



OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
FOR BRITISH COLUMBIA

Order F24-46

## VANCOUVER ISLAND HEALTH AUTHORITY

Carol Pakkala  
Adjudicator

June 5, 2024

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**Summary:** The applicant requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to records about his interactions with outpatient services. The Vancouver Island Health Authority (Island Health) disclosed responsive records to the applicant but withheld some information from them under s. 22(1) (unreasonable invasion of a third party’s personal privacy) of FIPPA. The adjudicator found that s. 22(1) requires Island Health to refuse to disclose the information.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, ss. 22(1), 22(2), 22(2)(e), 22(2)(f), 22(2)(h), 22(3), 22(3)(b), 22(3)(h), 22(4), 22(4)(a), and Schedule 1 (definitions of “third party”, “personal information” and “contact information”).

### INTRODUCTION

[1] An individual (the applicant) requested access to records held by the Vancouver Island Health Authority (Island Health) relating to his interactions with its Outpatient Mental Health and Substance Use Services (MHSU) and Integrated Mobile Crisis Response Team (IMCRT). Island Health disclosed responsive records to the applicant but withheld some information under s. 22(1) (unreasonable invasion of a third party’s personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA)<sup>1</sup>.

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

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

## Preliminary Matters

### *Order for destruction of records*

[3] In his submission, the applicant says he seeks an order requiring Island Health to destroy the records at issue. Island Health says this is a new request. Island Health further says that this relief is not available where the request relates to a decision of the head of a public body to refuse to give access to part of a record, as is the case in the present inquiry.<sup>2</sup>

[4] Section 58(3)(f) allows the Commissioner to order a public body to destroy personal information collected in contravention of FIPPA. However, this inquiry is not a complaint about an unauthorized collection of personal information, and the applicant did not request permission to add that issue into the inquiry.<sup>3</sup> Therefore, I will not consider the applicant's request for a destruction order because that is not an available remedy in an inquiry about an access decision.

### *Video file evidence*

[5] The applicant submitted four video files in this inquiry. The applicant does not explain how the videos are related to the issues in this inquiry. I understand the applicant to have concerns about what he describes as “police manipulations with bad intent and the adjoining explanation of how they sneakily cover their tracks”.<sup>4</sup> Island Health says the video evidence does not appear to involve the applicant or pertain to the responsive records in any way.<sup>5</sup>

[6] I reviewed the video files and considered whether they contain any relevant material. I am satisfied the videos are not relevant to the issues in this inquiry, so I will not consider them any further.

## ISSUE AND BURDEN OF PROOF

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

[8] Section 57(2) places the burden on the applicant to establish that disclosure of any personal information at issue would not unreasonably invade a third party's personal privacy under s. 22. However, the public body has the initial burden of proving the information at issue is personal information.<sup>6</sup>

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<sup>2</sup> Island Health's reply submission at para. 6.

<sup>3</sup> Previous orders and decisions have regularly said that a party may only introduce a new issue into an inquiry if the OIPC grants permission to do so. For instance, see Order F21-21, 2021 BCIPC 26 (CanLII) at para. 8 as well as the cases cited there.

<sup>4</sup> Applicant's submission.

<sup>5</sup> Island Health's reply submission at para. 3.

<sup>6</sup> Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9–11.

## DISCUSSION

### Background and information at issue

[9] Island Health is a public body responsible for the delivery of healthcare services in the Vancouver Island region of BC. Island Health delivers mental health and substance use services through MHSU, and in collaboration with other agencies, through IMCRT.

[10] The applicant requested access to records held by Island Health related to his interactions with MHSU and IMCRT. In response, Island Health provided the applicant with a four page clinical profile from 2012 (the 2012 Profile) and two pages of progress notes from 2019. Island Health only withheld information from one page of the 2012 Profile.

### *Disclosure harmful to personal privacy, s. 22*

[11] Section 22(1) requires a public body to refuse to disclose personal information to an applicant if its disclosure would be an unreasonable invasion of a third party's personal privacy. Section 22(1) is mandatory, meaning a public body has no discretion and is required by law to refuse to disclose this information.

[12] 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.

[13] Previous orders have considered the proper approach to the application of s. 22 and I apply those same principles here.<sup>7</sup>

### *Personal information*

[14] 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.

[15] 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

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<sup>7</sup> Order F15-03, 2015 BCIPC 3 (CanLII) at para. 58 sets out a summary of the steps in a s. 22 analysis. I will follow the same approach in this matter.

individual.”<sup>8</sup> Whether information is “contact information” depends upon the context in which it appears.<sup>9</sup>

[16] Island Health says it withheld information that would identify third parties,<sup>10</sup> not by name, but by what the disputed information reveals about them. Island Health further says it withheld the identities of third parties as well as the substance of information which it says unavoidably identifies the third parties.<sup>11</sup> The applicant’s submission does not address whether the information at issue is personal information.

