



Order F24-22

FRASER HEALTH AUTHORITY

Carol Pakkala
Adjudicator

March 26, 2024

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Summary: An applicant requested that the Fraser Health Authority (Fraser Health) provide access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to her deceased mother's (the deceased) medical records. Fraser Health refused to disclose the requested records on the basis that the applicant was not authorized to make the request on behalf of the deceased under s. 5(1)(b) of FIPPA and s. 5 of the *Freedom of Information and Protection of Privacy Act Regulation* (Regulation). Fraser Health also refused the applicant access to the records under s. 22 of FIPPA. The adjudicator found that the applicant was not acting on behalf of the deceased. The adjudicator further found that 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)(a), 22(2)(f), 22(2)(i), 22(3), 22(3)(a) and 22(4); *Freedom of Information and Protection of Privacy Regulation*, BC Reg 155/2012, ss. 5, 5(1)(a), 5(2)(a); and *Interpretation Act*, RSBC 1996, c. 238.

Introduction

[1] This inquiry is about access to the medical records of the applicant's deceased mother (the deceased). The Fraser Health Authority (Fraser Health) refused access to these records on the basis that the applicant was not acting on behalf of the deceased under s. 5(1)(b) of the *Freedom of Information and Protection of Privacy Act* (FIPPA)¹ and s. 5 of the *Freedom of Information and Protection of Privacy Act Regulation* (Regulation). Fraser Health also denied access under s. 22(1) (unreasonable invasion of a third party's personal privacy).

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review Fraser Health's decision. Mediation conducted by the OIPC did not resolve the matter and it proceeded to this inquiry. Both parties provided written submissions in this inquiry.

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

Preliminary Matter

[3] The applicant seeks a full review of her mother's hospital stay and an answer to the question of why her mother could not be saved. She seeks accountability for the death of her mother.² While I sympathize with the applicant for her loss, I wish to be clear at the outset of this inquiry that what the applicant seeks is outside the scope of inquiry. I do not have the jurisdiction (authority) to review her mother's hospital stay. My jurisdiction is to review Fraser Health's decision under FIPPA to refuse her request for access to the deceased mother's medical records.

ISSUES AND BURDEN OF PROOF

[4] 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. Is Fraser Health required to refuse to disclose the information under s. 22?

[5] 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.³

[6] Section 57(2) places the burden on the applicant to establish that disclosure of the information at issue in the records would not be an unreasonable invasion of a third party's personal privacy. However, Fraser Health, which is the public body in this case,⁴ has the initial burden of proving the information is personal information.⁵

DISCUSSION

Background

[7] The applicant's mother was admitted to a hospital operated by Fraser Health in July 2021 where she was treated until her death in August 2021. Following her death, the applicant made an access request under FIPPA for her mother's medical records.

² Applicant's response submission.

³ Order F18-08, 2018 BCIPC 10 (CanLII) at para. 7; Order F07-10, 2007 CanLII 30395 (BC IPC) at paras. 10-11.

⁴ Schedule 1 (Definition of "public body").

⁵ Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9-11.

Records at issue

[8] The records at issue total 1,109 pages consisting of documents related to the deceased's medical care, which include charts, forms, tests, notes, orders, and directives (medical records). Fraser Health is withholding the entirety of the 1,109 pages from the applicant.⁶

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

[9] At issue in this inquiry is whether the applicant is authorized to make an access request on behalf of the deceased. FIPPA contains provisions regarding who can exercise another individual's access to information rights in these circumstances. The relevant sections are s. 5(1)(b) of FIPPA and s. 5 of the Regulation.

[10] Section 5(1)(b) specifies how an applicant may make a request on behalf of another person:

How to make a request

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, ...

[11] Section 5 of the Regulation says that if an individual is deceased, an "appropriate person" may act for the deceased in relation to s. 5 of FIPPA. The Regulation defines "appropriate person" as follows:

Who may act for a deceased individual

5(1) In this section:

"appropriate person" means,

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

...

