Order F26-73

MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL

Alexander R. Lonergan
Adjudicator

August 25, 2026

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Summary: An applicant requested that the Ministry of Public Safety and Solicitor General (Ministry) provide access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the medical records of his deceased child (Deceased). The Ministry decided that the applicant did not make the request on behalf of the Deceased under s. 5(1)(b) of FIPPA and s. 5 of the *Freedom of Information and Protection of Privacy Regulation* (Regulation) and treated it as a request to the personal information of a third party under FIPPA. The Ministry provided responsive records to the applicant but severed information under ss. 22(1) (unreasonable invasion of third-party personal privacy), 15(1)(f) and 15(1)(l) (harm to law enforcement) of FIPPA. The adjudicator found that the applicant did not make the access request on behalf of the Deceased under s. 5(1)(b) of FIPPA and s. 5 of the Regulation. The adjudicator further determined that the Ministry was required to withhold most of the disputed information under s. 22(1), and required the Ministry to withhold all the information it exclusively withheld under ss. 15(1)(f) and 15(1)(l). The adjudicator ordered the public body to disclose the information it was not authorized or required to withhold.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 5, 15(1)(f), 15(1)(l), and 22(1); Freedom of Information and Protection of Privacy Regulation, BC Reg 155/2012, s. 5.

INTRODUCTION

[1] An individual (the Deceased) died after an incident that occurred at a correctional institution in early 2022. Through a legal representative, the Deceased's father (applicant) asked the Ministry of Public Safety and Solicitor General (Ministry) for access to all records related to the Deceased's death and all records related to the Deceased's incarceration.

[2] Initially, the Ministry decided that the applicant did not make the request on behalf of the Deceased under s. 5(1)(b) of Freedom of Information and Protection of Privacy Act (FIPPA) and s. 5 of the Freedom of Information and Protection of Privacy Regulation (Regulation).[1] After considering the applicant's request as a request for records about a third party, the Ministry refused to disclose the responsive records under ss. 13(1) (advice or recommendations), 15(1)(c), 15(1)(f), 15(1)(l), and 15(2)(c) (harm to law enforcement), as well as 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA.[2]

[3] After reconsidering its initial decision to deny access to the records, the Ministry provided an updated records package to the applicant. The Ministry continued to withhold information from the records under ss. 15(1)(c), 15(1)(f), 15(1)(l) and 22 but withdrew its reliance on ss. 13(1) and 15(2)(c).

[4] The Applicant asked the OIPC to review the Ministry's decision to withhold the requested information. The Ministry once more reconsidered its severing decisions and released additional information to the applicant. Mediation by the OIPC did not resolve the remaining issues and the matter proceeded to this inquiry.

[5] Finally, during the inquiry the Ministry withdrew its reliance on s. 15(1)(c) so I find that provision is no longer at issue.[3]

DISCUSSION

Background[4]

[6] The Ministry operates several correctional centres in BC through its branch, BC Corrections, where it oversees the incarceration of individuals who are awaiting trial and individuals serving custodial sentences of fewer than two years following a conviction.

[7] In 2022, the Deceased was incarcerated at a correctional institution operated by BC Corrections. Shortly after the Deceased's incarceration began, an incident occurred which resulted in the Deceased's hospitalization and death.

[8] The applicant is the father of the Deceased. On January 11, 2024, the applicant asked the Ministry to provide him with access under FIPPA to all records related to the death of the Deceased as well as all records related to the Deceased's incarceration in 2022.

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[1] Freedom of Information and Protection of Privacy Regulation, BC Reg 155/2012.
[2] All subsequent sectional references refer to FIPPA unless otherwise noted.
[3] Ministry's initial submission at para 9.
[4] The information in this background section is based on information provided in the parties' submissions and evidence. It is not information that is in dispute.

Records and Information at Issue

[9] The disputed records consist of 116 pages of documents and photographs. The records include various reports, daily institutional logs, findings of a formal investigation entitled a "Critical Incident Review" (CIR), and miscellaneous administrative records. The records relate to the Deceased's incarceration, the incident that resulted in the Deceased's death, the steps taken by the Ministry after the incident, and administrative matters during the Deceased's incarceration that do not directly relate to the Deceased's death.

[10] The applicant indicates that he does not seek disclosure of a cell phone number that belongs to a certain employee of the Ministry,[5] therefore, I find that this information is not in dispute and I will not address it in the analysis below.

