OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F25-06

# MINISTRY OF HEALTH

Alexander Corley
Adjudicator

January 16, 2025

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**Summary:** Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), a journalist (applicant) requested that the Ministry of Health (Ministry) provide access to PharmaNet data about the prescribing and dispensing of specific medications. The Ministry withheld the entire record under several sections of FIPPA and the *Pharmaceutical Services Act* (PSA). The adjudicator found that releasing the record would be an unreasonable invasion of third-party personal privacy and ordered the Ministry to withhold the information pursuant to s. 22(1) of FIPPA. Because of the adjudicator's conclusion that s. 22(1) of FIPPA covered the entire record, it was not necessary to consider the other matters at issue in the inquiry.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act* [RSBC 1996, c. 165] at ss. 3(7), 22(1), 22(2)(a), 22(2)(b), 22(3)(d), and 22(4)(e); *Pharmaceutical Services Act* [SBC 2012, c. 22] at ss. 25(1) and 25(2).

## INTRODUCTION

[1] A journalist (applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA)[1] to the Ministry of Health (Ministry) for access to an itemized spreadsheet of PharmaNet data related to 26 years of prescribing and dispensing of benzodiazepines, stimulants, and narcotics, including opioids in British Columbia (record).[2]

[2] The applicant requested that various kinds of information be included in the spreadsheet, including information about the medications prescribed, patient ages and genders, and the names, work locations, and other identifying

[1] RSBC 1996, c. 165. Through the remainder of this Order, references to sections of a statute are references to FIPPA unless otherwise stated.
[2] Specifically, the applicant requested an itemized spreadsheet of data related to the Prescription Review Program, which is a quality assurance program created by the College of Physicians and Surgeons of British Columbia and is responsible for reviewing prescribing practices related, primarily, to the listed classes of medication.

information of the medical practitioners who prescribed the medications (prescribers) and the pharmacists who dispensed the medications (dispensers).

[3] The Ministry responded that the entire record is subject to s. 22(1) (unreasonable invasion of third-party personal privacy) and withheld it in full on that basis. The applicant then contacted the Office of the Information and Privacy Commissioner (OIPC) to request a review of the Ministry's response. Mediation by the OIPC did not resolve the issues between the parties and the applicant requested that the matter proceed to this inquiry.

[4] After the close of mediation, but before the OIPC issued the Notice of Inquiry, the Ministry provided a revised response to the access request and indicated that it was also withholding the record under ss. 15 (disclosure harmful to law enforcement), 17 (disclosure harmful to the financial or economic interests of a public body), 19 (disclosure harmful to individual or public safety), and 21 (disclosure harmful to business interests of a third party) of FIPPA, and s. 25 (no market research) of the *Pharmaceutical Services Act*[3] (PSA).

[5] Because of the nature of the information in dispute in this inquiry, the OIPC invited the following parties to make submissions as appropriate persons under s. 54:

A) The Association of Doctors of BC (Doctors of BC);
B) The BC Pharmacy Association (Association);
C) The College of Pharmacists of BC (College); and,
D) The Nurses and Nurse Practitioners of BC.[4]

[6] Doctors of BC, the Association, and the College each made submissions in this inquiry. The Nurses and Nurse Practitioners of BC declined the OIPC's invitation to participate in the inquiry.[5] For the remainder of this order, I will refer to the Ministry, Doctors of BC, the Association, and the College together as the "Respondents."

[7] In its submission in this inquiry, the Ministry says that it is no longer relying on s. 21(1) to withhold any information from the record. Therefore, I find that s. 21(1) is no longer in dispute and I will not further consider that section in this order. Additionally, the applicant says that they are no longer seeking information about patient age and gender. Accordingly, I also find that information is not in dispute.

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[3] SBC 2012, c. 22.
[4] See OIPC invitation letters to these parties, all dated July 2, 2024.
[5] See e-mails from Nurses and Nurse Practitioners of BC to OIPC's registrar of inquiries, dated September 13, 2024, and October 23, 2024.

