OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F26-55

FRASER HEALTH AUTHORITY

Alexander Corley
Adjudicator

June 29, 2026

CanLII Cite: 2026 BCIPC 68
Quicklaw Cite: [2026] B.C.I.P.C.D. No. 68

Summary: The spouse of a deceased individual (applicant) requested some of the deceased's medical records from the Fraser Health Authority (public body). The public body determined that the applicant was not acting "on behalf of" the deceased under s. 5(1)(b) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) and withheld the records under s. 22(1) (unreasonable invasion of privacy) of FIPPA. At the inquiry, the adjudicator found that the applicant was not acting "on behalf of" the deceased and confirmed that the public body must refuse to disclose all the information in dispute under s. 22(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act* [RSBC 1996, c. 165] at ss. 5(1)(b), 22(1), 22(2)(i), 22(3)(a), and 22(4); Freedom of Information and Protection of Privacy Regulation, [BC Reg 155/2012] at s. 5.

INTRODUCTION

[1] This order is about whether a deceased person's spouse (applicant) can access the deceased's medical records pursuant to the *Freedom of Information and Protection of Privacy Act* (FIPPA)[1] and the Freedom of Information and Protection of Privacy Regulation (Regulation).

[2] The deceased passed away on July 14, 2024. On July 31, 2024, and August 7, 2024, the applicant requested under FIPPA that the Fraser Health Authority (public body) release certain portions of the deceased's medical records created between May 26, 2024, and July 14, 2024, while the deceased was receiving care at two different hospitals operated by the public body (Hospital 1, Hospital 2).

[1] Through the remainder of this order, references to sections of an enactment are references to FIPPA unless otherwise stated.

[3] In response, the public body advised the applicant that it had determined the access requests were not made on behalf of the deceased in accordance with s. 5(1)(b) of FIPPA and s. 5 of the Regulation. Therefore, the public body treated the requests as arm's-length requests for third-party personal information and determined it was required to withhold all the requested information and records under s. 22(1) (unreasonable invasion of privacy).

[4] On September 9, 2024, the applicant asked the Office of the Information and Privacy Commissioner for British Columbia (OIPC) to review the public body's decision to withhold the requested information and records.

[5] On January 30 and March 24, 2025, the applicant made further access requests to the public body for some of the same records they originally requested or for similar records.[2] My understanding is that because this matter was already before the OIPC at that time the public body advised the applicant that it would not process the January 30 and March 24, 2025 access requests.[3] Therefore, those access requests are not at issue in this inquiry.

[6] On April 24, 2025, the public body reconsidered its decision to withhold all the requested information under s. 22(1) and released some of that information to the applicant.[4]

[7] Ultimately, mediation by the OIPC did not resolve the remaining issues between the parties and the applicant requested that the matter proceed to this inquiry. The public body and the applicant each provided written submissions and evidence in the inquiry.

Preliminary Issues

Public body's request to exclude certain evidence

[8] The public body submits that in determining the applicant's motive for making the access requests I should only consider what the applicant said to the public body at the time the requests were made and that it would be unfair for me to consider what the public body frames as the "expanded" motives the applicant later provided to the public body and repeats in their inquiry submission.[5]

[9] This is not the first time the public body has made this argument. Recently, in Order F26-43, an adjudicator rejected the public body's same argument in the context of a different applicant's request for their deceased

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[2] Affidavit #1 of the public body's Release of Information Advisor (Release Advisor) at para. 6 and Exhibit "**B**."
[3] Public body's initial submission at para. 12; Applicant's submission at pp. 2-3.
[4] Public body's initial submission at paras. 4 and 13, citing Affidavit #1 of Release Advisor at para. 7.
[5] Public body's initial submission at paras. 24-27.

spouse's medical records.[6] The adjudicator concluded that accepting the public body's position would interfere with an applicant's ability to make their case, deny an adjudicator the ability to consider all the relevant circumstances in coming to their conclusion, and, in certain cases, work contrary to FIPPA's purposes as set out in s. 2.[7]

[10] Without finding it necessary to repeat what is said in Order F26-43 in any greater detail, I find the adjudicator's reasoning on this point is cogent and persuasive and I agree with it. Therefore, I will not further consider the public body's submission that I should exclude some of the applicant's submissions and evidence because what the applicant says differs from what they said to the public body at the time of the access requests. I will decide this matter based on the full record before me.

