OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F24-66

MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

Allison J. Shamas
Adjudicator

July 18, 2024

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Summary: An applicant requested access to all records relating to his child from the Ministry of Children and Family Development (the Ministry). The Ministry refused to disclose information on the basis that the applicant was not authorized to make an access request on behalf of the child in accordance with s. 5(1) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) and s. 3(1)(a) of the Freedom of Information and Protection of Privacy Regulation (Regulation), and that disclosure would be an unreasonable invasion of a third party's personal privacy under s. 22(1). The adjudicator determined that the applicant was authorized to make the request on behalf of the child and that the Ministry was required to refuse access to some, but not all, of the information it withheld under s. 22(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165, ss. 5(1)(b), 22(1), 22(2)(f), 22(3)(a), 22(4)(e) and definition of "personal information" and "contact information"; Freedom of Information and Protection of Privacy Regulation, BC Reg 155/2012, s. 3(1)(a).

INTRODUCTION

[1] This inquiry concerns a request by a parent (the applicant) for access to records relating to the applicant's child from the Ministry of Children and Family Development (the Ministry). *The Freedom of Information and Protection of Privacy Act* (FIPPA) and the *Freedom of Information and Protection of Privacy Regulation* (the Regulation) permit applicants to exercise a child's rights under FIPPA where the applicant meets certain requirements. The applicant sought to do so in this case.

[2] The Ministry refused the applicant's request, taking the position that the applicant was not authorized to exercise the child's access rights because he was not acting "for" and "on behalf of" the child as required by s. 5(1)(b) of FIPPA, s. 3 of the Regulation, and s. 76 of the *Child, Family and Community*

Services Act (*CFCSA*), and that disclosure of the information in dispute would be an unreasonable invasion of third-party personal privacy under s. 22(1) of FIPPA.

[3] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the Ministry's decision. Mediation failed to resolve the issues and the matter proceeded to inquiry.

Preliminary Issues

Issues in Dispute – s. 22

[4] The Notice of Inquiry lists s. 22 as an issue to be decided in this inquiry. After receiving the Notice of Inquiry, the Ministry requested that the OIPC remove s. 22 from the Notice of Inquiry, arguing that the OIPC did not have jurisdiction to decide the s. 22 issue because the Ministry had not yet severed the records based on s. 22. In correspondence dated March 17, 2023, the OIPC's Director of Adjudication (the Director) determined that the OIPC had jurisdiction to decide the s. 22 issue, declined the Ministry's request to remove s. 22 from the Notice of Inquiry, and provided detailed reasons in support of both decisions.[1]

[5] After receiving the Director's letter, the Ministry severed the records under s. 22, and both parties made submissions about the Ministry's application of s. 22 to the records in this inquiry.

[6] I raise this history because the Ministry revisited it in its inquiry submission. While I have considered these submissions, I decline to address them further for several reasons. First, the Director fully and finally decided that the OIPC has jurisdiction to decide the s. 22 issue and that the s. 22 issue would be decided in this inquiry.[2] I see no basis to revisit the decision, and the Ministry did not ask me to.

[7] Furthermore, as the Ministry has now severed the records under s. 22, the circumstances on which the Ministry's argument was premised no longer exist.

[8] Finally, from a practical perspective, having reviewed the parties' submissions, it is clear that there is a dispute between them as to the Ministry's application of s. 22. Accordingly, whether in this decision or in a subsequent decision, the OIPC will be required to adjudicate the s. 22 issue. As the Ministry has now severed the records under s. 22 and both parties have made submissions about s. 22, I see no reason to decline to decide the issue in this decision.

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[1] See correspondence from Director of Adjudication dated March 17, 2023.
[2] See correspondence from Director of Adjudication dated March 17, 2023 at page 2 and 3.

Applicability of the CFCSA

[9] During the inquiry, the Ministry reconsidered its position about the applicability of the CFCSA and took the position that the CFCSA did not apply to the information in dispute. The applicant chose not to make submissions about this issue. Accordingly, based on the Ministry's submission, I find that s. 76 of the CFCSA is no longer in dispute in this inquiry, and I will not consider it further.

Appropriate Party

[10] Under s. 54(b) of FIPPA, the OIPC has the authority to provide a copy of the applicant's request for review to any person the Commissioner considers appropriate. Under s. 56(3), that person must be given an opportunity to make representations during the inquiry.

[11] During the inquiry I determined that the child's mother was an appropriate party to this inquiry. The OIPC contacted the child's mother to ask if she wished to receive a s. 54 invitation to participate. The child's mother declined. Accordingly, the inquiry proceeded without representations from the child's mother.

ISSUES

[12] The issues in dispute are as follows:

1. Is the applicant is acting "for," or "on behalf of" his child in accordance with section 5(1) of FIPPA and section 3(1)(a) of the Regulation?
2. Is the Ministry required to refuse access to the withheld information under s. 22(1) of FIPPA?

[13] FIPPA does not address who has the burden under ss. 5(1) of FIPPA and s. 3(1)(a) of the Regulation. However, previous orders have said that each party is responsible for submitting arguments and evidence to support its position.[3]

[14] Section 57(2) of FIPPA places the burden on the applicant to prove that disclosure of any personal information would not be an unreasonable invasion of a third party's personal privacy under s. 22(1). However, the public body has the initial burden of proving the information at issue is personal information.[4]

[3] Order F07-16, 2007 CanLII 35477 (BC IPC), at para. 4, and Order F17-04, 2017 BCIPC 4 (CanLII) at para. 4.
[4] Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

BACKGROUND

[15] The applicant is a parent of a child whose mental health records are at issue in this inquiry. Pursuant to a custody order, the applicant and his ex-spouse (the mother or the child's mother) share "joint legal custody"[5] of the child and the child lives primarily with the mother.