[8] The Ministry requested, and received, permission from the OIPC to provide a small amount of its submissions and affidavit evidence in this inquiry *in camera* (that is, for only the Commissioner and not the other parties to see).[6]

## *Preliminary Issues*

### Section 25(1)(b) of FIPPA and the public interest in disclosure

[9] In their inquiry submission, the applicant argues that there is a "public interest" in disclosing the information in dispute. This argument raises s. 25(1)(b), which requires public bodies to disclose information when disclosure is clearly in the public interest.

[10] Section 25(1)(b) was not listed as an issue in the Investigator's Fact Report or Notice of Inquiry. Prior OIPC orders are clear that in the absence of extraordinary circumstances, a party may not raise a new issue at the inquiry stage without the express permission of the OIPC.[7] There is no indication in the materials before me that the applicant sought the OIPC's permission to add s. 25(1)(b) to this inquiry. I also do not see the kind of extraordinary circumstances in this case that would warrant me adding a new issue at this late stage. Therefore, I decline to consider whether s. 25(1)(b) applies to the information in dispute.[8]

### What information is in dispute?

[11] As explained above, the applicant's access request was for PharmaNet data about the prescribing and dispensing of benzodiazepines, stimulants, and narcotics, including opioids in British Columbia over a 26 year period (between January 1, 1995, and March 25, 2021).The applicant requested various kinds of data, including information about the type of medication, patient age and gender, and the names, work locations, and other identifying information of individual prescribers and dispensers.

[12] The responsive record is in table format with each row representing a single prescription and containing the following columns of information:

A) Dispense Date;
B) Days Supplied;
C) Dispensed Quantity;

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[6] See OIPC letter to Ministry dated August 28, 2024.
[7] See, for example, Order F12-07, 2012 BCIPC 10 at para. 6 and Order F10-37, 2010 BCIPC 55 at para. 10.
[8] However, I will consider the applicant's arguments regarding potential public interest in disclosing the information in dispute where those arguments may be relevant to my analysis of the sections of FIPPA and the PSA which are properly in issue in this inquiry.

D) Patient Gender;
E) Patient Age;
F) Patient ID Jurisdiction Code;
G) DIN/PIN;
H) Generic Drug Name;
I) Drug Brand Name;
J) Drug Strength;
K) Drug Form;
L) Drug Route;
M) Drug Manufacturer;
N) Prescriber Surname;
O) Prescriber Given Name;
P) Prescriber ID;
Q) Prescriber Licensing Body;
R) Prescriber Address;
S) Prescriber Fwd Sortation Area;
T) Pharmacy ID;
U) Pharmacy Name;
V) Pharmacy Fwd Sortation Area
W) Dispenser ID;
X) Dispenser Surname; and
Y) Dispenser Given Name.

[13] As mentioned above, the applicant says in their inquiry submission that they are no longer seeking access to the patient age and gender information.

[14] Further, from the information before me I can see that the primary purpose of the applicant's access request is to find out information about the prescribers and dispensers identified in the records. The applicant states in their submission:

> I knew that any analysis … would have to be able to drill down to the individual prescriber and dispenser level, which is why I requested the names of doctors, pharmacists and pharmacies. It's not enough to look at aggregate data – any patterns [in the prescription information] would be playing out at local levels and must be analyzed as such.[9]

[15] And, several pages later they say:

> Prescribers' and dispensers' names are essential … Otherwise, all we are left with is an enormous database of millions of prescriptions, unmoored from any region, city, or town, and disconnected from the people who

[9] See also applicant's submission at p. 6 where the applicant identifies prescribers and dispensers as the "focus of [the access] request."

> promote health care in this province (namely doctors, nurses, and pharmacists).

[16] The applicant says the requested information will allow for public oversight of prescribers and dispensers and improve the public's ability to hold these professionals accountable for the harms caused by the opioid crisis. The applicant also says that the information in the record can be used to determine which prescribers are "high- (and low-) volume opioid prescribers"; to identify "unusual prescription activity, or understand which neighbourhoods, towns or regions are prescribing or dispensing opioids at higher rates"; or to link together prescribers and dispensers who may be coordinating to improperly provide opioids to the public for financial gain or are otherwise allegedly engaging in fraudulent practices.