Applicant's privacy complaint

[11] On March 6, 2026, while the inquiry was ongoing, the public body reconsidered its severing under s. 22(1) for a second time and again released additional records and information to the applicant (supplemental release).[8] I take it to be the case that the public body felt it was appropriate to make the supplemental release because of its determination that the information it contains is either the applicant's own personal information, was provided to the public body by the applicant, or is not information that falls within the scope of s. 22(1). In response, the applicant says that much of the information contained in the supplemental release is outside the bounds of what they requested and the applicant implies that releasing this information to the OIPC as part of the inquiry may represent a breach of the privacy rights of the deceased and the applicant.[9]

[12] In reply, the public body explains that the material contained in the supplemental release falls within the technical scope of the records requested by the applicant even if the applicant did not take themselves to be requesting access to those records.[10] Further, the public body says that the applicant's privacy complaint is not properly before me for consideration during this inquiry.[11]

[13] Having considered what the parties say regarding this matter, I agree with the public body on both points. I accept that the applicant believed they were requesting a narrower class of records than what the public body considered to be the case. However, I find the public body's interpretation was reasonable based on what the applicant said when they made their access requests.

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[6] 2026 BCIPC 55 at paras. 30-38.
[7] *Ibid* at para. 37.
[8] Public body's letter to applicant of March 6, 2026, attaching 105 pages of partially severed records.
[9] Applicant's submission at pp. 3 and 7.
[10] Public body's reply submission at paras. 1-4.
[11] Public body's reply submission at para. 5.

[14] Turning to whether it is appropriate to resolve the applicant's privacy complaint in the course of this order, prior orders have consistently held that parties may not add new issues at the inquiry stage without the express permission of the OIPC. Here, the *Notice of Inquiry* list ss. 5 and 22(1) as the issues for consideration in the inquiry and does not reference s. 33 (public body disclosure of personal information). Further, the OIPC *Instructions for Written Inquiries*, which were provided to the parties at the outset of the inquiry, make clear that the OIPC's permission is required to add new issues to an inquiry. There is no indication that the applicant requested the OIPC's permission to add their privacy complaint as an issue in this inquiry.

[15] I accept that the applicant would not have been aware of the underlying facts grounding their privacy complaint until the inquiry was already ongoing because that is when the supplemental release occurred. But, I also find that the public body made the supplemental release several days before it provided its inquiry submission and several weeks before the applicant's deadline to provide their response submission. As such, I find the applicant had sufficient time to decide whether to request the OIPC's permission for their privacy complaint to be considered during this inquiry. The applicant did not do so but elected instead to do no more than loosely allege a privacy breach in their response submission.[12]

[16] For these reasons, I will not further consider what the parties say about the appropriateness of the supplemental release or the applicant's submissions regarding their privacy complaint.

ISSUES

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

1. Did the applicant make the access requests on behalf of the deceased in accordance with s. 5(1)(b) of FIPPA and s. 5 of the Regulation?
2. Is the public body required to withhold any information in the disputed records under s. 22(1)?

[18] FIPPA does not identify which party has the burden of showing whether an access request has been made on behalf of a deceased person. However, in these circumstances, previous OIPC orders have determined that each party is responsible for providing evidence and argument in support of their own position.[13] I agree with and adopt the same approach here.[14]

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[12] The applicant also does not clearly suggest what remedy would be appropriate if their privacy complaint were made out or how the alleged breach ought to affect the outcome of this inquiry. Therefore, I do not see how the privacy complaint, even if substantiated, would have a material impact on the inquiry.

[13] See, for example, Order F18-08, 2018 BCIPC 10 at para. 7 and the orders cited therein.

[14] However, I accept that as a practical matter the applicant is better placed to provide much of the relevant evidence than the public body.

[19] Section 57(2) places the burden on the applicant to show that disclosing the information the public body has withheld under s. 22(1) would not be an unreasonable invasion of a third party's personal privacy. However, the public body bears the initial burden of demonstrating that the information is "personal information."[15]

DISCUSSION

Background and records in dispute

[20] In the time leading up to their passing, the deceased received care at Hospital 1 and Hospital 2. After the deceased passed, the applicant requested records and information pertaining to the deceased's medical care from both hospitals.

[21] Specifically, on July 31, 2024, the applicant requested the following records and information from Hospital 1 created between May 26, 2024, and the deceased's passing on July 14, 2024:

1. A "visit summary" for the deceased;
2. "emergency visit information" for the deceased;
3. "diagnostic reports (lab/radiology)" for the deceased;
4. "all vitals" for the deceased; and
5. "all medications administered" to the deceased.

[22] Further, on August 7, 2024, the applicant requested the following records and information from Hospital 2 created between June 28, 2024, and July 11, 2024:

1. "emergency visit information" for the deceased;
2. "diagnostic reports (lab/radiology)" for the deceased;
3. "all labs" for the deceased; and
4. "all medications" for the deceased.

[23] In response, the public body identified 616 pages of records responsive to the applicant's access request to Hospital 1[16] and a further 83 pages of records responsive to the applicant's access request to Hospital 2. The public body initially withheld all of these records in their entirety under s. 22(1).