[16] The Ministry provides services to children and families, including mental health services for children.

[17] The Ministry provided mental health services to the child in 2018 and 2019. The child was 2 and 3 years of age at the time.[6] The applicant states that he had no knowledge of the Ministry's involvement with the child at that time.

[18] In 2021, the applicant sought mental health services for the child through the Ministry. During the Ministry's intake process, the applicant learned that the child had previously received mental health services from the Ministry. When the Ministry refused to provide him with records of those services, the applicant made the access request that is at issue in this inquiry (the Access Request).

RECORDS AND INFORMATION AT ISSUE

[19] The records are 71 pages of medical and administrative records relating to the mental health services provided to the child by the Ministry in 2018 and 2019. The forms identify the child by name and include detailed information about the child's personal history, mental health assessments, diagnoses, and treatment recommendations. They also contain information about the child's mother, siblings, grandparents, physician, a contact from the child's school, the individual who referred the child for treatment, and the Ministry employees who provided services to the child. With the exception of some basic biographical information about the child and the headings on some forms, the Ministry withheld all the information in the records.

IS THE APPLICANT IS ACTING "FOR," OR "ON BEHALF OF" THE CHILD?

[20] The first issue to be determined is whether the applicant is authorized to exercise his child's right to make the Access Request. If the applicant is so authorized, then the inquiry will proceed as though the child is requesting access to the records. If the applicant is not authorized, then the inquiry will proceed as though the applicant is making the request.

[21] Section 5(1)(b) of FIPPA provides:

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[5] See custody order at para 2.
[6] The child's date of birth is found on page 2 of the records.

> **How to make a request**
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> 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, …

[22] Section 3(1) of the Regulation provides:

> **Who may act for a minor**
>
> 3 (1) A guardian of a minor may act for the minor in relation to any of the following sections of the Act if the minor is incapable of acting under that section:
>
> (a) section 5;
>
> (2) A guardian of a minor may exercise a power granted to the guardian under subsection (1) of this section only if the power is within the scope of the guardian's duties or powers.

[23] These provisions establish several requirements that an applicant must meet to be permitted to exercise a child's rights under FIPPA. There is no dispute between the parties that the applicant is the guardian of the child, the child is a minor who is incapable of acting, and that the applicant's request is within the scope of the applicant's duties. As set out in the notice of inquiry, the sole requirement that is in dispute is whether the applicant was acting "for" and "on behalf of" the child when he made the Access Request.

Ministry's Argument

[24] The Ministry argues that the terms "for" and "on behalf of" in FIPPA and the Regulation mean "acting to benefit the child, to further the child's own goals or objectives, and in the child's best interests."[7] Further, relying on case law from courts across Canada, it submits that the records attract significant privacy rights both because children have enhanced privacy rights due to their vulnerability and because mental health information is some of the most sensitive personal information that government entities hold. In this regard, the Ministry emphasizes that the Supreme Court of Canada has repeatedly recognized that Canadian law affords children greater privacy rights than similarly situated adults, and that this reflects a general societal consensus about the value of protecting children's

[7] Ministry's initial submission at para 37.

privacy interests.[8] It cites *Ontario (Children's Lawyer) v. Ontario (Information and Privacy Commissioner)* in which the Ontario Court of Appeal held that when considering issues that affect the rights of children "administrative authorities and legislative bodies have a duty to recognize, advance and protect their interests."[9] It also relies on *G.L.K. v. C.L.K.*,[10] in support of the proposition that privacy is fundamental to the therapeutic relationship, and that accordingly, children have significant privacy interests in their counselling records.

[25] While the Ministry does not dispute that "it is possible that it is in the best interest of the [a]pplicant's child to receive further counselling or therapy,"[11] it asserts that the applicant failed to meet the standard established by the OIPC, which is that his request for access to the child's personal information is exclusively to further his child's own goals or objectives and that the disclosure would be a benefit to the child.

[26] The Ministry also argues that the applicant has failed to establish that his access to the child's previous counselling records is in the child's best interest. In this regard, the Ministry notes that the applicant has already sought out further counselling for the child through the Ministry and if it is necessary to do so, practitioners in the Ministry would be able to access and review the child's counselling file to inform future treatment.

Applicant's Argument

[27] The applicant asserts that the Ministry has failed to establish that any harm could be caused to the child by disclosing the child's information to the child's parent. He submits that the Ministry's arguments about confidentiality over counselling records are not relevant to the child's information as the child was barely able to communicate verbally at the time of the treatment. He also argues that because the child did not have the capacity to consent to treatment in 2018 and 2019, the child's health care is not confidential from those with legal custody, and that the Ministry's actions are preventing him from fulfilling his parental obligations.