[17] Therefore, it seems to me that information in the record about the actual medications prescribed is only useful to the applicant in combination with the information about the prescribers and dispensers of those medications. Given this, if I find that the Ministry is authorized or required to withhold all information from the record that would identify individual prescribers and dispensers and their work locations, that will be the end of my analysis because I find that the applicant is not interested in the remaining information in dispute in isolation.

## ISSUES

[18] The issues to be decided in this inquiry are:

1. Is the Ministry required by s. 25 of the PSA to withhold the information in dispute?
2. Is the Ministry required by s. 22(1) of FIPPA to withhold the information in dispute?
3. Is the Ministry authorized by ss. 15(1)(l), 17(1), or 19(1) of FIPPA to withhold the information in dispute?

[19] Neither FIPPA nor the PSA say who has the burden of showing that s. 25 of the PSA applies to the information in dispute. However, the Ministry accepts that it bears the burden of demonstrating s. 25 of the PSA applies to the information in dispute given it is the party who raised and seeks to rely on that section. I agree with the Ministry that it bears the burden of proof on this point.

[20] Section 57(1) of FIPPA places the burden on the Ministry to prove it is authorized to withhold the information in dispute under ss. 15, 17, or 19. Meanwhile, s. 57(2) says the applicant bears the burden of demonstrating that

releasing any personal information in dispute would not be an unreasonable invasion of third-party personal privacy pursuant to s. 22(1).[10]

## DISCUSSION

### *Background*

[21] Under s. 2 of the PSA, the Province administers a provincial prescription drug program known as PharmaCare. In administering PharmaCare, the Ministry relies on a computerized system known as PharmaNet. The PSA generally requires that specific information about each prescription dispensed in the province be entered into PharmaNet.[11] PharmaNet contains significant information about patients, prescribers, and dispensers going back to 1996.

[22] The applicant is a journalist some of whose work concerns investigating the opioid crisis in Canada. As a part of this investigative work the applicant requested information contained in PharmaNet related to the "Prescription Review Program" (PRP). The PRP is a quality assurance program created by the College of Physicians and Surgeons of British Columbia and is responsible for reviewing prescribing practices related, primarily, to benzodiazepines, stimulants, and narcotics, including opioids.[12]

[23] In essence, the applicant's access request is a request for specific classes of information contained in PharmaNet related to the prescribing and dispensing of medications of interest to the PRP between PharmaNet's inception and the date of the access request.

### *Record at issue*

[24] The responsive record is a data table containing an estimated 189 million rows of data[13] with each row representing an individual prescription and containing information under the 25 columns listed above.[14] The Ministry is withholding the record under ss. 15(1)(l), 17(1), 19(1), and 22(1) of FIPPA and s. 25 of the PSA.

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[10] However, the Ministry bears the initial burden of demonstrating that the information in dispute meets the definition of "personal information" under FIPPA: Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 9-11.
[11] There are certain exceptions to this rule such that some dispenses of medications or medical devices may not be entered into PharmaNet, but I find those exceptions are not relevant to the issues before me.
[12] Affidavit #1 of D. Unger at paras. 10 and 14.
[13] Ministry letter to OIPC dated June 5, 2024.
[14] At para. 12 of this Order.

*Sampling approach*

[25] Due to the large volume of information in the record, the Ministry has provided me with an unsevered representative sample of the information in dispute (sample) as opposed to providing the entirety of the record.[15] The applicant agrees that the issues in dispute between the parties may be fairly decided based on the sample.[16]

[26] I agree with the parties that whether FIPPA or the PSA authorize or require the Ministry to withhold the information in dispute can be fairly decided using the sample.[17]

[27] The sample contains over 200,000 rows of data. Each row follows the same format and lists the same pieces of information in the same order. I find that the sample is large enough to allow me to assess whether there are trends or patterns emerging from the information in dispute which may be relevant to my analysis of the FIPPA exceptions at issue or to s. 25 of the PSA. Finally, the Respondents have provided affidavit evidence from individuals who are familiar with the information in dispute and this evidence provides further context for the sample.