Issues and Burden of Proof

[11] The issues I must decide in this matter are the following:

1. Is the applicant acting on behalf of the Deceased in accordance with s. 5(1)(b) of FIPPA and s. 5 of the Regulation?
2. Is the Ministry required to refuse to disclose the disputed information under s. 22(1)?
3. Is the Ministry authorized to refuse to disclose the disputed information under ss. 15(1)(f) or 15(1)(l)?

[12] FIPPA does not specify which party has the burden to prove that an applicant is acting on behalf of another individual under s. 5(1)(b) of FIPPA and s. 5 of the Regulation. In these circumstances, past orders say that both parties are responsible for providing their best arguments and evidence to support their positions.[6] I adopt this approach.

[13] Section 57(2) places the burden on the applicant to establish that disclosure of the information Ministry has withheld under s. 22(1) would not be an unreasonable invasion of a third party's personal privacy.[7] However, as the public body in this matter, Ministry has the initial burden of proving that the information it has withheld under s. 22(1) is personal information.[8]

[5] The records at p 115.
[6] Order F24-22, 2024 BCIPC 28 (CanLII) at para 5; Order F18-08, 2018 BCIPC 10 (CanLII) at para 7; Order F07-10, 2007 CanLII 30395 (BC IPC) at paras 10-11.
[7] Schedule 1 of FIPPA says that a "third party" in relation to a request for access to a record or for correction of personal information means any person, group of persons or organization other than the person who made the request, or a public body.
[8] Order 03-41, 2003 CanLII 49220 (BCIPC) at paras 9-11.

[14] Finally, s. 57(1) places the burden on the Ministry to prove that the applicant has no right of access to the information withheld under ss. 15(1)(f) or 15(1)(l).

AUTHORITY TO ACT ON BEHALF OF A DECEASED INDIVIDUAL – s. 5(1)(b)

[15] Section 5(1)(b) of FIPPA explains how an applicant may make an access request on behalf of another person:

> 5(1) To obtain access to a record, the applicant must make a written request that
>
> …
>
> (b) provides written proof of the authority of the applicant to make the request, if the applicant is acting on behalf of another person in accordance with the regulations …

[16] Section 5(2)(a) of the Regulation provides that an "appropriate person" may act for a deceased person in relation to a request for access to records under s. 5 of FIPPA. Section 5(1)(a) of the Regulation sets out the process for determining who is an "appropriate person".

[17] Relying on these sections of FIPPA and the Regulation, past OIPC orders have established a two-part test for an applicant to exercise a deceased person's access rights.

[18] First, the applicant must be an "appropriate person" under the Regulation. Second, the applicant's access request must have been made "on behalf of" the deceased person under s. 5(1)(b) of FIPPA.[9] If the two-part test is not met, then the access request is treated as an ordinary, arm's-length request by one individual for another's personal information.[10]

[19] The applicant argues that the second part of the s. 5(1)(b) test should not be applied in this matter. I will address the parties' arguments about this issue after considering the applicant's status as an "appropriate person".

[20] The outcome of the s. 5(1)(b) issue will affect how s. 22 is determined in this inquiry. If the applicant is found to be acting on behalf of the Deceased, then the access request is treated as if the Deceased made the request. In other words, the analysis under s. 22 would consider that the Deceased is requesting

[9] Order F18-08, 2018 BCIPC 10 (CanLII) at para 10; Order F22-42, 2022 BCIPC 47 (CanLII) at para 16.
[10] Order F23-92, 2023 BCIPC 108 (CanLII) at para 27; Order F24-22, 2024 BCIPC 28 (CanLII) at para 12.

access to their own personal information rather than the applicant requesting access to the personal information of a third party under FIPPA.[11]

Is the applicant an appropriate person?

[21] As noted above, the process for determining who is an “appropriate person” is set out in s. 5(1) of the Regulation:

> 5 (1) In this section:
>
> "**appropriate person**" means,
>
> (a) in respect of a deceased adult, one of the following:
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> (i) a committee acting under section 24 of the *Patients Property Act* for the deceased;
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> (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;
>
> (b) adult child of the deceased;
>
> (c) parent of the deceased;
>
> (d) adult sibling of the deceased;
>
> (e) other adult relation of the deceased other than by marriage;
>
> (f) an adult immediately related to the deceased by marriage;

[22] In this matter, the parties both take the position that the applicant is an “appropriate person” under the Regulation. There is no suggestion or evidence in the material before me that a committee acted for the Deceased, that the Deceased has a “personal representative”,[12] or that the Deceased had a spouse or adult child at the time of their death.