[17] I have reviewed the information at issue and can confirm that it is information about identifiable third parties.<sup>12</sup> This information is intermingled with information about the third parties’ opinions about the applicant. I find this information was not provided to enable the third parties to be contacted at a place of business, so it is not contact information. As a result, I find it is personal information.

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

[18] 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. Island Health says none of the s. 22(4) scenarios apply to the information at issue.<sup>13</sup>

[19] The applicant makes no comment about s. 22(4). However, the applicant does say he disputes certain paragraphs in the affidavit of Island Health’s Information Access Analyst (Analyst).<sup>14</sup> In particular, he disputes paragraph 16(b) wherein the Analyst attests that she was told by Island Health’s Release of Information Officer (Officer) that to the Officer’s knowledge, the third parties in the records has/have not consented to disclosure.<sup>15</sup> In my view, the applicant’s dispute of this paragraph raises the potential applicability of s. 22(4)(a).

[20] Section 22(4)(a) says that a disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy if the third party has, in

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<sup>8</sup> FIPPA, Schedule 1.

<sup>9</sup> Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

<sup>10</sup> For readability, I have used a gender-neutral plural rather than “identity/ies” used by Island Health.

<sup>11</sup> Island Health’s initial submission at para. 8.

<sup>12</sup> FIPPA defines a third party as any person, group of persons or organization other than the person who made the request or a public body. See Schedule 1.

<sup>13</sup> Island Health’s initial submission at para. 23.

<sup>14</sup> Applicant’s submission. The applicant states he disputes paras. 4, 8, 9, and 16(b)(c)(d)(e) of the Analyst’s affidavit.

<sup>15</sup> Analyst’s affidavit at para. 16(c).

writing, consented to or requested the disclosure. Island Health says that the third parties in question have not consented to disclosure.<sup>16</sup>

[21] As noted above, the applicant has the burden of establishing that disclosure would not unreasonably invade a third party's personal privacy under s. 22. I have no evidence before me that the third parties, have in writing, consented to or requested the disclosure of their personal information. I only have the applicant's denial of the Analyst's statement that the third parties did not consent to disclosure. I find the applicant's bare dispute of this affidavit evidence is insufficient to meet this burden.

[22] I also reviewed the other provisions under s. 22(4) and find none apply in this case.

*Presumption of an unreasonable invasion of privacy, s. 22(3)*

[23] 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.

[24] Island Health says ss. 22(3)(b) and (h) apply to the information it withheld.<sup>17</sup> The applicant does not say anything about whether s. 22(3) applies. I considered whether any of the other subsections in s. 22(3) apply and I find that only ss. 22(3)(b) and (h) are relevant in this case.

[25] The relevant provisions are as follows:

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

(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,

...

(h) the disclosure would reveal

(i) the identity of a third party who supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation, or

(ii) the content of a personal recommendation or evaluation, character reference or personnel evaluation supplied, in confidence, by a third party, if the applicant could

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<sup>16</sup> Island Health's initial submission at para. 23(a).

<sup>17</sup> Island Health's initial submission at para. 24.

reasonably be expected to know the identity of the third party

Investigation into a possible violation of law, s. 22(3)(b)

[26] Island Health says the personal Information consists of identifying information about witness(es) or source(s) of information, and the content of information that the source(s) provided to the Saanich Police Department (Saanich Police) during an investigation.<sup>18</sup>

[27] While the applicant makes no comment about s. 22(3)(b), he does say he disputes certain paragraphs in the Analyst's affidavit. Specifically, he disputes paragraph 4 wherein the Analyst says, in part:

On two occasions – once in 2012 and once in 2019 – police referred the Applicant to Island Health's Integrated Mobile Crisis Response Team ("IMCRT") in the course of an investigation of an alleged violation of law...<sup>19</sup>

[28] In my view, the applicant's dispute of this paragraph potentially refutes the applicability of s. 22(3)(b). However, I find the applicant's bare denial of this piece of evidence is unsupported by the content of the records.

[29] I am satisfied from my review of the records that there was an investigation by the Saanich Police into a possible violation of law. I am further satisfied that the personal information at issue is identifiable as part of the police investigation.

[30] I find that s. 22(3)(b) applies to create a presumption that its disclosure is presumed to be an unreasonable invasion of the third parties' personal privacy.