[28] Given this, I will decide the issues raised in this inquiry based on the sample.

## *Section 25 of the PSA – no market research*

[29] The Ministry submits that s. 25 of the PSA precludes the Minister from disclosing the information in dispute to the applicant regardless of whether the applicant is entitled to access any of that information under FIPPA.

[30] The relevant parts of s. 25 of the PSA are as follows:

> **25** (1) This section applies despite Part 2 of the *Freedom of Information and Protection of Privacy Act* and any provision of this Act or a regulation made under it.
>
> (2) The minister must not disclose, for the purpose of market research, any of the following information collected under this Act:

[15] Ministry letter to OIPC dated June 5, 2024.
[16] Applicant letter to OIPC dated June 12, 2024.
[17] I note the Ministry's Initial Submission says the sample contains PharmaNet data from 2023, which would place the information it contains outside the scope of the access request: see para. 94. However, from reviewing the sample I can see that this is a typographical error and the sample contains information entered into PharmaNet within the date range specified in the access request.

> (a) the personal information of any person;
> (b) information related to a practitioner.

[31] Section 25 of the PSA contains clear language overriding Part 2 of FIPPA. Based on this, I find that s. 3(7) of FIPPA is relevant to consider here. That section says:

> **3** (7) If a provision of this Act is inconsistent or in conflict with a provision of another Act, this Act prevails unless the other Act expressly provides that it, or a provision of it, applies despite this Act.

[32] Based on the wording of s. 3(7), I find that I only need to consider the impact of the FIPPA override in s. 25 of the PSA on the applicant's information rights if there is a potential conflict or inconsistency between what FIPPA and s. 25 of the PSA each require in this case.

[33] I have read what the Ministry and the applicant say about whether s. 25 of the PSA applies to the information in dispute. Based on the Ministry's submissions and evidence, I find that it is at least arguable that s. 25 could restrict the Minister from disclosing some of the information in dispute to the applicant even if the applicant were entitled to receive that information under FIPPA. However, as is explained in more detail below, I find based on the submissions and evidence before me that the Ministry is required to withhold all the information in dispute under s. 22(1) of FIPPA.

[34] Therefore, I find there is no conflict or inconsistency between what FIPPA requires in this case and what s. 25 of the PSA may require. Given this, it would be strictly academic for me to conduct an in-depth analysis of how s. 25 of the PSA would hypothetically apply if FIPPA did not require the Ministry to withhold the information in dispute and I decline to conduct such an analysis.

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

[35] Section 22(1) requires a public body to refuse to disclose information if disclosure would be an unreasonable invasion of a third party's personal privacy. The Ministry has withheld all the information in dispute pursuant to s. 22(1) and the Respondents submit that releasing the information would unreasonably invade the personal privacy of patients who were prescribed medications, prescribers who issued such prescriptions, and dispensers who dispensed such medications.[18]

[18] The Respondents broadly adopt each other's arguments on s. 22(1) and there is significant overlap in their submissions on this point. Given this, I will consider their arguments together throughout this section as opposed to parsing which respondent has made each specific point.

*Personal information*

[36] Since s. 22(1) only applies to personal information, the first step in the analysis is to determine whether the information in dispute is personal information.

[37] Schedule 1 of FIPPA says:

> "personal information" means recorded information about an identifiable individual other than contact information;
>
> "contact information" means 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[.]

[38] Therefore, "contact information" is not "personal information" under FIPPA. Whether information is contact information is context dependent.[19]

[39] Information is "about an identifiable individual" when it is reasonably capable of identifying the individual, either alone or when combined with other available sources of information.[20]

Positions of the parties

[40] The Respondents say that all the information in dispute is the medical histories of identifiable patients and the employment and occupational histories of identifiable prescribers and dispensers and therefore is the personal information of all those third parties.

[41] Considering the patients, the Respondents say that even though the applicant is not seeking directly identifying information about patients, the information in dispute could reasonably be expected to reveal the identities of individual patients when combined with other available sources of information.