[28] In terms of his reasons for requesting access to the child's information, the applicant asserts that the child has ongoing behavioural issues that require mental health treatment, and that he will not allow the child to receive further treatment from the Ministry given the Ministry's refusal to provide him records from the child's prior treatment. The applicant explains that he wishes to obtain mental health support for the child from outside the Ministry and argues that

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[8] *R. v. Jarvis*, 2019 SCC 10 (CanLII). See also *A.B. v. Bragg Communications Inc.* 2012 SCC 46 (CanLII) [*Bragg*] at paras 17 and 18 and the cases and materials cited therein.
[9] 2018 ONCA 559 (CanLII) at para 64 [*OCL*]. (Application for leave to appeal to the Supreme Court denied (2019 SCC 23873 (CanLII)).
[10] 2021 ONSC 5843 (CanLII).
[11] Ministry's initial submission at para 65.

access to the child's mental health records would allow him to determine the best course of action for future mental health treatment for the child. The applicant says the following about why he needs access (he refers to himself as "Father"):

> … access to [the] child's therapy records would allow a through examination AND understanding of the counseling allegedly offered by the Ministry (BY OTHER professionals both in the US and Canada) and allow them to craft a (more suitable) go-forward therapy and approach to address since then existing concerns. That was already a reasonable position, that would naturally allow an assessment of the quality of the counseling and draft further counseling in the best interest of the child since it would have been clear to Father AND new/other professionals to understand what did not work and what would suit child's needs and his response to the new therapy could have been better observed, assessed a[n]d compared. Father offered supportive evidence, through the course of this ordeal created by the Ministry, in form of independent and impartial notes of real events of concern from child's school and private life.[12] For any proper treatment, a full review of prior notes is needed. Father has made it clear early in his application that the records are indeed needed to establish "what was done and what did not work" as the child continued to show behavioral issues and mental distress also witnessed by multiple school officials.[13]

[29] The applicant also states that giving him access to the records would allow him "to partner and be present in his child's well-being and ensure proper record keeping is available for both parents."[14]

[30] Finally, the applicant submits that the case law relied on by the Ministry from outside of BC is irrelevant.

Ministry's Reply

[31] In reply, the Ministry argues that the applicable case law does not require it to establish that disclosure of the withheld information will result in harm. However, it nonetheless argues that disclosure of the child's sensitive personal information would harm the child's privacy interests.

[32] The Ministry argues the applicant has not established that he needs access to the child's counselling records to get the child appropriate care. In this regard, the Ministry argues the applicant has not provided evidence that he was unable to provide his child with appropriate care, or that a medical professional believes disclosure of the records to the applicant is necessary to provide appropriate care for the child. Finally, it argues that requesting access to the child's records for the applicant's own record keeping purposes does not fit within

[12] Applicant's inquiry submission at page 2.
[13] Applicant's inquiry submission at page 2.
[14] Applicant's inquiry submission at page 3.

the established framework of what it means to be acting "for" and "on behalf of" a child.

Findings and Analysis

[33] While the terms "for" and "on behalf of" are not defined in the relevant legislation, past OIPC orders provide some guidance. In Order F17-04, the adjudicator held that in the context of the access rights of a minor child the terms "for" and "on behalf of" mean "acting to benefit the child, to further the child's own goals or objectives and in the child's best interests."[15] Numerous past orders have adopted this definition, and I do the same here.[16]

[34] There are no significant disputes over the facts, and where the parties do not agree, I have addressed their positions below.

[35] I accept that the child would benefit from additional mental health services, and that the applicant is no longer willing to obtain these services through the Ministry. The applicant, who is the party best positioned to speak to these issues, says so, and the Ministry does not dispute his position on either point.

[36] I find that the applicant's primary purpose in requesting access to the records is to use them to make decisions about future mental health services for the child. In my view, the applicant's statements to the Ministry and the OIPC clearly reflect this purpose. In his access request, the applicant wrote that he was requesting access to the child's records "to prevent ongoing risk and impending risk to child and [their sibling] and to determine best course of action and new therapy for [the child's] mental, emotional, and physical well-being.[17] In his request for review to the OIPC, the applicant explained his reasons this way:

> in an effort to better understand the extent and findings of the previous engagement and be able to determine proper treatment on a go-forward basis. The information is highly critical to prevent self-harm, harm to those around [the child] and to understand what did not work previously and what can be done differently and in more up to date term to help and provide the child with the support he deserves.[18]

[37] The applicant's submissions in this inquiry, which are reproduced above, mirror these statements and detail precisely how the applicant would make use of the records to make decisions about mental health treatment for the child. Furthermore, I note that the applicant was seeking mental health services for the

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[15] Order F17-04, 2017 BCIPC 4 at para 17.
[16] Order F18-34, 2018 BCIPC 47 (CanLII) at paras 14 and 15; Order F18-38, 2018 BCIPC 41 (CanLII) at paras 10 and 11; F18-08, 2018 BCIPC 10 (CanLII) at para 13.
[17] See "Requestion Clarification Checklist" submitted to the Ministry in support of the applicant's access request.
[18] Request for review of the Ministry's decision at page 9.

child when he made his access request. I find that this circumstance lends credibility to his statements.

[38] I find that the applicant is also interested in the records for recordkeeping purposes, but that this purpose is related to his interest in his child's mental health treatment. The applicant references recordkeeping once, at the end of his submissions, together with a general statement about his desire to be present in his child's well-being. Neither the Ministry nor the applicant provide any additional information about this statement. Examining this comment in context, I find that it reads like more of a passing remark about an ancillary benefit of gaining access to the records, than a genuine motivation for making the Access Request. Therefore, I find that it is more probable than not that the applicant's interest in recordkeeping relates to his interest in making decisions about the child's mental health treatment.