⁶ Fraser Health's initial submissions at paras. 10-11. The Fact Report for this inquiry indicates there are 128 pages of records. Fraser Health, in its submissions, says this number is incorrect and that there are 1,109 pages of health records responsive to the applicant's request. Fraser Health says it already provided 128 pages that it describes as a "basic package" of records to the applicant. I have not seen those records and they are not in dispute in this inquiry.

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

"**nearest relative**" means the first person referred to in the following list who is willing and able to act under subsection (2) of this section for a deceased individual:

...

(a) spouse of the deceased at the time of death;

(b) adult child of the deceased;

...

[12] Previous OIPC orders establish a two-part test for an applicant to exercise a deceased person's access rights under FIPPA. First, the applicant must be the appropriate person under s. 5(1)(a) of the Regulation. Second, they must make the request "on behalf of" the deceased.⁷ If the two-part test is not met, yet it is evident the applicant wants access to the records, then the request is considered on the basis the request is made on the applicant's own behalf.⁸ I turn now to the application of this two-part test to this access request.

1. Appropriate person

Parties' submissions

[13] Fraser Health does not dispute that the applicant is an "appropriate person" for the purposes of FIPPA.⁹ The applicant makes no submissions about "appropriate person".

Analysis

[14] Section 5 of the Regulation sets out who may act for a deceased person in accessing records under FIPPA. If there is no committee or personal representative, then the nearest relative may act for the deceased. Neither party argued there is a committee or a personal representative acting for the deceased, and there is no evidence of such committee or representative. As a result, an appropriate person to act for the deceased is the nearest relative of the deceased.

[15] The Regulation defines the "nearest relative" as the first person referred to in the specified list who is willing and able to act for the deceased individual. As noted above, the first person in that list is a spouse of the deceased at the time of death and the second is an adult child of the deceased. Neither party argued

⁷ Order F18-08, 2018 BCIPC 10 (CanLII) at para. 7 and Order F22-42, 2022 BCIPC 47 (CanLII) at para. 16.

⁸ Order F23-92, 2023 BCIPC 108 (CanLII) at para. 27.

⁹ Fraser Health's initial submissions at para. 23.

there is a spouse at the time of death and there is no evidence in the record of such a spouse. The applicant says that she is the deceased's daughter. Fraser Health does not dispute that the applicant is the adult daughter of the deceased. The applicant made the request for access to the deceased's medical records and made submissions in this inquiry, so it is evident to me she is willing and able to act.

[16] Having considered all the information provided by both parties, I am satisfied that the applicant is the deceased's daughter and is willing and able to act for the deceased in exercising the deceased's access rights under FIPPA. Therefore, I find the applicant qualifies as the deceased's "nearest relative" and an "appropriate person" under s. 5 of the Regulation.

2. Acting on behalf of

Parties' submissions

[17] Fraser Health submits there is insufficient evidence to establish that the applicant was "acting on behalf of" the deceased when making her access request.¹⁰ Fraser Health says the applicant expressed concerns about the treatment her mother received while in the hospital and that she seeks to hold those who treated her mother accountable.¹¹ Fraser Health says while it is sympathetic to the applicant's concerns, the applicant's reasons for her records request do not meet the test set out in past OIPC orders that have interpreted the relevant provisions of FIPPA and the Regulation.¹²

[18] The applicant's submissions are largely about the treatment her mother received in the hospital.¹³ The applicant says she wants the medical records reviewed by an outside body because her mother asked that she and her sister always review all her health care concerns.¹⁴

Analysis

[19] The phrase "acting on behalf of" is not defined in FIPPA or in the *Interpretation Act*.¹⁵ Previous orders have interpreted it to mean acting to benefit the other individual, to further the other individual's own goals or objectives, and

¹⁰ Fraser Health's initial submissions at para. 31.

¹¹ Fraser Health's reply submissions at para. 2.

¹² Fraser Health's initial submissions at para. 32.

¹³ The applicant's response submission refers to points made by Fraser Health. OIPC's registrar confirmed with the applicant that her points are in response to other documents she has in her possession, not anything she's responding to in Fraser Health's initial submissions.

¹⁴ Applicant's December 10, 2021 email to the OIPC.