[42] Turning to the prescribers and dispensers, the Respondents emphasize that the names, addresses, and unique registration numbers of individual prescribers and dispensers are listed in each row in the record and the information in dispute is therefore clearly about identifiable individuals. Further, they submit that the prescribing and dispensing histories of these third parties is their personal information.

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[19] Order F20-13, 2020 BCIPC 15 at para. 42.
[20] Order F16-36, 2016 BCIPC 40 at para. 17.

[43] The Respondents also say it is not possible to de-identify the record such that no patients, prescribers, or dispensers could reasonably be re-identified while still producing information that is responsive to the access request.[21]

[44] Finally, the Respondents submit that when considered in its entire context none of the information in dispute is contact information because it was not gathered and entered in PharmaNet for the purpose of allowing anyone to be contacted at a place of business.

[45] The applicant submits that none of the information in dispute is personal information for the purposes of s. 22(1). Considering whether the information in dispute is patient personal information, the applicant asserts that the information contained in the record is not specific enough to allow re-identification of patients.

[46] Turning to whether the information in dispute is the personal information of prescribers or dispensers, the applicant raises a 2018 decision of the Ontario Court of Appeal[22] in which, the applicant says, the Court determined that doctors' names were not personal information for purposes of Ontario's FIPPA in the context of an access request for information about billing practices. The applicant says I should apply the Ontario decision here and find that none of the information in dispute is the "personal information" of prescribers or dispensers because that information is "tied to these individuals in their professional capacity."

[47] The applicant does not clearly address whether any of the information in dispute is "contact information."

Analysis and conclusion – "personal information"

[48] Since the applicant is no longer seeking access to the information about patient ages and genders, I am not convinced that the remaining information in dispute is reasonably capable of identifying individual patients. Accordingly, I find the information in dispute is not patient personal information.

[49] However, I am satisfied that the information in dispute is the personal information of prescribers and dispensers.

[50] The information in dispute clearly reveals information about identifiable prescribers and dispensers, including information about their work activities. Although some of the information is the names and work addresses of the prescribers and dispensers, I find that information is not "contact information"

[21] See Affidavit #1 of P. Day at paras. 9-42 for a detailed breakdown of the reasoning for the Ministry's conclusion on this point.
[22] *Ontario Medical Association v. Ontario (Information and Privacy Commissioner)*, 2018 ONCA 673 [*Ontario Medical*].

because it was entered into PharmaNet for the purpose of complying with regulatory and statutory requirements, and not to allow anyone to be contacted at a place of business.

[51] I have considered the applicant's arguments about an alleged distinction between "personal information" and information related to an individual acting in a "professional capacity" including the potential impact of the Ontario Court of Appeal decision the applicant cites.[23]

[52] With respect to the applicant, I am not bound by prior decisions of the Ontario Courts or other non-British Columbia decisions which may have reached a similar conclusion. Further, previous OIPC orders do not draw a clear distinction between "personal" and "professional" information[24] and FIPPA's definition of "personal information" does not include the same "carve-out" for professional or workplace information that is present in the Ontario and Federal access and privacy legislation.[25] As stated by prior Commissioner Denham in Order F13-04,

> If the Legislature wished to exclude professional, official, or business information from the scope of "personal information", it could have done so explicitly. … The Legislature [did not do so], however, suggesting that FIPPA's otherwise general language – "recorded information about an identifiable individual" – is not further circumscribed.[26]

[53] Therefore, under FIPPA, information is "personal information" if it is recorded information about an identifiable individual and it is not contact information. If the information is about an identifiable individual who was acting in a professional capacity, that may be a relevant consideration in deciding whether disclosing the information would be an unreasonable invasion of personal privacy under s. 22(1); however, it is not relevant to determining whether the information meets FIPPA's definition of "personal information."[27]

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[23] *Ontario Medical*, *ibid*.

[24] See, for example, the following recent OIPC orders where information about individuals acting in a professional capacity was found to come within FIPPA's definition of "personal information": F24-86, 2024 BCIPC 98 at paras. 26 and 33; F24-80, 2024 BCIPC 91 at paras. 26 and 36; F24-48, 2024 BCIPC 56 at paras. 60-61, 65, and 74-75; F24-41, 2024 BCIPC 49 at paras. 46-47; and, F23-104, 2023 BCIPC 120 at para. 55.