Confidential personal recommendation or evaluation, s. 22(3)(h)

[31] Island Health says s. 22(3)(h) applies to the identity of the provider of what it describes as an evaluation. Island Health says that it is clear on the face of the records that the third parties have identified that the applicant has a history of mental health issues and have evaluated the applicant on this basis. Island Health says the identify of the provider of this evaluation is properly and reasonably protected by s. 22(3)(h)(i).<sup>20</sup>

[32] Having reviewed the personal information at issue, I disagree with Island Health's characterization of the personal information. In my view, this information is not an evaluation within the meaning of s. 23(3)(h). At most, the information

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<sup>18</sup> Island Health's initial submission at para. 29.

<sup>19</sup> Analyst's affidavit at para. 4.

<sup>20</sup> Island Health's initial submissions at para. 36.

can be characterized as opinions or concerns. Previous orders have found that s. 23(3)(h) applies to formal evaluations, such as job or academic references and annual employment performance reviews. It could also apply in the case of a tenancy reference from a landlord.<sup>21</sup>

[33] The purpose of s. 22(3)(h) is to enable a person to speak freely without fear of the potential repercussions created by their evaluation being subject to disclosure. Section 22(3)(h) does not apply in cases where an individual is merely expressing an opinion or concerns about the behaviour of another, which is the nature of the information at issue in this case.<sup>22</sup>

[34] I find that the information is not a personal recommendation or evaluation, character reference or personnel evaluation. It is therefore unnecessary for me to decide, for the purposes of s. 22(3)(h), whether this information was supplied in confidence.

[35] I find that s. 22(3)(h) does not apply.

*Summary, s. 22(3)*

[36] I find that s. 22(3)(b) creates a presumption against disclosure of the third parties' personal information. I find that no other s. 22(3) presumptions apply. I turn now to whether the applicant has rebutted the s. 22(3)(b) presumption and whether disclosure of the information at issue would be an unreasonable invasion of the third parties' personal privacy.

*Relevant circumstances, s. 22(2)*

[37] 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). It is at this step, after considering all relevant circumstances, that the applicant may rebut the presumption created under s. 22(3)(b).

[38] Island Health submits that none of the factors in s. 22(2) weigh in favour of disclosure and that ss. 22(2)(f) and (h) weigh against disclosure. The applicant makes no comment about s. 22(2).

[39] The relevant parts of s. 22(2) are as follows:

22 (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of

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<sup>21</sup> Order F21-60, 2021 BCIPC 69 at para. 25; Order F17-46, 2017 BCIPC 51 (CanLII) at para. 16; Order 01-07, 2001 BCIPC 21561 (CanLII) at para. 22; Order F16-01, 2016 BCIPC 1 (CanLII) at para. 21.

<sup>22</sup> Order F21-60, 2021 BCIPC 69 at para. 25.

a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

...

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant,

...

Unfair exposure to harm, s. 22(2)(e)

[40] Section 22(2)(e) says unfairly exposing a third party to financial or other harm is a relevant circumstance to consider. It is the exposure to harm, not the likelihood or existence of harm, that matters.<sup>23</sup> Exposure to harm can arise from disclosure of information related to the involvement of third parties in police investigations.<sup>24</sup> Harm includes serious mental distress or anguish or harassment.<sup>25</sup> However, embarrassment, upset, or negative reactions do not rise to the required level of mental harm.<sup>26</sup>

[41] Island Health says it is clear from the responsive records that the third parties would be concerned about exposure to possible reputational harm, embarrassment and stigma if the information at issue was disclosed.<sup>27</sup>

[42] While the applicant does not comment on s. 22(2)(e), he does dispute the paragraph in the Analyst's affidavit wherein she attests that the Officer told her:

. . . the information provided to the Saanich Police by the third party/ies describes circumstances that could expose those third parties to reputational harm, embarrassment and stigma if disclosed . . .<sup>28</sup>

[43] The content of the 2012 Profile indicates that disclosure of the personal information about the third parties involvement in the police investigation could unfairly expose the third parties to serious mental distress and reputational harm. I cannot say more without disclosing the actual information in dispute.

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<sup>23</sup> Order F23-106, 2023 BCIPC 122 at para. 53.

<sup>24</sup> Order F23-102, 2023 BCIPC 118 at paras. 26-29.

<sup>25</sup> Order 01-37, 2001 CanLII 21591 (BC IPC) at para. 42.

<sup>26</sup> Order 01-15, 2001 CanLII 21569 (BC IPC), at paras. 49-50; and Order F20-37, 2020 BCIPC 43 (CanLII), at para. 120.

<sup>27</sup> Island Health's initial submission at para. 42.

<sup>28</sup> Analyst's affidavit at para. 16(e).



[44] Consequently, I find that s. 22(2)(e) is a relevant circumstance weighing in favour of withholding the personal information.