¹⁵ *Interpretation Act*, RSBC 1996, c 238.

in the other individual's best interest.¹⁶ Previous OIPC orders also say access requests motivated by the desire to understand or make sense of the deceased's medical history or treatments prior to death is insufficient to show an applicant is "acting on behalf of" the deceased.¹⁷

[20] I find the applicant's explanation of her motive for making the access request is insufficient to show she is acting on behalf of the deceased. The applicant says:

The entire 26 days of her in hospital stay should be reviewed because it was mismanaged and for the sake of future patients and learning efforts to fix procedures that led to the demise of our mother in a hospital setting should be made to help save others.¹⁸

[21] The applicant also says her mother, when she was alive, wanted her health care concerns reviewed by the applicant and her sister.¹⁹ I find this statement applies to concerns the deceased had when she was alive; however, it is not clear to me that the deceased's request to her daughters would also apply after her death. There is nothing in the materials before me to indicate that the deceased 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. We do not know the deceased's intent other than a general desire to have her health concerns reviewed by her daughters.

[22] Based on the applicant's access request and her submissions, I find she seeks access to the deceased's medical records in pursuit of her own concerns about her mother's medical care. Such concerns are understandable where a person has died while receiving medical care. Absent any further evidence or explanation however, I cannot see how scrutinizing the requested medical records would benefit the deceased's interests.

[23] I find that what the applicant has said about why she is making the access request is not sufficient to establish that her request is to further the deceased's goals or objectives as required by s. 5(1)(b).

Conclusion, s. 5(1)(b)

[24] I have found that while the applicant is an appropriate person pursuant to the Regulation, she has not established that she is acting on behalf of the deceased.

¹⁶ Order F18-08, 2018 BCIPC 10 (CanLII) at paras 12-13 relying on Order F17-04, 2017 BCIPC 4 (CanLII) at para 17.

¹⁷ Order F24-05, 2024 BCIPC 7 (CanLII) at para. 35; Order F23-80, 2023 BCIPC 96 (CanLII) at paras. 13-16; and Order F22-42, 2022 BCIPC 47 (CanLII) at paras. 27-29.

¹⁸ Applicant's response submission.

¹⁹ Applicant's December 10, 2021 email to OIPC.

[25] Previous 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 (here, the applicant) for another’s (here, the deceased’s) personal information.²⁰ A deceased person’s right to privacy is recognized in various provisions of FIPPA and in orders of the OIPC for at least thirty years.²¹ For these reasons, I will consider below whether giving the applicant access to the deceased’s medical records would be an unreasonable invasion of the deceased’s personal privacy under s. 22(1).

Disclosure harmful to personal privacy, s. 22

[26] Section 22(1) requires a public body to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy. A “third party” is defined in Schedule 1 of FIPPA as any person, group of persons or organization other than the person who made the access request or a public body. This provision is mandatory, meaning a public body has no discretion and is required by law to refuse to disclose this information. Previous orders have considered the proper approach to the application of s. 22 and I apply those same principles here.²²

Personal information

[27] Section 22(1) only applies to personal information, so the first step in a s. 22 analysis is to decide if the information in dispute is personal information.

[28] FIPPA defines personal information 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 Whether information is “contact information” depends upon the context in which it appears.²⁴

[29] Fraser Health says that the information contained in the medical records is the deceased’s personal information. Specifically, Fraser Health submits that disclosure of the information would reveal aspects of the deceased’s social and

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

²¹ Order No. 96-1996, 1996 CanLII 21109 (BC IPC) referencing previous orders Order No. 27-1994, October 24, 1994; Order No. 31-1995, January 24, 1995; and Order No. 53-1995, September 18, 1995.

²² Order F15-03, 2015 BCIPC 3 (CanLII) at para. 58 sets out a summary of the steps in a s. 22 analysis which I follow here.

²³ FIPPA, Schedule 1.

²⁴ Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

family history, health conditions, and medical treatment.²⁵ The applicant's submission does not address whether the information in dispute is personal information.

[30] For the reasons that follow, I find that the information in the medical records is personal information.