[25] See FIPPA at Schedule 1, definition of "personal information", in contrast to Ontario's *Freedom of Information and Protection of Privacy Act*, RSO 1990, c. F.31 at s. 2(3), and the *Privacy Act*, RSC 1985, c. P-21, definition of "personal information" at s. 3(j).

[26] 2013 BCIPC 4 at para. 35.

[27] In this vein, I also note s. 22(4)(e) says that disclosing 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 or as a member of a minister's staff. Section 22(4)(e) would serve no purpose if professional or workplace information was excluded from FIPPA's definition of "personal information."

[54] I note that the Respondents raise many of the above points in their submissions and I agree, broadly, with the Respondents' submissions on this issue.[28]

[55] Based on the above, I conclude that the information in dispute is the personal information of prescribers and dispensers.

*Section 22(4) – not an unreasonable invasion*

[56] Section 22(4) sets out circumstances where disclosing personal information is not an unreasonable invasion of third-party personal privacy. If s. 22(4) applies to any information, s. 22(1) does not authorize or require the public body to withhold that information.

[57] The applicant does not address whether s. 22(4) applies to any of the personal information in dispute. The Respondents say s. 22(4) does not apply to any of that information and, specifically, that s. 22(4)(e) does not apply.

[58] Section 22(4)(e) says that disclosing 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 or as a member of a minister's staff.

[59] Some of the prescribers and dispensers whose personal information is in dispute may be employees of various health authorities, which are public bodies under FIPPA.[29] Therefore, information about their positions, functions, or remuneration as employees of the health authorities may be subject to s. 22(4)(e).[30]

[60] Numerous prior OIPC orders have considered the meaning and scope of s. 22(4)(e). Key principles are that s. 22(4)(e) applies to information that reveals a public body employee's name, signature, job title, duties, functions, remuneration (including salary and benefits) or position and to objective, factual information about what the public body employee did or said in the normal course of discharging their job duties.[31]

[61] Having considered the way the OIPC generally applies s. 22(4)(e), I find the personal information in dispute does not fall within that section. The personal

[28] See Ministry's Initial Submission at paras. 156-162. See also Doctors of BC Initial Submission at para. 19.
[29] The Respondents acknowledge this in their inquiry submissions.
[30] However, I note that in the great majority of cases the prescribers and dispensers whose personal information is contained in the record are either self-employed or privately employed and s. 22(4)(e) clearly does not apply to them.
[31] See Order F20-54, 2020 BCIPC 63 at para. 56 and note 45; Order F18-38, 2018 BCIPC 41 at para. 70; Order F22-62, 2022 BCIPC 70 at para. 27.

information I am considering reveals when and by whom sensitive and, in some cases, potentially controversial medications were prescribed and dispensed. In my view, the information reveals the inputs and outputs of discretionary decisions made by regulated professionals applying clinical expertise and professional and ethical judgement. Further, I find that the information in dispute is used in some cases for purposes of regulatory oversight and assessment of the professional activities of prescribers and dispensers. For both these reasons, I find that disclosing the information in dispute could reasonably reveal more than "objective, factual information" about what prescribers and dispensers did or said in the normal course of their employment.

[62] Given this, I find that s. 22(4)(e) does not apply to any of the personal information in dispute. I also find that none of the other sub-sections of s. 22(4) apply to the personal information in dispute.

*Section 22(3) – presumed unreasonable invasion of privacy*

[63] Section 22(3) lists circumstances where disclosure of personal information is presumed to be an unreasonable invasion of third-party personal privacy. The applicant does not address whether s. 22(3) may apply to the information in dispute. The Respondents say that ss. 22(3)(d) and (j) apply to the personal information in dispute. I do not see that any other sub-sections of s. 22(3) may apply to the personal information before me.

[64] Under s. 22(3)(d), disclosure of a third party's employment, occupational, or educational history is presumed to be an unreasonable invasion of that third party's personal privacy.