[39] I also find that the information at issue is relevant to the applicant's interest in making decisions about the child's mental health treatment. While I make no finding that the information will *in fact* assist the applicant, I accept that there is a sufficient nexus between the information about the child's past mental health treatment and decision-making about future mental health treatment as to make the information relevant to that purpose.

[40] Finally, I find that the applicant's intentions to use the information to make decisions about the child's future mental health treatment and for related recordkeeping purposes are in the child's interest.

[41] To summarize, I accept that the applicant's purposes in requesting access to the records are in the child's interests. What remains to be determined is whether the findings above are sufficient to satisfy the requirement that the applicant is acting "for" and "on behalf" of the child in the circumstances of this case.

[42] The Ministry asks that I find that the applicant is not acting for and on behalf of the child because he has not established that he *requires* the information to obtain mental health treatment for the child. In my view, such an approach would require applicants to establish that they cannot access the requested information through any other process and that the information is essential to their stated purpose. I am not aware of any past OIPC orders that have taken such an approach, and the Ministry did not cite any.

[43] Furthermore, I decline to adopt the approach advocated by the Ministry. The relevant provisions concern whether an applicant is acting "for" and "on behalf of" a child. I can see no reasonable interpretation of this language that could support an obligation on applicants to prove that they cannot access the requested information through any other process and that the information is

essential to their stated purpose. If such an interpretation is available, the Ministry has not adequately explained.

[44] The Ministry also argues that the applicant's reference to proper record keeping brings the applicant's request outside the established framework of what it means to act "for" and "on behalf of" a child. In past orders the OIPC has held that an applicant who is seeking information to further their own interests, is not acting for and on behalf of another individual.[19] In one such order, a former Commissioner held that an applicant whose interests were melded together with those of the person whose access rights the applicant was seeking to exercise, was not acting for and on behalf of that individual.[20] I understand the Ministry to be arguing that the applicant's interest in recordkeeping is a self-interest, rather than in the child's interest.

[45] Given my finding about that the applicant's interest in recordkeeping is ancillary to his interest in obtaining mental health treatment for the child, and therefore in the child's interest, I find that the reasoning in the cases cited above is not applicable. Moreover, even if I were to accept that the recordkeeping purpose was a self-interest, given the truly secondary nature of the recordkeeping purpose, I find that it would be an overly technical and inappropriate application of the reasoning in the cases cited above to apply it here. For both reasons, I do not accept that the applicant recordkeeping purpose brings his request outside the established framework of what it means to act "for" and "on behalf of" a child.

[46] Finally, I turn to the Ministry's arguments about the child's privacy interests in their mental health records. I agree with the Ministry that children's privacy interests are entitled to protection, and that children have significant privacy interests in their mental health records. The OIPC has considered the intersection between a child's privacy interests and an adult's right to exercise a child's rights in Order 02-1994.[21] In that decision, former Commissioner Flaherty explained that:

> one of the principles of the Act is to protect personal privacy. This can be achieved in this instance by keeping to a minimum the number of people who have access to an infant's personal information. It must be emphasized, however, that the issue in this case is not a parent's right of access to information about his or her infant. It is about who is the best

[19] Order No. 53-1995, 1995 CanLII 1121 (BC IPC) at p. 6; Order 02-44, 2002 CanLII 42478 (BCIPC) at paras 39-40; Order F07-16, 2007 CanLII 35477 (BC IPC) at paras 19-20; Order 17-04, 2017 BCIPC 4 (CanLII) at paras 18-20; Order F18-34, 2018 BCIPC 47 (CanLII) at paras 14 and 15; and Order F18-38, 2018 BCIPC 41 (CanLII) at paras 10 and 11.
[20] Order 53-1995,1995 CanLII 1121 (BC IPC) at page 6.
[21] 1994 CanLII 1208 (BCIPC).

> person to exercise the infant's right of access under the Act.[22]

[47] I understand this statement to mean that what was then s. 3(1) of the Regulation protects children's privacy by limiting who can exercise a child's privacy rights.

[48] I agree with the former Commissioner's approach, and I find that it is equally applicable to the current version of the legislation and Regulation. Children do have important privacy interests. However, where they are incapable of acting, they must also have some means to exercise their rights under FIPPA. In my view, s. 3(1) of FIPPA and 5(1) of the Regulation balance these two important considerations by placing significant restrictions on who may exercise a child's rights under FIPPA.

[49] This is not to say that the context offered by the records is irrelevant to the analysis of whether or not an applicant is acting for and on behalf of a child. In considering whether the applicant was acting for and on behalf of the child, I carefully considered the content of the records in light of the Ministry's arguments about the child's privacy rights to analyse the applicant's motivations, and to ensure that there was a sufficient nexus between the applicant's motivations and the content of the records.

[50] Accordingly, I find that the applicant has established that he is acting "for" and "on behalf of" in respect of the Access Request. Therefore, I will now consider the applicant's request as though the child is requesting access to their own personal information.

SECTION 22(1) – UNREASONABLE INVASION OF THIRD-PARTY PERSONAL PRIVACY

[51] Section 22(1) of FIPPA requires a public body to refuse to disclose personal information that would be an unreasonable invasion of a third party's personal privacy. Numerous orders have considered the application of s. 22, and I will apply those same principles here.[23]

Section 22(1) – Personal Information

[52] As s. 22(1) applies to personal information, the first step in the s. 22(1) analysis is to determine whether the information in dispute is "personal information" within the meaning of FIPPA.

[53] Personal information is defined in Schedule 1 of FIPPA as "recorded information about an identifiable individual other than contact information."