[24] As noted above, the public body reconsidered its s. 22(1) severing prior to the commencement of the inquiry and again during the course of the inquiry.[17]

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[15] Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 9-11.
[16] The public body has organized these records into two batches, the first containing 300 pages of records and the second containing 316 pages of records.
[17] The information the public body has already released to the applicant is on pp. 1, 8-10, 35, 38-40, 42, 50, 56, 61, 63, 66, 73, 125, 130, 134, 136, 235, 249, 251, 253-55, 259-61, 263, and 270

The information and records the public body has already released to the applicant are no longer in dispute and I will not consider them any further.[18]

[25] Having reviewed the disputed records I find that they contain granular details regarding the deceased's point-in-time health status and the progression of the deceased's illness. This includes test results, clinical notes drafted by the deceased's healthcare providers, records of conversations and clinical interactions between the deceased and those care providers, and information about the deceased's health history and overall health status across time.

Section 5(1)(b) - acting on behalf of a deceased person

[26] Where an access applicant is found to be acting on behalf of a deceased person, the public body will treat the access request as if it were made by the deceased person themselves. If the request is for the deceased person's personal information, concerns about the deceased's personal privacy are less relevant in such a case because FIPPA does not consider the deceased person to be a "third party" to the access request.[19]

[27] But, where an access applicant is not acting on behalf of a deceased person, the public body will treat a request for information about the deceased person as an ordinary arm's-length request for information about a third party.

[28] The procedure for determining whether an access request was made on behalf of a deceased person is set out in s. 5(1)(b) of FIPPA and s. 5 of the Regulation. Section 5(1)(b) states:

> 5(1) To obtain access to a record, the applicant must make a written request that
>
> […]

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of the first batch of Hospital 1 records; pp. 29, 35, 37, 39, 45, 47, 49, 53, 56, 62, 64-65, 67, 69, 71-73, 75, 77, 82, 84-86, 88-89, 91-93, 105, 107, 109, 111, 113, 115-16, 124-27, 130, 135, 139, 141-43, 145, 150-51, 153-54, 171, 174-75, 183, 187, 189, 193, 197, 201, 209, 215, 252, 263, 291, 304, 306, 308, and 312-14 of the second batch of Hospital 1 records; and, pp. 1, 5, 28, 30, and 37 of the Hospital 2 records.

[18] In their inquiry submission, the applicant implies that they may not be seeking access to some of the information which does remain in dispute. However, I find that the applicant does not sufficiently explain which of the information before me they consider to be genuinely in dispute and which kinds or classes of information they consider to be outside the scope of their initial access requests. Therefore, for completeness, I have considered all of the information the public body says is still in dispute in reaching my conclusions below.

[19] Schedule 1 defines a "third party" as any person, organization, or group, other than the access applicant or a public body to whom the request is made. See also s. 22(1) which protects third party personal privacy from unreasonable invasion resulting from an access request.

> (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[.]

[29] Section 5(2)(a) of the Regulation specifies that an "appropriate person" may act for a deceased person in relation to s. 5(1)(b) of FIPPA. Who constitutes an "appropriate person" is further set out in s. 5(1) of the Regulation. The relevant portion of that section states:

> 5(1) In this section:
>
> **"appropriate person"** means,
>
> (a) in respect of a deceased adult, one of the following:
>
> (i) a committee acting under section 24 of the *Patients Property Act* for the deceased;
>
> (ii) if there is no committee acting for the deceased, the personal representative of the deceased;
>
> (iii) if there is no committee acting for the deceased and no personal representative of the deceased, the nearest relative of the deceased;
>
> […]
>
> **"nearest relative"** means the first person referred to in the following list who is willing and able to act under subsection (2) of this section for a deceased individual:
>
> (a) spouse of the deceased at the time of death […;]
>
> **"spouse"** means a person who,
>
> (a) is married to another person and is not living separate and apart, within the meaning of the Divorce Act (Canada), from the other person[.]

[30] Applying these provisions, previous OIPC orders have developed a two-part test to determine whether an access applicant was authorized to make an access request on behalf of a deceased person:

1. Is the applicant an "appropriate person" under s. 5 of the Regulation?
2. If so, was the applicant acting "on behalf of" the deceased person under s. 5(1)(b) in making the access request?[20]

[20] See Order F18-08, *supra* note 13 at para. 10.

[31] Both parts of the test must be met before an applicant can exercise a deceased person's access rights under FIPPA.[21]

Step One: "appropriate person"

[32] As set out above, s. 5(1)(a) of the Regulation establishes an order of priority for the types of people who may be an "appropriate person" to exercise a deceased person's access rights under FIPPA.

[33] The parties do not submit that there is or was a committee acting on behalf of the deceased at any relevant time or that there is a "personal representative" of the deceased who seeks to exercise the deceased's rights under FIPPA. I see nothing in the submissions or evidence before me indicating that there is or was a committee or personal representative properly placed to exercise the deceased's FIPPA rights.[22]

[34] However, the parties agree that the applicant is the deceased's "spouse" as that term is defined in s. 5 of the Regulation and is, therefore, the deceased's "nearest relative."