[31] From my review of the records, I can see that all the withheld information is, on its face, about the deceased who is identified by name in the records. It is, therefore, her personal information.²⁶ For example, the medical records include charts and forms that contain information that is only about the deceased. I can also see in the medical records the names and miscellaneous details about identifiable individuals who interacted with the deceased.²⁷ I find this information was not provided to enable these individuals to be contacted at a place of business, so it is not contact information. As a result, I find it is their personal information.

[32] I find the personal information of the other individuals in the medical records is intertwined with the personal information of the deceased. For example, reports of the treatment provided by identifiable individuals to the deceased reveal what type of treatment she received.²⁸ I find that this information is simultaneously the personal information of the deceased and of other third parties or of the applicant.²⁹ If I find that s. 22(1) does not prohibit disclosure of the deceased's personal information in the medical records, then I will decide if s. 22(1) prohibits disclosure of the third parties' and the applicant's personal information.³⁰

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

[33] The next step in a s. 22 analysis is to assess whether the personal information falls into any of the types of information listed in s. 22(4). If so, then its disclosure is not an unreasonable invasion of personal privacy. Fraser Health submits that none of the exceptions in s. 22(4) apply. The applicant makes no comment about s. 22(4).

²⁵ Fraser Health's initial submissions at para. 36.

²⁶ There are some pages in the records that are forms containing no information other than the form itself with headers that include personal details of the deceased. Examples include pp. 40, 76, 809, 857, 875, 913, 929, 963, 981, 1051, 1105.

²⁷ Individuals identified by name include her children and her medical care team. Examples include pp. 1, 8, 13, 15, 31, 38, 112, 441, 773, 915.

²⁸ Some examples include: pp. 117, 124, 132, 242, and 422

²⁹ For a similar conclusion, see Order F22-42, 2022 BCIPC 47 (CanLII) at para. 32; Order F24-05, 2024 BCIPC 7 (CanLII) at para. 37; Order F23-80, 2023 BCIPC 96 (CanLII) at para. 24; and Order F23-92, 2023 BCIPC at para. 40.

³⁰ Order F22-42, 2022 BCIPC 47 (CanLII) at para. 33.

[34] I have reviewed the various provisions under s. 22(4) and find none apply in this case. I considered whether any of the personal information of the medical staff in the records is the type of information to which s. 22(4)(e) might apply, namely information that is about their position or functions as an officer, employee or member of a public body.

[35] I am satisfied from the context and content of the medical records that the employees are public body employees. In my view, these records include notes and observations of employees recorded in the normal course of discharging their job duties. However, the employees are talking about the deceased, so I find the information is simultaneously her personal information and of those third parties. I find that s. 22(4)(e) does not apply where the employees are talking about the deceased because that information is about the deceased, not about the employees' positions, functions or remuneration with Fraser Health.³¹

[36] In the context of these medical records, which includes that the personal information of third parties is simultaneously about the deceased and reveal that she was communicating with them, I find that s. 22(4)(e) does not apply.³²

Presumed invasion of privacy, s. 22(3)

[37] Section 22(3) sets out circumstances where disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy. Fraser Health says s. 22(3)(a) applies. The applicant does not say anything about whether s. 22(3)(a) applies. I have considered whether any of the other subsections in s. 22(3) apply and I find that only s. 22(3)(a) is relevant in this case.

Medical treatment, s. 22(3)(a)

[38] Section 22(3)(a) states that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if it is related to a medical, psychiatric or psychological history, diagnosis, condition, treatment, or evaluation. I find the deceased's personal information in the medical records relates to her medical history, diagnosis, condition, treatment, and evaluation. This information is found in charts, forms, tests, and notes that discuss or reveal that type of information. For that reason, I find that s. 22(3)(a) applies to her personal information in these medical records. Disclosure of this personal information is, therefore, presumed to be an unreasonable invasion of her personal privacy.

³¹ Order F23-92, 2023 BCIPC 108 (CanLII) at para. 46.

³² Order F22-42, 2022 BCIPC 47 (CanLII) at para. 35.

[39] I find that no other s. 22(3) presumptions apply. I turn now to whether, in all the relevant circumstances, the s. 22(3)(a) presumption has been rebutted and whether disclosure of the medical records would be an unreasonable invasion of the deceased's personal privacy.