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[22] Order 02-1994, 1994 CanLII 1208 (BCIPC).
[23] For example, see Order F15-03, 2015 BCIPC 3 at para 58.

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]

[54] Contact information is defined in Schedule 1 of FIPPA 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] The purpose of the "contact information" exclusion is to clarify that information relating to the ability to communicate with a person at that person's workplace, in a business capacity, is not personal information.[26] Whether information is "contact information" depends on the context in which it appears.[27]

The parties' arguments - personal information

[55] The Ministry describes the withheld information as individuals' names, addresses, opinions, and medical and psychiatric information, and states that the affected individuals are the applicant's children and ex-spouse. On these bases, the Ministry asserts that the withheld information is "personal information" because it is information about identifiable individuals other than the applicant.

[56] The applicant argues that the Ministry has not made clear whose privacy is being protected – that is, whose "personal information" is at stake.

Findings and analysis - personal information

[57] The records in dispute are administrative and medical records relating to the child's mental health assessment and treatment by the Ministry. I find that the Ministry withheld the following information from the records:

- the child's name, personal health number, Ministry case file number;
- the child's mother's email address and cell phone number;
- the mother and child's home address and telephone number;
- the names, telephone numbers, and names of the places of business of the child's physician and a contact person at the child's school;
- the name of the individual who referred the child for treatment;
- the child's personal history, evaluation, diagnosis, and treatment recommendations which are comprised of:
    - statements about the child, the child's mother, the applicant, the child's sibling, and the child's grandparent,

[24] Order F19-13, 2019 BCIPC 15 at para 16, citing Order F18-11, 2018 BCIPC 14 at para 32.
[25] Schedule 1.
[26] Order F05-31, 2005 BCIPC 39585 (CanLII) at para 26. See also Order F08-03, 2008 BCIPC 13321 (CanLII) at para 82.
[27] Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

    - the child's mother's opinions, experiences, actions, and statements,
    - Ministry staff names, signatures, job titles, and opinions; and
- Headings, headers, footers, and questions on Ministry forms.

[58] I begin with the issue of whether the withheld information is recorded information about an identifiable individual.

[59] The headings, headers, footers, and questions on forms are about the Ministry rather than any individual. For this reason, I find that they are not recorded information about an identifiable individual. Therefore, this information does not qualify as "personal information" under FIPPA.

[60] I find that the child's name, personal health number, Ministry case file number; the mother's email address and cell phone number; the mother and child's home address and telephone number; the names, telephone numbers, and names of the places of business of the child's physician and a contact person at the child's school; and the name of the individual who referred the child for treatment is recorded information about identifiable individuals. Each piece of information relates to a specific individual whose full name appears in the same record as the withheld information (and in some cases is the individual's name).

[61] As the child's personal history is found in records that refer to the child by name, I find that it is recorded information about the child. In addition, it is clear on the face of the records, and specifically from express statements in the records and the nature of the information provided that the child's personal history was provided by the child's mother and is comprised of her opinions and personal experiences. For this reason, I find that the child's personal history is also recorded information about the child's mother. Finally, some of the information in the personal history is about the applicant, the child's sibling, and the child's grandparent. These individuals are referred to by their relationship to the child and are easily identifiable from these descriptions. Therefore, I also find that some of the information in the child's personal history is recorded information about these individuals.

[62] The child's diagnosis, evaluation, and treatment recommendations are also found in records that refer to the child by name. For this reason, I find that this information is recorded information about the child. In addition, some of the evaluation and treatment recommendation information describes the mother's actions and statements. Therefore, in addition to being about the child, I find that some of this information is also about the child's mother. Finally, some of this information is the opinions of Ministry officials whose names and signatures are found in these records. It is therefore, also recorded information about the named Ministry officials.

[63] I now turn to the issue of whether any of the withheld information is contact information. I find that the names, telephone numbers, and names of the places of business of the child's physician and contact person at the child's school are contact information. The information appears in intake forms, and it is clear from its context that it was recorded so these individuals could be contacted at their places of businesses with questions about the child. Thus, it qualifies as contact information and it is, therefore, not personal information under FIPPA.

[64] I come to the opposite conclusion about the names, telephone number, address, and email address of the child, mother, and Ministry officials. The contact information exclusion applies only to information that would enable an individual to be contacted their workplace. It is clear from the context that the information about the mother and child relates to the child's mother's home, not workplace. As for the names of the Ministry officials, there is nothing in the records to suggest that their names were provided for contact purposes. Therefore, I find that this information is not contact information.

[65] With the exception of the headings, headers, footers, questions on Ministry forms, names, telephone numbers, and names of the places of business of the child's physician and contact person at the child's school, I find that all of the withheld information satisfies the definition of "personal information."

"Third party" personal privacy

[66] Section 22 concerns whether disclosure of "personal information" would be an unreasonable invasion of a *third party's* personal privacy, and ss. 22(2), (3), and (4) are tools to analyse whether or not disclosure of personal information would be an unreasonable invasion of a third party's personal privacy. A "third party" is defined in schedule 1 of FIPPA as follows:

> in relation to a request for access to a record …, means any person… other than
>
> (a) the person who made the request, or
>
> (b) a public body.

As the applicant is exercising the child's access rights, the child is not a third party to this inquiry.

[67] The child's name, personal health number, and Ministry case file number are exclusively about the child. I find that this information does not impact the personal privacy interests of anyone other than the child. Therefore, I will not consider this information under ss. 22(2), (3), or (4) below.