[35] I agree. Based on the evidence before me, which I find is corroborated by the contents of the disputed records, I can see that the applicant was the deceased's spouse at the time the deceased passed away.[23] Based on this, I find the applicant is an "appropriate person" to exercise the deceased's access rights under FIPPA in this case.

Step Two: acting "on behalf of" the deceased

[36] Having found the applicant is an appropriate person to exercise the deceased's access rights under FIPPA, I must now decide whether the access requests were made "on behalf of" the deceased in accordance with s. 5(1)(b).

[37] What it means to act "on behalf of" another person is not defined in FIPPA. However, previous OIPC orders have considered this point and provide guidance. Those orders establish that acting "on behalf of" another person involves acting to the benefit of that person, to further the person's own goals

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[21] See Order F18-08, *ibid*.

[22] Some of the parties' submission imply that the applicant may also be executor of the deceased's estate and may therefore be the deceased's "personal representative" as that term is defined in s. 29 of the *Interpretation Act*, RSBC 1996, c. 238. However, both parties' submissions indicate that the access requests at issue were made by the applicant in their personal capacity as the deceased's spouse and not in any official capacity as executor of the deceased's estate.

[23] See Affidavit #1 of Release Advisor at Exhibit "**E**" which includes a copy of a marriage certificate issued by the British Columbia Vital Statistics Agency indicating that the applicant and the deceased were married for several decades prior to the deceased's passing.

and objectives, and, ultimately, acting in the person's best interest.[24] Further, these same orders explain that an access request that is made primarily with an applicant's own interests in mind has not been made "on behalf of" another person.[25]

[38] Given this, determining whether an applicant was acting on behalf of a deceased person in making an access request clearly involves determining both the desires and interests of the deceased person, and the applicant's own motives for making the request. Where an applicant can show that their motives are consonant with the desires, interests, and well-being of the deceased person, this will weigh strongly in favour of finding they are acting "on behalf of" the deceased person.

[39] Determining and unearthing an applicant's motives involves a close analysis of all the relevant material before an adjudicator. Particular attention should be paid to what the applicant said in the access request itself, the evidence and argument provided in the parties' inquiry submissions, and any evidence regarding how the applicant represented their position in correspondence between them and the other parties in the inquiry or the OIPC.[26] In my view, it is also appropriate for an adjudicator to consider the content of the disputed records themselves where those records have probative value regarding this issue.

Positions of the parties – acting "on behalf of" the deceased

[40] The public body submits that the applicant has not established they made the access requests "on behalf of" the deceased. In support of its position, the public body says that the applicant initially highlighted a strictly "personal" motivation for making the access requests. Further, that it was only after bringing the matter to the attention of the OIPC that the applicant started saying the access requests were motivated by the deceased directly asking the applicant to seek access to at least some of the information in dispute prior to their passing.

[41] The public body says the applicant has provided no evidence independently corroborating their contention that the deceased asked the applicant to do so or otherwise demonstrating the deceased's relevant desires or goals or showing how releasing the disputed records to the applicant would be in the deceased's best interest.

[42] In response, the applicant questions why they should be required to provide evidence establishing the deceased's relevant desires, goals, or best interest when if the deceased had themselves made the access requests while alive the deceased would not have been required to provide that type of evidence to the public body as a precondition to access. The applicant does not elaborate

[24] Order F17-04, 2017 BCIPC 4 at para. 17 and Order F18-08, *supra* note 13 at para. 13.
[25] Order F17-04, *ibid* at para. 20.
[26] See, for example, Order F24-05, 2024 BCIPC 7 at para. 23.

on this submission but ultimately does provide what they frame as evidence of the deceased's relevant goals, desires, and best interest, as particularized below.

[43] First, the applicant says that several days before the deceased passed away, on learning they would be transferred out of Hospital 2, the deceased told the applicant "[i]f I am being discharged from [Hospital 2,] I want you to get me copies of everything that I had done [at Hospital 2]."[27] The applicant also says that around the same time the deceased expressed a desire for access to certain records related to a surgery the deceased was set to undergo in short order at Hospital 1.[28] On this basis, the applicant implies that the deceased clearly desired that the applicant have access to the records in dispute.

[44] In addition, the applicant provides four notarized statements (applicant's statement, witness statements) one from themselves and three from other individuals (Witness 1, Witness 2, Witness 3). The applicant says these notarized statements provide evidence that they were acting "on behalf of" the deceased in making the access requests. Having read the statements I find they contain the following evidence which is potentially relevant on this point:

- The applicant's statement provides a detailed factual recounting of the time the deceased spent in and out of hospital leading up to their passing. The applicant also says in their statement that they received significant medical information about the deceased's health issues from the deceased's care providers during this time.
- Witness 1 identifies themselves as a long-time friend of the deceased and the applicant and states their perception that the deceased and the applicant "always spoke very openly and honest [sic] about things." Witness 1 also recalls that "when [the deceased] was in hospital, [the applicant] mention[ed] … that [the deceased] wanted to get [their own] medical records."
- Witness 2 also identifies themselves as a long-time friend of the deceased and the applicant and says that "[the deceased] and [the applicant]'s commitment to each other cannot possibly be put into question." Witness 2 also implies that I should defer to the applicant as the primary authority regarding what would be in the deceased's best interest given the applicant is the deceased's "lifelong soulmate" and states their opinion that releasing the records in dispute to the applicant would not violate the deceased's personal privacy.
- Witness 3 identifies themselves as the adult child of the deceased and the applicant and questions whether the public body can make out its argument that releasing the disputed records would violate the deceased's personal privacy when the applicant was present "at the hospital every day and was the one to help clarify for [the deceased] what the doctors were doing and saying." Witness 3 also states their

[27] Applicant's submission at p. 1.
[28] *Ibid*.

> belief that if the disputed records are released to the applicant, the applicant would be unlikely to share the information they contain with others.

[45] In further support of their position, the applicant points out that they signed certain treatment authorization and "consent to healthcare" forms on behalf of the deceased while the deceased was in hospital and that the public body accepted the applicant to be rightly acting "on behalf of" the deceased in that context and at that time. The applicant highlights that when they signed some of these forms on behalf of the deceased, the deceased was alert and lucid and would have been capable of signing on their own if asked. The applicant includes copies of some of these forms alongside their inquiry submission.

[46] The applicant also questions the public body's submission that the applicant's motive for making the access request has changed across time. The applicant says that if the public body required further information about that motive after it received the access requests it should have reached out to the applicant to clarify this issue. Further, the applicant implies that their initial communication to the public body of their "personal" motivation for making the access requests was meant to indicate the "personal" nature of the deceased's request to the applicant to obtain the disputed records. It was not meant to indicate that the access requests were motivated by the applicant's own "personal" desire to access those records.[29]

[47] Finally, the applicant says that the special nature of the relationship between them and the deceased and the nature and scope of the records they have requested make this case distinguishable from prior cases where the OIPC has found that an applicant was not acting "on behalf of" another person.[30]

[48] I have considered the public body's reply submission and I find it does not include anything relevant to this issue.

Analysis and conclusion – acting "on behalf of" the deceased

[49] For the reasons that follow, I find the applicant was not acting "on behalf of" the deceased in making the access requests.

[50] In the first place, I do not accept that it is improper to expect an applicant to provide evidence substantiating a deceased person's goals, desires, or best interest in support of that applicant's contention that they are acting "on behalf of" that deceased person.

[51] I agree with the applicant that the deceased would likely not have been required to provide this kind of evidence as a precondition to accessing their own

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[29] Applicant's submission at pp. 5-6.

[30] The applicant indicates they specifically consider their circumstances to be distinguishable from Order F22-42, 2022 BCIPC 47, Order F23-80, 2023 BCIPC 96, Order F24-05, *supra* note 26, Order F24-85, 2024 BCIPC 97, and Order F18-08, *supra* note 13.

medical records. However, the precise issue at play under s. 5(1)(b) is whether and when it is appropriate for *someone else* to step into a deceased person's place and exercise the deceased person's own information rights under FIPPA. Nothing the applicant says convinces me that what would have been personally required of the deceased had they themselves made the access requests is relevant here.

[52] Further, as set out above, prior orders that have considered what it means to act "on behalf of" another person have found evidence regarding the goals, desires, and best interest of that person to be central to the analysis and I agree with this approach.[31] Considering the evidence the applicant does provide about the deceased's desires, goals, and best interest I find as follows.

[53] At the outset I note that evidence establishing a deceased person expected someone else, even a dear and close loved one,[32] to be involved in their medical care while that deceased person was alive is not, on its own, also evidence regarding what that deceased person desired or expected would occur after they died.[33]

[54] As is explained below, I find that the evidence provided by the applicant establishes, at most, that the deceased desired that the applicant have access to some of the deceased's medical information for specific purposes while the deceased was alive. None of the evidence before me independently or collectively establishes, on a balance of probabilities, that the deceased wanted or expected the applicant's access to the deceased's medical information to continue after the deceased's passing.

[55] In the first place, I read the deceased's alleged request to the applicant as only indicating that the deceased wanted to access *their own* medical information and was asking the applicant to act as an agent for the deceased and assist them with gaining such access.

[56] I find this can be seen by the wording "*I want you to get me* copies of everything…." [emphasis added] which the applicant says the deceased used when asking the applicant to obtain records about the deceased's stay in Hospital 2. I find the same sentiment on the part of the deceased is indicated in what is said by Witness 1.[34] I also find the comments the applicant ascribes to the deceased regarding accessing information about the deceased's surgery at

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[31] Order F17-04, *supra* note 24 at para. 17 and Order F18-08, *supra* note 13 at para. 13.
[32] I do not see that evidence about the general care and closeness between the applicant and the deceased attenuates the acting "on behalf of" analysis in the way the applicant suggests. Many prior orders have been grounded in a similar context and still found an access applicant was not acting "on behalf of" a deceased loved one.
[33] See, for example, Order F25-79, 2025 BCIPC 93 at para. 33 and Order F24-22, *supra* note 30 at para. 21.
[34] As set out above, Witness 1 says that "[the applicant] mention[ed] … that [the deceased] wanted to get [their own] medical records."