Relevant circumstances, s. 22(2)

[40] The final step in a 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). These circumstances can weigh either in favour of, or against, its disclosure. It is at this step, after considering all relevant circumstances, that any presumptions under s. 22(3) may be rebutted.

[41] Fraser Health submits that ss. 22(2)(f) and (i) are relevant to this inquiry. I considered all the circumstances listed under s. 22(2) and the only other one I found relevant is s. 22(a). I consider each of these three circumstances below plus several additional circumstances I find are relevant.

Public scrutiny, s. 22(2)(a)

[42] 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. One of the purposes of s. 22(2)(a) is to make public bodies more accountable.³³ Therefore, for s. 22(2)(a) to apply, the disclosure of the information at issue must be desirable for subjecting the public body's activities to public scrutiny as opposed to subjecting an individual third party's activities to public scrutiny.³⁴

[43] The applicant expresses considerable concern for how her mother was treated while she was in the hospital. She also expresses a desire for accountability for that treatment.

[44] From my review of the medical records, I cannot see how its disclosure might serve the purpose of scrutinizing the activities of Fraser Health. In my view, the only thing the records reveal are details of the deceased's particular health challenges and treatment.³⁵ These medical records might be used to subject an individual third party's activities to public scrutiny, but I do not see how it would subject Fraser Health's activities to public scrutiny. As a result, I conclude that s. 22(2)(a) does not apply.

³³ Order F18-47, 2018 BCIPC 50 (CanLII) at para. 32.

³⁴ Order F16-14, 2016 BCIPC 16 (CanLII) at para. 40.

³⁵ Order F22-42, 2022 BCIPC 47 (CanLII) at para. 45.

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

[45] Section 22(2)(f) asks whether personal information has been supplied in confidence. If so, this factor weighs in favour of withholding the personal information. For s. 22(2)(f) to apply, there must be evidence that a third party supplied personal information, and at the time the information was provided, it was done so under an objectively reasonable expectation of confidentiality.³⁶

[46] I find that some of the information in dispute was not *supplied* to the hospital but was *generated* by hospital staff, so s. 22(2)(f) does not apply to that information. This information includes data in medical reports generated and input into forms based on hospital staff's assessments of the deceased. This information also includes the records of hospital staff about the treatment provided.

[47] I am satisfied that the balance of the personal information in the medical records was supplied in confidence to the hospital. Fraser Health says that information supplied by a deceased for their medical care is generally understood to be provided with an expectation that it will be kept confidential by the recipient.³⁷ I agree with this submission.

[48] While there are no express statements of confidentiality in the medical records, given their content and context, I find it reasonable to conclude that the deceased's personal information was supplied to her medical team in confidence. This personal information is about medical matters which is generally understood to be provided with an expectation that it will be kept confidential by its recipient.³⁸ I cannot see any information before me to suggest that, at the time the deceased supplied her personal information, it was intended to be shared with anyone other than those providing her treatment.

[49] I considered the applicant's assertion that her mother wished for she and her sister to review her health concerns. I have insufficient evidence before me as to when this wish was shared by the deceased or in what circumstances or how this would affect the s. 22(2)(f) analysis. Instead, I am satisfied that at the time the deceased provided the information to her health care providers, it was done so under an objectively reasonable expectation of confidentiality.

³⁶ Order F11-05, 2011 BCIPC 5 (CanLII) 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).

³⁷ Fraser Health's initial submissions at para. 42.

³⁸ *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.

[50] I find that s. 22(2)(f) applies and weighs against disclosing the deceased's personal information supplied in confidence for her medical care.

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

[51] 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.

[52] Fraser Health 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.³⁹ The applicant makes no submission on this point.

[53] 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 orders have noted that in most Canadian jurisdictions, the law provides that disclosing information about someone who has been deceased for 20-30 years is not an unreasonable invasion of their privacy. Previous orders have also said that an individual's personal privacy rights are likely to continue for at least 20 years past their death.⁴⁰

[54] In this case, the deceased passed away less than 3 years ago. In my view, the deceased has ongoing privacy rights which have not been diminished by this relatively short passage of time. Therefore, I find s. 22(2)(i) weighs against disclosing the deceased's personal information.