[68] In addition, as I will discuss in more detail below, as ss. 22(2), (3), and (4) relate to third party privacy interests, the factors, presumptions, and exclusions in those sections do not apply to the child's privacy rights. Therefore, where

information is about both the child and another individual, the factors, presumptions, and exclusions in ss. 22(2), (3), and (4), apply only to the privacy interests of the other individuals, not to the privacy interests of the child.

Section 22(4) – Circumstances where Disclosure is not an Unreasonable Invasion of a Third Party's Personal Privacy

[69] The second step in the s. 22 analysis is to consider whether s. 22(4) applies to any of the information that I have found is "personal information." Section 22(4) lists circumstances where disclosure of personal information 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), the public body is not required to withhold the information under s. 22(1).

[70] The Ministry submits that none of the categories listed in s. 22(4) apply to the withheld information. The applicant does not address s. 22(4).

[71] Having considered the categories listed under s. 22(4), I find that it is appropriate to consider application of s. 22(4)(e) to the personal information of Ministry officials.

Third party's position, functions, or remuneration – s. 22(4)(e)

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

[73] It is well-established that s. 22(4)(e) applies to "objective, factual statements about what the third party did or said in the normal course of discharging [their] job duties"[28] Past OIPC orders have also found that s. 22(4)(e) applies to information that identifies a public body employee,[29] and to a public body employee's signature provided in the normal course of performing their job duties.[30]

[74] The Ministry withheld the names, signatures, job titles, and opinions of Ministry officials from reports about the child. From the job titles, I can see that the affected Ministry officials are Ministry employees. The job titles describe the employees' positions. Based on the context and content of the records as a whole, including their job titles, I find that the affected Ministry officials provided

[28] Order F09-15, 2009 BCIPC 58553 (CanLII) at para 15; Order F14-41, 2014 BCIPC 44 (CanLII) at para 24; and Order F24-10, 24 BCIPC 14 at para 45.
[29] Order F08-03, 2008 BCIPC 13321 (CanLII) at para 101; Order F10-14, 2010 BCIPC 23 (CanLII) at paras 41–44; and Order F24-10, 24 BCIPC 14 at para 45.
[30] Order F22-62, 2022 BCIPC 70 at paras 26-28.

their opinions and signatures in the ordinary course of their job duties. Therefore, consistent with past orders, I find that s. 22(4)(e) applies to all the information about Ministry employees.

Section 22(3) – Disclosure Presumed to be an Unreasonable Invasion of Third-Party Personal Privacy

[75] Section 22(3) lists circumstances where disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. The third step is to consider whether the presumptions listed in s. 22(3) apply to any of the personal information that is not excluded under s. 22(4).

[76] The Ministry argues that s. 22(3)(a) applies to all the withheld information. The applicant did not identify any s. 22(3) provisions that may be relevant, except to generally dispute the Ministry's application of s. 22(3).

Section 22(3)(a) – medical, psychiatric, or psychological information

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

[78] As discussed above, s. 22(3)(a) protects third parties' privacy interests over their own medical, psychiatric, or psychological information. In this case, the only individual whose medical, psychiatric, or psychological information is at issue is the child. The child is not a third party, and therefore, the presumption against disclosure in s. 22(3)(a) does not apply to the child's medical, psychiatric, or psychological information.

[79] Having considered the other presumptions in s. 22(3), I find that no other presumptions apply to the information in dispute.

Section 22(2) – All Relevant Circumstances

[80] The final step in the s. 22 analysis is to consider the impact of disclosing the personal information that is not excluded under s. 22(4) in light of all relevant circumstances, including those listed in s. 22(2).

[81] The Ministry asserts that s. 22(2)(f) applies. The applicant does not address s. 22(2). I will also consider the sensitivity of the information and the fact that it is about the child.

Supplied in confidence – s. 22(2)(f)

[82] Section 22(2)(f) provides that whether "the personal information has been supplied in confidence" is a factor to consider in determining whether disclosure is an unreasonable invasion of a third party's personal privacy. For s. 22(2)(f) to apply, there must be evidence that an individual supplied the personal information, and that they did so under an objectively reasonable expectation of confidentiality at the time the information was provided.[31]

[83] The Ministry argues that it is widely accepted that the types of records at issue (which it describes as medical and counselling records and related administrative records) are confidential in nature. Thus, according to the Ministry, at the time the information was provided, the supply was done under an objectively reasonable expectation of confidentiality.

[84] The applicant states that at the relevant time, he shared joint legal custody of the child with the child's other parent and that the other parent was under court order to disclose any medical records and treatments to him but failed to do so. The applicant did not, provide me a copy of a court order, and it is not clear to me whether these statements refer to the custody order that the Ministry submitted with its initial submissions or to a separate court order.

[85] For the reasons below, I find that some of the information in dispute was supplied in confidence within the meaning of s. 22(2)(f).

[86] **Information generated by the Ministry:** I find that some of the "personal information" was not *supplied to* the Ministry but rather was *generated by* the Ministry. This information is the child's Ministry case file number and questions on Ministry forms. It is clear on the face of the records, that a Ministry official generated this information through its own systems. Section 22(2)(f) requires that the information be *supplied* in confidence and not generated by a Ministry employee.[32] As this information was generated by, rather than supplied to the Ministry, I find that s. 22(2)(f) does not apply.