Hospital 1 are most logically read as expressing the deceased's desire for personal access to their own medical records.[35]

[57] Given this, I find that none of the evidence provided by the applicant or Witness 1 regarding the deceased's alleged request to the applicant sheds any light on what the deceased wanted or expected to happen regarding their medical information after they had passed away.

[58] I also find the evidence about treatment authorizations and consent forms provided by the applicant and the applicant's submissions regarding the impact of those forms suffers from the same flaw in that it does not provide any clear evidence establishing the deceased's *posthumous* goals, desires, or best interest.

[59] I do not doubt that the applicant's motive in making the access requests was a sincere want to further and fulfill what they take to be the deceased's goals, desires, and best interest. However, for the reasons set out above, I find that the applicant has not provided sufficient evidence or persuasive argument to demonstrate that any relevant goals or desires were, in fact, held by the deceased or to show how releasing the requested records to the applicant would otherwise be in the deceased's best interest. On this basis, I find the applicant has not established the access requests were made "on behalf of" the deceased.

Conclusion – s. 5(1)(b)

[60] For the reasons given above, I found above that while the applicant is an "appropriate person" to exercise the deceased's information rights under FIPPA, the applicant's evidence and argument do not establish on a balance of probabilities that the applicant made the access requests "on behalf of" the deceased.

[61] Therefore, I will move on to consider whether the public body was required to withhold the information in dispute under s. 22(1) (unreasonable invasion of privacy) in response to the applicant's arm's-length requests for some of the deceased's medical records.

Section 22(1) – unreasonable invasion of privacy

[62] Section 22(1) requires a public body to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of the personal privacy of a third party. FIPPA defines a "third party" as anyone other than the access applicant or the public body who is the subject of the access request.[36]

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[35] Applicant's submission at p. 1 where they say on this point that "[the deceased] then asked whether [Hospital 1] would provide records relating to [the deceased's] surgery, and I advised that they would. I assured [the deceased] that this would be addressed once the surgery was completed."

[36] FIPPA at schedule 1, definition of "third party."

Personal information

[63] 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.

[64] Under schedule 1 of FIPPA,

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

[65] Therefore, "contact information" is not "personal information" under FIPPA. Whether information is contact information is context dependent.[37]

[66] Neither party addresses whether any of the information in dispute is "contact information" and I do not see that any of it is because none of it was provided to the public body solely to enable anyone to be contacted at a place of business.

[67] The public body says the information in dispute is clearly the "personal information" of the deceased because all of it is contained in the deceased's medical records which were the only records requested by the applicant. The applicant does not dispute that the information in dispute is the deceased's personal information.

[68] Having reviewed the records, I find that all the information in dispute is the deceased's personal information because it is, on its face, about the deceased who is named or clearly referenced throughout the records. In some cases, the information is also about other third parties including the deceased's healthcare providers and other hospital staff. A small amount of information in the records is also about the applicant because it names or references the applicant and their involvement in the deceased's healthcare.[38] However, in each case I find that all the information that is about the applicant or about third parties other than the deceased is also about the deceased; therefore, it is the deceased's personal information as well as the personal information of these other individuals.[39]

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[37] Order F20-13, 2020 BCIPC 15 at para. 42.
[38] See first batch of Hospital 1 records at p. 6 and second batch of Hospital 1 records at pp. 155 and 205, for example.
[39] See Order F24-22, *supra* note 30 at para. 32 and the orders cites therein.

Section 22(4) – not an unreasonable invasion

[69] Section 22(4) lists circumstances where disclosing personal information is not an unreasonable invasion of third-party personal privacy. If s. 22(4) applies to personal information, a public body cannot withhold that information under s. 22(1).

[70] The public body says none of the circumstances listed in s. 22(4) applies in this case. The applicant does not address s. 22(4) in their submission.

[71] I find that none of the subsections of s. 22(4) applies to the deceased's personal information in dispute in this case. I considered whether information about things the deceased's healthcare providers said or did in the normal course of performing their job duties could be covered by s. 22(4)(e) (positions and functions of public body employees). However, as noted above, I have found that any information about these individuals is also information about the deceased because it is contained in the deceased's medical records. On this basis, I find that s. 22(4)(e) does not apply to any of the personal information in dispute.[40]

Section 22(3) – presumed unreasonable invasion

[72] Section 22(3) lists circumstances where disclosing personal information is presumed to be an unreasonable invasion of third-party personal privacy. The public body says that all the deceased's personal information in dispute is subject to the presumption under s. 22(3)(a) which protects information related to, among other things, a third party's medical treatment, history, and diagnosis. The public body does not raise any other subsection of s. 22(3).[41]

[73] The applicant says that even if the s. 22(3)(a) presumption technically applies to the personal information in dispute, it is clearly rebutted because of the specific character of the relationship between the deceased and the applicant and the applicant's pre-existing knowledge of significant amounts of information related to the deceased's medical care, health and personal circumstances, and time spent in hospital.[42]

[74] I do not see that any of the other subsections of s. 22(3) may apply in this case, so I will only consider s. 22(3)(a).