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[11] Schedule 1 of FIPPA defines the term “third party” as any person, group of persons or organization other than the person who made the access request or a public body.
[12] The *Interpretation Act*, RSBC 1996, c 238, at s 29 defines a “personal representative” as including “an executor of a will and an administrator with or without will annexed of an estate, and, if a personal representative is also a trustee of part or all of the estate, includes the personal representative and trustee”.

[23] Under these circumstances and pursuant to s. 5(1) of the Regulation, the next individual who may be an “appropriate person” is the Deceased’s parent. Given that the applicant is the father of the Deceased, I find that the applicant is an “appropriate person” in this matter.

Was the access request made “on behalf of” the Deceased?

[24] Having determined that the applicant is an appropriate person under s. 5 of the Regulation, the second step of the analysis is to determine whether the applicant made his request “on behalf of” the Deceased as required by s. 5(1)(b) of FIPPA.

[25] FIPPA does not define what it means to act “on behalf of” another individual. Past orders have interpreted this term to mean acting to benefit the other individual, to further the other individual’s own goals or objectives, and acting in the other individual’s best interest.[13] Additionally, if an applicant requests information to further their own interests, past orders say this is not enough to establish they are acting on behalf of another individual.[14]

[26] The applicant directly challenges the second step of the s. 5(1)(b) analysis. Specifically, the applicant argues that I should not interpret the term “acting on behalf of” to mean that the applicant must establish they are acting to the benefit of the other individual, to further the other individual’s own goals or objectives, and in the other individual’s best interests.[15] I will consider this argument before continuing the analysis.

<u>Parties’ Positions - “Acting on Behalf of”</u>

[27] The applicant says that the existing approach to the analysis precludes meaningful access and significantly undermines the accountability objective of FIPPA, especially in the context of an individual’s death while they are held in a public body’s custody.[16]

[28] The applicant’s suggested approach is to interpret s. 5(1)(b) as requiring only that the applicant prove he has sufficient authority to apply for access on

[13] Order F24-22, 2024 BCIPC 28 at para 19, Order F24-05, 2024 BCIPC 7 (CanLII) at para 27, Order F18-08, 2018 BCIPC 10 (CanLII) at paras 12-13 relying on Order F17-04, 2017 BCIPC 4 (CanLII) at para 17.
[14] Order F22-42, 2022 BCIPC 47 at para 23; Order F17-04, 2017 BCIPC 4 (CanLII) at paras 18-20; Order F07-16, 2007 CanLII 35477 (BC IPC) at paras 19-20; Order 02-44, 2002 CanLII 42478 (BC IPC) at paras 39-40.
[15] The applicant provided extensive arguments in support of this position. While I have read and considered all of those arguments, I have summarized them in this order only to the extent necessary to provide intelligible reasons for my decision.
[16] Applicant’s submission at paras 9-12, and 34-39.

behalf of the Deceased.[17] I understand this argument to be that I should not consider whether and how the access request was made "on behalf of" the Deceased after the applicant establishes that he is an "appropriate person". In terms of ensuring the protection of the Deceased's privacy under the applicant's suggested approach, the applicant notes that even after an applicant is identified as an appropriate person, a public body must nonetheless also consider whether the other substantive provisions of FIPPA apply to prevent disclosure.[18]

[29] The applicant argues that modern statutory interpretation principles and the language of s. 5(1)(b) do not support a requirement that the applicant prove his request aligns with a deceased person's goals, objectives, benefits, or best interests. The applicant characterizes these considerations as a subjective analysis of the Deceased's hypothetical welfare interests which FIPPA does not expressly require.[19]

[30] Finally, the applicant says that the second branch of the s. 5(1)(b) analysis was developed in Order F17-04 under distinguishable circumstances.[20] The applicant explains that unlike the present matter, the adjudicator in Order F17-04 interpreted s. 5(1)(b) of FIPPA in the context of the *Child, Family and Community Service Act* (CFCSA). The applicant argues that the adjudicator of Order F17-04 applied a best-interests standard to define "acting on behalf of", because the CFCSA and the unique circumstances of a minor child informed the adjudicators' analysis under s. 5(1)(b), neither of which are present in this case.[21]

[31] The Ministry's position is that the s. 5(1)(b) test should be applied as it has by past OIPC orders, namely, by considering whether the applicant's access request was made for the benefit of the Deceased, to further the Deceased's own goals or objectives, and in the Deceased's best interests. The Ministry says that this approach is reasonable, consistent with the purposes of FIPPA, and consistent with the intentions of the Legislature.