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

[45] Section 22(2)(f) says the confidential supply of information is a relevant circumstance to consider. For s. 22(2)(f) to apply, there must be evidence that a third party supplied personal information under an objectively reasonable expectation of confidentiality, at the time of its supply.<sup>29</sup>

[46] Island Health says the personal information was confidentially provided by the third parties to the Saanich Police during a criminal investigation, who then forwarded it to IMCRT to assist in IMCRT's psychiatric evaluation of the applicant.<sup>30</sup> Island Health relies on hearsay evidence that the information was provided in confidence by third parties they say did not consent to its disclosure.<sup>31</sup> The applicant did not dispute this portion of the evidence even though he disputes other portions of the same affidavit.

[47] I am satisfied from my review of the affidavit evidence, records, and the nature of the information at issue that the personal information was supplied in confidence. Previous orders have found that, when people supply information to the police during investigations, they have a reasonable expectation of confidentiality.<sup>32</sup>

[48] From the nature of the information at issue and the police investigation context, I find the third parties supplied it under an objectively reasonable expectation of confidentiality.

[49] Consequently, I find that s. 22(2)(f) is a relevant circumstance weighing in favour of withholding the personal information.

Damage to reputation, s. 22(2)(h)

[50] Section 22(2)(h) says unfairly exposing any party referred to in the record to reputational harm is a relevant circumstance to consider. Two requirements must be met to engage s. 22(2)(h). First, the information must damage an individual's reputation. Second, that damage must be unfair.<sup>33</sup>

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<sup>29</sup> 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 discussing "in confidence" in the context of s. 21(1)(b).

<sup>30</sup> Island Health's initial submission at para. 9, referencing the Analyst's affidavit at para. 12.

<sup>31</sup> Analyst's affidavit at para. 16.

<sup>32</sup> See for example: Order F23-103, 2023 BCIPC 119 (CanLII) at para. 126 and Order F15-30, 2015 BCIPC 33 (CanLII) at paras. 91-92 adopting the SCC's discussion of privacy in police occurrence reports in *R. v. Quesnelle*, [2014] 2 SCR 390 at para. 43.

<sup>33</sup> Order F23-106, 2023 BCIPC 122 at para. 65.

[51] When considering s. 22(2)(e) above, I found that that disclosure of the personal information provided in the context of the police investigation could expose the third parties to unfair reputational harm. The third parties are referred to in the requested records. For the same reasons set out under the s. 22(2)(e) analysis, I find that disclosure may damage the reputation of the same third parties. I also find that such damage would be unfair because the personal information was provided in the context of a police investigation and the third parties are not privy to the results of that investigation and do not have the opportunity to respond.

[52] Consequently, I find that s. 22(2)(h) is a relevant consideration weighing in favour of withholding the personal information.

Other relevant factors, s. 22(2)

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

[54] Applicant's information – some of the third parties' personal information that I find is properly withheld under s. 22, is intermingled with the applicant's personal information because it is about the police investigation involving him. In my view, the applicant's personal information is so closely intermingled with the third parties' personal information that it cannot be reasonably severed and disclosed to him.

[55] 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.<sup>34</sup> Island Health says it is clear from the face of the responsive records that the information at issue is sensitive in nature and is information that the third parties would not wish to have circulated.<sup>35</sup> I agree. I find the sensitivity of third parties' personal information weighs strongly against its disclosure.

[56] I find there are no other relevant circumstances under s. 22(2).

*Conclusion, s. 22*

[57] I found the information withheld by Island Health withheld under s. 22(1) is personal information. I found that none of the circumstances in s. 22(4) apply here. I found that the disclosure of all the information in dispute is presumed to be an unreasonable invasion of the third parties' personal privacy under s. 22(3)(b) because it was compiled and is identifiable as part of an investigation into a possible violation of law.

<sup>34</sup> Order F19-15, 2019 BCIPC 17 (CanLII) at para. 99.

<sup>35</sup> Island Health's initial submission at para. 45.

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

- the third parties will be exposed unfairly to harm;
- the personal information was supplied in confidence;
- the disclosure may unfairly damage the reputation(s) of person(s) named in the records; and
- the personal information is highly sensitive.

[59] Having considered the relevant circumstances set out above, I conclude that the applicant has not rebutted the presumption created by s. 22(3)(b). I find that disclosing the third parties' personal information would be an unreasonable invasion of their personal privacy under s. 22(1). Therefore, Island Health must refuse to give the applicant access to that information.

## **CONCLUSION**

[60] For the reasons given above, under s. 58 of FIPPA, I require Island Health to refuse access under s. 22(1) to the information at issue.

June 5, 2024

## **ORIGINAL SIGNED BY**

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Carol Pakkala, Adjudicator

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