[65] The Respondents say that the information in dispute is information about where in the Province prescribers and dispensers work and the kinds of work which they engage in. Moreover, that the information in dispute is detailed and itemized information about the prescribing and dispensing practices of individual practitioners across time and would reveal the practitioners' actions and clinical judgments and how they fulfilled their professional and ethical duties to their patients and their communities.

[66] Based on this, the Respondents say that a motivated third party armed with the personal information in dispute could create a detailed record of an individual prescriber or dispenser's work statuses and locations and evolving approach to important aspects of their career across time. Therefore, that the personal information in dispute represents the employment and occupational histories of the identifiable prescribers and dispensers whom it is about.

[67] I agree. From reviewing the sample, I can see that it would be trivial for a motivated individual to derive significant amounts of information about the employment histories of prescribers or dispensers by analyzing that information.

[68] For example, by isolating rows which include a specific prescriber's or dispenser's PharmaNet ID number or name and sorting those entries by date one could easily discern, among other things, that prescriber's or dispenser's work locations and status as an employee or self-employed person across time and infer their potential days off work and status as a full- or part-time practitioner. I find all of this is information about third party employment history.

[69] As noted above, I also find that the personal information in dispute is used to allow for oversight and assessment of the professional activities of prescribers and dispensers. Therefore, I also find that disclosing the personal information in dispute could reasonably reveal occupational history information about those professionals.

[70] Based on this, I find that disclosing any of the personal information in dispute is presumed to be an unreasonable invasion of personal privacy pursuant to s. 22(3)(d).

[71] As I have found that releasing any of the personal information in dispute is presumed to be an unreasonable invasion of privacy pursuant to s. 22(3)(d) it is not necessary for me to consider whether the presumption set out in s. 22(3)(j) also applies to that same information and I decline to do so.

*Section 22(2) – relevant circumstances*

[72] Section 22(2) says that when a public body decides if disclosure of personal information constitutes an unreasonable invasion of third-party personal privacy, it must consider all relevant circumstances, including those listed in s. 22(2). Some circumstances weigh in favour of disclosure and some weigh against. Circumstances favouring disclosure may rebut the applicable s. 22(3) presumptions.

[73] I have found above that releasing any of the personal information in dispute is presumed to be an unreasonable invasion of third-party personal privacy pursuant to s. 22(3)(d).

[74] The Respondents say that ss. 22(2)(e), (f), (g), and (h) each apply to all the personal information in dispute. The applicant does not clearly address whether and how s. 22(2) may apply to the personal information in dispute. However, reading the applicant's submission holistically, I can see that the applicant submits that releasing that information will promote accountability and

public health in British Columbia and I take these submissions to be arguments that ss. 22(2)(a) and (b) apply here.

[75] If they apply, ss. 22(2)(a) and (b) weigh in favour of disclosing the personal information in dispute. If any of ss. 22(2)(e), (f), (g), or (h) apply, they weigh in favour of withholding the information.

[76] For the reasons that follow, I am not persuaded that ss. 22(2)(a) or (b) apply to the information in dispute. Therefore, I find that the presumption under s. 22(3)(d) is not rebutted. Since the other s. 22(2) factors raised would weigh against disclosure and only strengthen the presumption under s. 22(3)(d), I find it is not necessary to consider them.

Section 22(2)(a) – public scrutiny of a public body

[77] Section 22(2)(a) recognizes that where disclosing the information in dispute would foster accountability of a public body this may provide a foundation for finding that disclosure would not constitute an unreasonable invasion of a third party's personal privacy.[32] It is well established that the purpose of s. 22(2)(a) is to make public bodies more accountable, not individual third parties.[33]

[78] The applicant says the personal information in dispute will improve the public's ability to hold "prescribers, dispensers, regulatory bodies, and the government accountable" for the harms caused by the opioid crisis. The applicant's main submissions on this point relate to using the personal information to:

- determine which prescribers are "high- (and low-) volume opioid prescribers";
- identify "unusual prescription activity, or understand which neighbourhoods, towns or regions are prescribing or dispensing opioids at higher rates"; and,
- connect prescribers and dispensers who may be working together to improperly provide opioids to the public for financial gain or are otherwise allegedly engaged in fraudulent practices.