[75] Under s. 22(3)(a), disclosing information related to a third party's medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation is presumed to be an unreasonable invasion of that third party's personal privacy. As noted above, all the personal information in dispute is contained in the deceased's medical records.

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[40] See Order F25-79, *supra* note 33 at paras. 54-55 for a similar conclusion.
[41] The public body references s. 22(3)(d) at para. 39 of its initial submission but, in context, it is clear to me that this is a typographic error and the public body intended to reference s. 22(3)(a).
[42] Applicant's submission at pp. 6-7.

[76] Given the specific form and content of the records at issue, as briefly discussed above at paragraph 25 of this order, I find that all the personal information they contain is related to the deceased's medical history, condition, diagnosis, and treatment.[43]

[77] As such, I find that releasing any of the deceased's personal information in dispute is presumed to be an unreasonable invasion of the deceased's personal privacy pursuant to s. 22(3)(a).

[78] I will consider the applicant's submissions and evidence related to this point in more detail below when I weigh and apply "all relevant circumstances" under s. 22(2).

Section 22(2) – relevant circumstances

[79] Section 22(2) says that when a public body is deciding whether disclosing personal information would be 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 s. 22(3) presumptions.

[80] The public body says that s. 22(2)(i) weighs against disclosing the personal information in dispute.

[81] The applicant does not directly address the circumstances listed in s. 22(2). However, as noted above, the applicant does say that their existing knowledge of significant information about the deceased and the deceased's medical circumstances as well as their close-knit and long-term relationship with the deceased operate in this case to rebut the s. 22(3)(a) presumption.

[82] In addition to the "relevant circumstances" raised by the parties, I find that the sensitivity of the personal information in dispute and fact that some of that personal information is also the applicant's own personal information also bear considering. So, I will consider all of these circumstances below.

Section 22(2)(i) – information about a deceased individual

[83] Under s. 22(2)(i), where the personal information of a deceased person is in dispute the public body must consider that the information is about a deceased person and also consider how long it has been since the deceased person passed away. Prior orders have found that where the personal information in dispute is about a deceased person this weighs against disclosing it until at least

[43] The analysis under s. 22(1) is about the actual information in dispute and not simply the kinds or classes of records containing that information. However, prior orders have also found it appropriate to consider the entire content of an individual's medical records subject to the presumption under s. 22(3)(a) depending on specific form and content of those medical records: See, for example, Order F25-79, *supra* note 33 at para. 58.

20 years after the deceased passed away at which point the balance may shift in favour of disclosure.[44]

[84] The public body says the deceased passed away much less than 20 years ago and therefore s. 22(2)(i) weighs against disclosing any of the deceased's personal information. The applicant does not address what the public body says about s. 22(2)(i).

[85] As noted above, all the information in dispute is the deceased's personal information. It is also clear to me that the deceased passed away less than two years ago which is well under the 20-year threshold referenced in other orders. Therefore, I find that s. 22(2)(i) applies in this case and weighs against disclosing the personal information in dispute to the applicant.

Applicant's prior knowledge of information and relationship with deceased

[86] An applicant's prior knowledge of personal information may weigh in favour of disclosing it.

[87] Here, the applicant says that they already know much of the personal information in dispute because they were present alongside the deceased in hospital at the time this information was collected and created by the deceased's healthcare providers and the public body. The applicant also says that they know significant additional personal and private information about the deceased which the deceased would not have shared with anyone else and that this also weighs in favour of disclosing the personal information in dispute to them.

[88] Further, the applicant submits that during their marriage "there was no expectation of privacy between" the applicant and the deceased and that this should weigh strongly in favour of disclosing the deceased's personal information to them. Some of what is said in the witness statements also echoes or claims to reinforce the applicant's submissions about prior knowledge of the deceased's personal information or the nature of the deceased's privacy interests vis-à-vis the applicant.[45]

[89] The public body does not address these lines of argument from the applicant.

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[44] See, for example, Order F24-05, *supra* note 26 at para. 48, Order F23-58, 2023 BCIPC 68 at para. 91, and Order F23-26, 2023 BCIPC 30 at para. 101. See also Order F23-12, 2023 BCIPC 12 at paras. 33-34 where, outside the context of s. 22(2)(i), the adjudicator held that "FIPPA protects the privacy rights of [deceased persons]. …. While disclosure of the personal information of a deceased person cannot cause them material harm, it can harm their dignity."

