA submits that insufficient time has elapsed since the deceased passed away for s. 22(2)(i) to weigh in favour of disclosing the information at issue.³⁶ The applicant makes no submission on this point.

[48] FIPPA does not specify the length of time after which disclosing a deceased individual's personal information will not be an unreasonable invasion of privacy. Previous OIPC orders have found that an individual's personal privacy rights are likely to continue for at least 20 years after they have passed away.³⁷ In this case, the deceased passed away approximately 15 months ago. In my view, therefore, the deceased has ongoing privacy rights which have not been diminished by the passage of time. I conclude that s. 22(2)(i) weighs against disclosing the deceased's personal information.

Applicant's motive

[49] The applicant submits that he has requested the deceased's medical records because he loved his mother very much and plans to sue FHA for

³⁶ FHA's initial submission at paras 44-46. Citing Order F14-09, 2014 BCIPC No. 11.

³⁷ Order F18-08, 2018 BCIPC 10 at paras 31-32; Order F14-09, 2014 BCIPC 11 at para 30; Order F23-92, 2023 BCIPC 108 at paras 60-62.

negligence but does not specifically explain how his motive is relevant to the s. 22 analysis.³⁸

[50] Prior orders have considered an applicant's motive for requesting records to be a relevant factor where the applicant is seeking information to deal with the aftermath of a family member's death.³⁹

[51] In my view, the applicant's submission suggests that he is seeking the deceased's medical records to better understand the circumstances surrounding her death and to hold FHA to account for what he believes they did wrong.⁴⁰ In my view, this is a legitimate and understandable reason to request medical information related to a deceased family member. I find that the applicant's motive weighs in favour of disclosing the information at issue.

Applicant's knowledge

[52] While not enumerated in s. 22(2), past orders have considered whether the applicant's pre-existing knowledge of the information in dispute weighs for or against disclosure.⁴¹

[53] Based on the applicant's relationship to the deceased and what is revealed by the records, I can see that the applicant already knows some of the personal information in dispute. For example, I am satisfied that the applicant knows the deceased's name, age, date of birth, gender and address, as well as some of the information related to her general wellbeing and dates of admission to various health care facilities. He also knows the full contents of the representation agreement because he was the named representative and he signed it and he included it with his access request.

[54] I find that the applicant's pre-existing knowledge weighs in favour of disclosing this information to the applicant.

Sensitivity

[55] Sensitivity is not a circumstance listed in s. 22(2), but I find it is a relevant circumstance to consider in this case. Past orders have said that where information is sensitive, it is a circumstance weighing in favour of withholding the information. Conversely, where information is not sensitive, this weighs in favour of disclosure.⁴² Neither of the parties made submissions regarding sensitivity.

³⁸ Applicant's response submission; FHA did not say anything about the applicant's motive.

³⁹ Order F15-36, 2015 BCIPC 39 at para 31; Order F14-09, 2014 BCIPC 11; Order No. 96-1996, 1996 BCIPCD No 22; Order 00-11, 2000 CanLII 10554; Order F23-92, 2023 BCIPC 108 at para 64.

⁴⁰ Applicant's response submission "I still request all medical cause I loved my mom Very much and I am planning to sue [FHA] for negligence in her death [sic]."

⁴¹ Order F18-48, 2018 BCIPC 51 at para 27; Order F20-22, 2020 BCIPC 26 at para 51.

⁴² For example, Order F21-69, 2021 BCIPC 80 at para 82.

[56] I find that the information contained in the records at issue is about the deceased's health condition, emotional state and social and family history. This kind of information is clearly sensitive, and I find that this weighs against disclosing it to the applicant.

Conclusion, s. 22(1)

[57] I found that all the information FHA withheld under s. 22 is the personal information of the deceased. In addition, some of it is about other identifiable individuals' interactions with her, so it is simultaneously her personal information and their personal information.

[58] I found none of the circumstances in s. 22(4) apply here.

[59] I found that the disclosure of all the information in dispute is presumed to be an unreasonable invasion of the deceased's personal privacy under s. 22(3)(a) because it is about her medical condition and treatment.

[60] I found that the deceased's privacy rights have not been reduced by the passage of time and s. 22(2)(i) weighs against disclosure. I also found that sensitivity of the personal information weighs against disclosure. These factors strengthen and support the s. 22(3)(a) presumption.

[61] While I found that the applicant's motive and existing knowledge were factors that weigh in favour of disclosure, they are only sufficient to rebut the s. 22(3)(a) presumption that applies to the representation agreement. They are not enough to rebut the s. 22(3)(a) presumption that applies to the rest of the personal information.

[62] In conclusion, I find that disclosing the personal information would be an unreasonable invasion of the deceased's personal privacy. FHA must refuse to disclose this information under s. 22(1).

CONCLUSION

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

1. I confirm, in part, FHA's decision to withhold information under s. 22(1) subject to item 2 below.
2. FHA is not required to withhold the information in the representation agreement on pages 1828-1835 of the records. FHA is required to give the applicant access to this information.

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3. FHA must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the pages described at item 2 above.

[64] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **March 8, 2024**.

January 25, 2024

ORIGINAL SIGNED BY

D. Hans Hwang, Adjudicator

OIPC File No.: F21-86743