[32] Contrary to what the applicant says, the Ministry argues that the "best interests" aspect of the s. 5(1)(b) test did not arise in Order F17-04 merely because the adjudicator interpreted s. 5(1)(b) in the context of the CFCSA. Instead, the Ministry points to OIPC orders that predate Order F17-04 which distinguish between access requests made by a representative for the benefit of a deceased individual and requests made for the representative's own purposes.[22] Regarding Order F17-04 in particular, the Ministry points to a footnote in that order which discusses the "best interests" requirement in earlier

[17] Applicant's submission at paras 16-17.
[18] Applicant's submission at paras 40-43.
[19] Applicant's submission at paras 14-19, 22-24, and 31-33.
[20] Order F17-04, 2017 BCIPC 4 (CanLII).
[21] Applicant's submission at paras 25-28.
[22] Ministry's reply submission at paras 10-12, with reference to Order No. 31-1995, 1995 CanLII 830 (BC IPC) and Order 02-44, 2002 CanLII 42478 (BCIPC).

OIPC orders, one of which considered a deceased individual's personal information.[23]

[33] The Ministry says that adopting the applicant's argued approach would permit anyone who qualifies as an "appropriate person" to gain unfettered access to personal information of a deceased individual. The Ministry says that this would frustrate FIPPA's purpose by enabling appropriate persons to gain access to deceased individual's personal information for vindictive reasons or personal gain. The Ministry also argues that s. 22 is not a sufficient safeguard of personal privacy under the applicant's argued approach "because disclosure automatically follows if an applicant is found to be 'acting on behalf of' a deceased."[24]

<u>Analysis and Findings – Issue of "Acting on Behalf" of the Deceased</u>

[34] For the reasons that follow, I decline the applicant's request that I automatically find him to be making his request on behalf of the Deceased on the basis that he is an "appropriate person".

[35] As a starting point, I do not accept the applicant's position that an applicant's status as an "appropriate person" is a complete answer to the issue of whether that applicant has satisfied the requirements of s. 5(1)(b).

[36] Despite the applicant's status as an "appropriate person", he remains capable of making an access request either on his own behalf, on behalf of the Deceased, or on behalf of another person. As the Ministry correctly identifies, past OIPC Commissioners and their delegates have consistently recognized this distinction both before and after Order F17-04 framed the s. 5(1)(b) analysis as a two-step process.[25]

[37] The language in FIPPA and the Regulation also support an approach that separately considers an applicant's authority to make a request and on whose behalf the request is actually made. Section 5(1)(b) requires not only that an applicant provide "written proof of the authority of the applicant to make the request," but also that the applicant be "acting on behalf of another person in accordance with the regulations." A reasonable interpretation of this provision must give some meaning to the words "acting on behalf of".

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[23] Ministry's reply submission at paras 11-13, with reference to Order F17-04, 2017 BCIPC 4 (CanLII) at footnote #8.
[24] Ministry's reply submission at paras 20-23.
[25] Order No. 31-1995, 1995 CanLII 830 (BC IPC) at p 11; Order 02-44, 2002 CanLII 42478 (BC IPC) at para 17; Order F07-21, 2007 CanLII 52746 (BC IPC) at paras 27-28; Order F22-42, 2022 BCIPC 47 (CanLII) at paras 27-29.

[38] Section 5 of the Regulation describes who may act for a deceased individual, but as the applicant points out, it does not describe when or under what circumstances a request is made “on behalf of” a deceased individual.

[39] Notwithstanding the fact that the Regulation does not provide an exhaustive list of criteria as to how appropriate persons can prove that their request is made on behalf of another, I do not think this means that the requirement is automatically satisfied regardless of the timing, purpose, and consequences of the access request in question. In my view, s. 5(2) of the Regulation merely lists the provisions of FIPPA under which an appropriate person may exercise the rights of a deceased person. Consequently, I reject the applicant’s argued approach because I find it is not grounded in a reasonable interpretation of s. 5(1)(b) and the Regulation.

[40] To summarize my findings up to this point, I have found that one issue for determination under s. 5(1)(b) is whether the applicant is “acting on behalf of” the Deceased in making his request. I have also determined that the applicant’s status as an “appropriate person” does not resolve this issue. However, I must now consider whether the “best interests” test applied in past orders is the appropriate approach to resolving this issue.