[87] **Information provided by the child's mother:** I find that a second category of "personal information" was provided to the Ministry by the child's mother. This information is the child's personal health number, name, address, and telephone number, the child's personal history, and other information recorded in the records containing evaluation and treatment recommendations. It is the mother's opinions, experiences, actions, and statements.

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[31] Order F11-05, 2011 BCIPC 5 at para 41 citing and adopting the analysis in Order 01-36, 2001 CanLII 21590 (BC IPC) at paras 23-26 regarding s. 21(1)(b).
[32] Order F21-64, 2021 BCIPC 75 (CanLII) at para 102.

[88] As the Ministry notes, several factors weigh in favour of a finding that this information was supplied in confidence. The information was supplied by the child's mother in the context of the child's mental health assessment and treatment. It is generally understood that personal information supplied in the context of medical and mental health treatment is provided with an expectation that it will be kept confidential by the recipient.[33] There is nothing in the records that suggests that the information was intended to be shared with anyone other than the Ministry staff working on the child's case.

[89] Furthermore, in my view, the nature of the information supplied by the child's mother also favours a finding that it was supplied in confidence. In addition to information about the child in the context of the child's psychological evaluation and treatment, the mother also supplied highly personal information about her own life experiences as they relate to the child. It is, in my view, the kind of information that an individual would typically expect to be kept confidential by the professional receiving it.

[90] Turning to the custody order, I accept that it was in effect at the time the other parent supplied the information in dispute. It states "If the children become seriously ill or injured, each parent shall notify the other parent as soon as practicable. If the children become ill or injured during contact, the parent shall contact the other parent to secure treatment unless the situation is a medical emergency." In my view, the custody order deals with notification obligations, not information sharing obligations. It is also not clear to me that obtaining mental health treatment for the child is the kind of "serious illness or injury" contemplated in the order, and the applicant did not provide sufficient evidence to support such an interpretation. As the applicant did not provide a copy of any other court order, I make no findings about it.

[91] Having examined the nature of the information and the language of the custody order, I am not persuaded that its terms are sufficient to undermine the otherwise objectively reasonable expectation that the information the other parent supplied would be kept confidential. Therefore, I find that the information supplied by the child's mother was supplied in confidence, and that s. 22(2)(f) weighs against disclosure of the information supplied by the child's mother.[34]

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[33] *R. v. Spencer*, 2014 SCC 43 at para 39 in which 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. See also Order F22-42, 2022 BCIPC 47 (CanLII) at para 49; and Order F22-62, 2022 BCIPC 70 at para 51.

[34] My findings above are limited to the impact of the court order on the objectively reasonable expectations of the other parent. I make no findings about the applicant's arguments that the other parent was under a court order to disclose the treatment to him, or about whether his consent was required to enroll the child in treatment. These matters are outside of my jurisdiction, and in any event, I do not have sufficient evidence to make findings about them.

[92] **Information provided by the child:** I find that a third category of information was provided to the Ministry by the child during the Ministry's assessments of the child and recorded by the Ministry official responsible for those assessments. The content of this information leaves no question that the recorded information came from the child as it records the child's words and actions.

[93] Section 22(2)(f) relates to third party's personal privacy. Again, as the applicant is acting for the child, the child is not a third party. In my view, the issue of whether or not the child supplied their own information in confidence is not relevant to any third party personal privacy interests. Therefore, I find that s. 22(2)(f) does not apply to the information supplied by the child.

[94] To conclude, I find that s. 22(2)(f) weighs against disclosure of the information supplied by the mother.

Sensitivity

[95] Previous OIPC orders have considered the sensitivity of the personal information at issue. Where the sensitivity of the information is high, withholding the information should be favoured.[35] However, where the information is of a non-sensitive nature or that sensitivity is reduced by the circumstances, then this factor may weigh in favour of disclosure.[36]

[96] I find that some of the information about the child's mother describes highly personal and sensitive life experiences. While I cannot describe this information without the risk of revealing it, I find that some of the information provided by the mother is sensitive, and that the sensitivity of this information is a factor weighing against disclosure.

[97] As for the child's mental health information, as discussed above, the s. 22(2) factors relate to third party personal privacy interests. The mental health information relates to the child who is not a third party. For this reason, I find that the sensitivity factor does not apply to the child's mental health information.

Applicant's personal information

[98] Past OIPC decisions have held that where personal information is the applicant's personal information, this factor weighs in favour of disclosure,[37] but

[35] Order F16-52, 2016 BCIPC 58 at para 87.
[36] Order F16-52, 2016 BCIPC 58 at paras 87-91 and 93.
[37] Order F23-56, 2023 BCIPC 65 (CanLII) at para 90; and Order F23-101, 2023 BCIPC 117 (CanLII) at paras 194-196.

have attributed diminished weight to the fact information is about an applicant where the information is also about another individual.[38]

[99] As set out above, all the information about the child's personal history is also the personal information of the child's mother, and in some cases the child's other family members. In addition, some of the information about the child's evaluation and treatment recommendations is also the personal information of the mother. Therefore, consistent with past orders I find that while this factor favours disclosure of this information, its weight is diminished by the fact that the information is also about other individuals.

[100] I note that the child's diagnosis, and the balance of the evaluation and treatment recommendations are the personal information of the child and the affected Ministry officials. However, in light of my findings under s. 22(4)(e) that it would not be an unreasonable invasion of the personal privacy of the affected Ministry officials to disclose their personal information, the fact that the information is also about the Ministry officials does not affect the analysis. Therefore, I find that this factor strongly favours disclosure of the information about the child's diagnosis, and those parts of the evaluation and treatment recommendations that are not the mother's personal information.