Other relevant factors, s. 22(2)

[55] Section 22(2) says that all relevant circumstances must be considered. I find there are several relevant factors not listed under s. 22(2) that require consideration.

[56] Applicant's motive - An applicant's motive has been considered in the context of family members seeking information to deal with a death and its aftermath.⁴¹ I find it appropriate to consider the applicant's motive here.

[57] The applicant says she requested her mother's medical records because she wants a full review and accountability for her mother's death. In my view, the

³⁹ Fraser Health's initial submissions at para. 44.

⁴⁰ Order F18-08, 2018 BCIPC 10 (CanLII) at paras. 31-32; Order F14-09, 2014 BCIPC 11 (CanLII) at para. 30; Order F23-92, 2023 BCIPC 108 (CanLII) at paras. 60-62; Order F24-05, 2024 BCIPC 7 (CanLII) at para. 48.

⁴¹ Order F15-36, 2015 BCIPC 39 (CanLII) at para. 31; Order F23-92, 2023 BCIPC 108 at para. 64; Order F24-05 BCIPC 7 (CanLII) at para. 51.

applicant's motive is a legitimate and understandable reason to request medical information related to a deceased family member.

[58] I find that the applicant's motive weighs in favour of disclosing the deceased's personal information to the applicant.

[59] Existing knowledge - Previous orders have considered whether the applicant's knowledge of the information in dispute weighs for or against disclosure.⁴²

[60] Based on the applicant's relationship to the deceased and what is revealed by the medical 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 well-being and treatment. I find that this knowledge weighs in favour of disclosing some of the deceased's known personal information to the applicant.

[61] Sensitivity - Previous orders have considered the sensitivity of the information in dispute. For example, where information is sensitive, it is a circumstance weighing in favour of withholding the information.⁴³ Neither of the parties made submissions regarding sensitivity.

[62] Most of the deceased's personal information relates to her health and medical care. I find that this information is highly sensitive.

[63] I find the sensitivity of the deceased's personal information weighs strongly against disclosure.

Conclusion, s. 22(1)

[64] I found most of the information Fraser Health withheld under s. 22(1) 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.

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

[66] 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 relates to her medical history, diagnosis, condition and treatment and evaluation.

⁴² Order F24-05, BCIPC 7 (CanLII) at para.52; Order F18-48, 2018 BCIPC 51 (CanLII) at para. 27; Order F20-22, 2020 BCIPC 26 (CanLII) at para. 51.

⁴³ Order F19-15, 2019 BCIPC 17 (CanLII) at para. 99.

[67] I found the following relevant circumstances under s. 22(2) strengthen and support the s. 22(3)(a) presumption and weigh against disclosing the personal information at issue:

- most of the deceased's personal information in the records was supplied in confidence under s. 22(2)(f);
- the deceased's privacy rights have not been reduced by the passage of time in accordance with s. 22(2)(i); and
- the personal information is highly sensitive.

[68] While I found that the applicant's motive and existing knowledge were factors that weigh in favour of disclosure and some of the information at issue was generated, but not supplied, in confidence, I find those factors are insufficient to rebut the strongly bolstered s. 22(3)(a) presumption that I found applied to the deceased's medical records.

[69] In conclusion, I find that disclosing all the deceased's personal information in the medical records would be an unreasonable invasion of her personal privacy under s. 22(1) and Fraser Health must refuse to give the applicant access to that information.⁴⁴

Conclusion

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

1. I confirm Fraser Health's decision that the applicant is not acting on behalf of the deceased for the purposes of s. 5(1)(b) of FIPPA and s. 5 of the Regulation.
2. I confirm Fraser Health's decision that it is required to refuse to disclose the information in dispute under s. 22(1).

March 26, 2024

ORIGINAL SIGNED BY

Carol Pakkala, Adjudicator

OIPC File No. F22-88308

⁴⁴ Since the personal information of the deceased must not be disclosed, it is not necessary to also decide if disclosure would be an unreasonable invasion of the other third parties' personal privacy.