[45] For example, Witness 1's claim that the applicant and the deceased always spoke openly and honestly with one another; Witness 2's opinion regarding the close-knit nature of the relationship between the deceased and the applicant and their commitment to one another; and, Witness 3's discussion of the relationship between the applicant's prior knowledge of the information in dispute and the public body's arguments regarding unreasonable invasion of the deceased's personal privacy.

[90] I accept that the applicant was present with the deceased at Hospital 1 and Hospital 2 at the time that the disputed personal information was collected and created by the deceased's care providers and the public body. The contents of the disputed records also corroborate much of the account of this time given in the applicant's statement. Therefore, I find that the applicant clearly already knows some of the personal information in dispute and that this weighs in favour of disclosing that information to the applicant.

[91] However, I do not accept the applicant's submission that the fact they are aware of private information about the deceased which is unrelated to the information in dispute weighs in favour of granting them access to the disputed personal information. Prior orders considering an applicant's pre-existing knowledge of disputed personal information centre the analysis on concrete and demonstrated knowledge of that information.[46]

[92] Based on what the applicant says I am not convinced that it is appropriate or desirable to expand this analysis and draw the inference suggested by the applicant between the applicant's knowledge of other information about the deceased and the specific personal information that is before me.

[93] I also decline to dilute the privacy rights of the deceased based on the applicant's submission that there was "no expectation of privacy" between the applicant and the deceased or anything else the applicant or their witnesses say about the specific relationship between the applicant and the deceased. One of FIPPA's purposes is to "protect personal privacy" and it is well-established that disclosure under FIPPA is "disclosure to the world" and must be assessed as such, not simply as disclosure to a specific access applicant.[47] Given this, I am not convinced that what is said by the applicant or in the witness statements regarding the specific content or character of the relationship between the applicant and the deceased gives rise to a "relevant circumstance" that weighs in favour of disclosure in this case.

Sensitivity

[94] Prior orders have held that where personal information is sensitive this weighs against disclosing that information. On the other hand, where personal information is clearly "innocuous" or non-sensitive this can weigh in favour of disclosing it to an applicant.

[95] Here, I find that the kind of detailed and granular information about the deceased's medical history, care, and treatment in hospital which is in dispute is among the most sensitive kinds of information about an individual. As such, I find

[46] See, for example, Order F24-22, *supra* note 30 at paras. 59-60 and the Orders cited therein.
[47] See, for example, Order F22-31, 2022 BCIPC 34 at para. 80, citing Order 03-35, 2003 CanLII 49214 (BC IPC) at para. 31.

that the deceased's personal information in dispute is sensitive and that this weighs against disclosing that personal information to the applicant.

Applicant's own personal information

[96] Where the personal information in dispute is an applicant's own personal information, this can weigh heavily in favour of disclosing that information to them. However, where the applicant's personal information is interwoven with the personal information of third parties this factor carries less weight.[48]

[97] As I explained above, all the applicant's personal information is interwoven with the deceased's personal information. As such, while the fact that some of the personal information in dispute is the applicant's own personal information weighs in favour of disclosing that information to the applicant, the weight I give to this point is tempered.[49]

Conclusion – s. 22(1)

[98] I have found above that all the information in dispute is the deceased's own personal information and that some of this information is also the personal information of other third parties or the applicant, as the case may be.

[99] I have found that none of the personal information in dispute falls within the scope of s. 22(4). I have also found that the presumption against disclosure in s. 22(3)(a) applies to all the personal information in dispute.

[100] Finally, applying s. 22(2) and working through all the relevant circumstances, I have found that s. 22(2)(i) and the sensitivity of the personal information in dispute weigh against disclosing that information to the applicant. However, I have also found that the applicant's pre-existing knowledge of some of the personal information in dispute and the fact that some of that personal information is about the applicant in addition to being about the deceased weigh in favour of disclosing that specific personal information to the applicant.

[101] Taking all of this together and weighing it out, I find that the applicant has not established that the presumption under s. 22(3)(a) is rebutted in this case. Therefore, I find that releasing any of the personal information in dispute is presumed to be an unreasonable invasion of the deceased's personal privacy and the public body must withhold all that information under s. 22(1).

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[48] Order F14-47, 2014 BCIPC 51 at para. 36.

[49] I note that one of the public body's motivations for making the supplemental release was that at least some of the additional information it released to the applicant was the applicant's own personal information. Without adjudicating the merits of the public body's decision to make the supplemental release, I will say that I do not find this is relevant evidence concerning whether to release the interwoven personal information remaining in dispute because it is clearly distinct information that is rightly subject to independent consideration under s. 22(1).

CONCLUSION

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

June 29, 2026

ORIGINAL SIGNED BY

Alexander Corley, Adjudicator

OIPC File No.: F24-98284