[79] The Respondents say that s. 22(2)(a) does not apply to the personal information in dispute because the information relates strictly to individuals, not to public bodies.

[80] Having considered the submissions of the parties, I find that the personal information in dispute relates strictly to individual prescribers and dispensers, not

[32] Order F05-18, 2005 CanLII 24734 (BC IPC) at para. 49.
[33] See, for example, Order F18-47, 2018 BCIPC 50 at para. 32.

to public bodies. Moreover, while the applicant makes a passing reference linking the personal information in dispute to the public accountability of "regulatory bodies" and "the government" I find that their specific submissions on this point focus on the accountability of individuals. Given all of this, I find that the applicant has not demonstrated how releasing the personal information in dispute would foster the accountability of public bodies as opposed to individuals, and therefore, that s. 22(2)(a) does not apply in this case.

Section 22(2)(b) – promoting public health and safety

[81] Section 22(2)(b) asks whether disclosure of the personal information in dispute is likely to promote public health and safety or protection of the environment. If it applies, this section weighs in favour of disclosing the personal information.

[82] The applicant says that releasing the personal information in dispute would allow for the kind of public oversight of prescribers and dispensers referenced above in my analysis of s. 22(2)(a), thereby "materially affect[ing] the opioid crisis" and promoting public health in British Columbia.

[83] The Respondents say that none of the personal information in dispute would promote public health or safety if released. Moreover, that releasing the personal information in dispute could damage public health by eroding trust between medical professionals and patients.

[84] I accept that the opioid crisis is a serious public health issue. I also accept that, in a general sense, information about how and by whom opioids are prescribed and dispensed in British Columbia relates to "public health." However, I find the applicant's arguments on this point to be speculative in that they presuppose (as opposed to reasonably demonstrating) that reviewing the personal information in dispute will allow the public to discover trends regarding allegedly improper behaviour by prescribers and dispensers.

[85] I find that this manner of argument is insufficient to establish that releasing the personal information in dispute is likely, on a balance of probabilities, to promote public health. Further, it seems equally likely to me that if the personal information in dispute is publicly released this could lead to prescribers and dispensers becoming more hesitant to provide PRP-related medications to patients in future, for fear of information about those prescriptions also being made public and subject to criticism. In my view, that kind of hesitance on the part of prescribers and dispensers could itself give rise to negative public health outcomes by introducing medically irrelevant considerations into those professionals' calculus for making treatment decisions. I make no finding regarding the Respondents' submission that releasing the personal information in dispute could erode trust between medical professionals and their patients.

[86] Based on all of this, I find that the applicant has not established that s. 22(2)(b) applies to any of the personal information in dispute.

*Conclusion – s. 22(1)*

[87] I have found above that all the information in dispute is the personal information of the prescribers and dispensers who are identified in the record. Further, I have found that none of the sub-sections of s. 22(4) apply to that personal information.

[88] Turning to s. 22(3), I have found that releasing the personal information in dispute would reveal the employment and occupational histories of individual prescribers and dispensers. Therefore, I have found that releasing the personal information in dispute to the applicant would represent a presumptively unreasonable invasion of third-party personal privacy pursuant to s. 22(3)(d).

[89] Considering s. 22(2) and all the relevant circumstances, I have found that the presumption under s. 22(3)(d) that releasing the personal information in dispute would be an unreasonable invasion of third-party personal privacy is not rebutted in this case.

[90] Based on all of the above, I find that the Ministry is required to withhold the personal information in dispute pursuant to s. 22(1).

[91] Given this conclusion, it is not necessary for me to consider whether ss. 15, 17, or 19 of FIPPA may apply to the information in dispute and I decline to do so.

## CONCLUSION

[92] For the reasons given above, under s. 58 of FIPPA, I confirm the Ministry's decision that it is required to withhold all the information in dispute pursuant to s. 22(1) of FIPPA.

January 16, 2025

**ORIGINAL SIGNED BY**

Alexander Corley, Adjudicator

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