Conclusions – s. 22(1)

[101] I have organized the information the Ministry withheld under s. 22(1) under the following categories:

- information that is not personal information;
- information exclusively about the child;
- information exclusively about the child's mother;
- information exclusively about the individual who referred the child for treatment;
- information about the child and the child's mother (and in some cases the child's other family members); and
- information about the child and Ministry officials.

[102] **Information that is not personal information:** I found that the headings, headers, footers, and questions on Ministry forms,[39] as well as the names, telephone numbers, and names of the places of business of the child's physician and contact person at the child's school[40] were not "personal information." Therefore, the Ministry is not required to withhold this information under s. 22(1).

[38] Order F15-52, 2015 BCIPC 55 at para 45, Order F22-31, 2022 BCIPC 34 (CanLII) at para 85.
[39] This information is found throughout the records.
[40] Page 2, 5, 7, 9, 11, 13, 14, 18, and 44.

[103] **Information exclusively about the child:** I found that the child's name, personal health number, and Ministry case file number[41] were exclusively the personal information of the child. The child is not a third party to this inquiry, and I can see no way that disclosing information that is exclusively about the child could impact the personal privacy of a third party. Therefore, the Ministry is not required to withhold this information under s. 22(1).

[104] **Information exclusively about the child's mother:** I found that the child's mother's email address and cell phone number[42] were exclusively the personal information of the mother. I also found that the mother supplied this information to the Ministry in confidence. This factor weighs against disclosure. No other factors apply to this information. Therefore, I find that it would be an unreasonable invasion of the mother's personal privacy to disclose this information, and that the Ministry is required to withhold it under s. 22(1).

[105] **Information exclusively about the individual who referred the child for treatment:** I found that the name of the individual who referred the child for treatment was the personal information of that individual.[43] No factors apply to this information. The onus is on the applicant to establish that it would not be an unreasonable invasion of a third parties' personal privacy to disclose their personal information, and the applicant has not done so. As a result, I find that disclosure of the referrers' name would be an unreasonable invasion of their personal privacy, and that the Ministry is required to withhold this information.

[106] **Information about the child and the child's mother (and in some cases the child's other family members):** I found that the mother and child's address and telephone number, the child's personal history, and parts of the child's evaluation and treatment recommendations[44] were the personal information of the child and the child's mother. I found that all of this information was supplied to the Ministry in confidence by the child's mother. This factor weighs against disclosure of this information. While the information is about the child, and this factor favours disclosure, as set out above, the weight of this factor is diminished by the fact that the information is also about the mother. In addition, some of this information is highly sensitive, and this factor also favours withholding some of the information. Weighing these factors, I find that that the fact that the information was supplied in confidence outweighs the diminished value of the fact that the information is about the child. Therefore, I find that it would be an unreasonable invasion of the child's mother's personal privacy to disclose this information, and that the Ministry is required to withhold this information under s. 22(1).

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[41] This information is found throughout the records.
[42] Records page 2, 4, 6, 11, 13, 51, and 59.
[43] Records pages 2, 6, 13, and 18.
[44] Records pages 2- 9, 11, 13-16, 18-32, 35-49, 51-71.

[107] **Information about Ministry officials:** I found that s. 22(4)(e) applies to the names, signatures, job titles, and opinions of Ministry officials.[45] As a result, it is not an unreasonable invasion of the Ministry official's personal privacy to disclose this information. The Ministry officials' names, signatures, and job titles are exclusively about them. Therefore, I find that the Ministry is not required to withhold this information under s. 22(1). However, the Ministry officials' opinions are also the child's evaluation, diagnosis, treatment recommendation information and therefore the personal information of the child. As a result, I will consider this information below, without regard to the personal privacy interests of the affected Ministry officials.

[108] **Information about the child and Ministry officials:** The balance of the information in dispute is the personal information of both the child and Ministry officials. This is the child's diagnosis, and those parts of the evaluation and treatment recommendations that are not the personal information of the child's mother.[46] As the child is not a third party to this inquiry, I can see no way that disclosing information that is exclusively about the child could impact the personal privacy interests of a third party. As above, I have already determined that disclosing the opinions of the Ministry officials is not an unreasonable invasion of their personal privacy. Accordingly, I find that it would not be an unreasonable invasion of third party personal privacy to disclose this information, and that the Ministry is not required to withhold this information under s. 22(1).

CONCLUSION

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

1. Subject to item 2, below, I require the Ministry to refuse access to parts of the records in dispute under s. 22(1).

2. I require the Ministry to give the applicant access to the information that I have found the Ministry is not required to withhold under s. 22(1). I have highlighted in green the information the Ministry is authorised to withhold in a copy of the records that will be provided to the Ministry with this order. The Ministry is required to provide to the applicant all information that is **not** highlighted in green.

3. The Ministry must provide the OIPC registrar of inquiries with proof that it has complied with the terms of this order, along with a copy of the pages described at item 2 above.

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[45] This information is found throughout the records.
[46] Records pages 16, 17, 18, 20, 24, 25, 26, 32, 33, 36-43, 49, and 50.

Pursuant to s. 59(1) of FIPPA, the Ministry is required to comply with this order by August 30, 2024.

July 18, 2024

ORIGINAL SIGNED BY

Allison J. Shamas, Adjudicator

OIPC File No.: F21-88618