[41] The applicant objects to the approach of past orders, that is, to consider whether the applicant’s access request was made for the benefit of the Deceased, to further the Deceased’s own goals or objectives, and is in the Deceased’s best interests. I understand that this objection is based on a lack of express statutory provisions containing this language and the inherent difficulties of ascertaining a deceased person’s goals and best interests, particularly in the case of unexpected or sudden deaths. Apart from his suggestion that I disregard this step entirely, the applicant does not clearly identify a different analytical framework that he considers more appropriate.

[42] In Order F17-04, the adjudicator determined that the terms “for” and “on behalf of” a minor child in accessing the child’s access rights, under both FIPPA and the CFCSA, meant acting to benefit the child, to further the child’s own goals or objectives, and in the child’s best interest. I can see that the adjudicator clearly considered the context and purpose of the CFCSA when interpreting these terms.[26]

[43] However, the adjudicator also arrived at their interpretation after considering the dictionary definitions of “for” and “on behalf of”, stating that:

> Dictionary definitions of “for” and “on behalf of” are somewhat circular. For example, definitions of “for” include: “in the interest of”; “to the benefit of”; “on behalf of”; “in place of”; and “representing”. Definitions of “on behalf of”

[26] Order F17-04, 2017 BCIPC 4 (CanLII) at paras 15-17.

> include: "in the interests of"; "as representative of"; "in the best interests"; "for"; "in aid of"; and "in support of".[27]

[44] I have considered the statutory context of s. 5(1)(b), the adjudicator's analysis in Order F17-04, and the circumstances of a deceased person. I am of the view that the context of a minor child is sufficiently similar to that of a deceased person for the adjudicator's interpretation of "on behalf of" to apply in both situations. Both contexts require consideration of the unique circumstances, goals, objectives, access rights, and privacy interests of an individual who lacks the ability to speak for themselves.

[45] Regarding the hypothetical aspect of analyzing a deceased person's objectives and best interests, I am not persuaded that the current approach is unworkable. Findings of fact about a deceased person's beliefs, goals, and objectives are regularly made in legal proceedings such as probate proceedings, estate litigation, and litigation about pre-death contractual obligations. To make such findings, an adjudicator may consider testamentary documents, a deceased person's written instructions and communications, as well as direct evidence provided by people who knew and spoke with the deceased person during their lifetime. In my view, the inherent difficulty of proving that a deceased person held a particular goal or objective does not mean that the deceased person's goals, objectives, benefit and best interests are irrelevant considerations.

[46] Having considered the parties' arguments and the principles discussed above, I conclude that the proper approach to determining whether the applicant makes his request on behalf of the Deceased is the same analytical framework that has been applied in past OIPC orders. I will therefore consider whether the applicant's request was made for the benefit of the Deceased, to further the Deceased's own goals or objectives, or is in the Deceased's best interest.

<u>Analysis and Findings – "Acting on Behalf" of the Deceased</u>

[47] For the reasons that follow, I find that the applicant's request is not made on behalf of the Deceased.

[48] The letter containing the applicant's access request provides the following explanation for why it was made:[28]

> My client is acting for his [child] by seeking information regarding the circumstances of [the Deceased's] death in order to understand how and why [they] died, to bring to light and seek redress for any wrongdoing or misconduct that contributed to his [child's] death, and to prevent similar

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[27] Order F17-04, 2017 BCIPC 4 (CanLII) at para 16, referring to *The Oxford English Dictionary 1991*, *sub verbo* "for", "on behalf of", online: *Oxford English Dictionary.*

[28] Applicant's access request, January 11, 2024.

> premature and tragic deaths in the future. He is acting in his deceased [child's] best interest and not in his personal interest.

[49] In his inquiry submission, the applicant also says that the request is motivated by a desire to understand the Deceased's circumstances of death and to ensure accountability.[29]

[50] Past orders have consistently found that these motivations do not support a finding that the request is made on behalf of the deceased person if there is no persuasive evidence that the deceased person held such objectives or if there is no explanation as to how scrutinizing the records would benefit the deceased person.[30] On this point, the applicant says that furthering accountability and his own understanding of the circumstances of death are in the Deceased's best interest.

[51] The applicant submits that in the case of a deceased person, the best-interests analysis must recognize dignity and accountability as legitimate interests because disclosure would protect against misinformation and address any related institutional wrongdoing.[31] The applicant argues that the accountability purpose of FIPPA is heightened in cases of deaths that occur under a public body's custody. I understand the applicant's position to be that the Deceased's dignity and best interests are better served by transparency and institutional accountability than by withholding the Deceased's personal information.

[52] I agree with the applicant that the things which benefit a deceased person may extend beyond maximizing estate value and achieving goals expressed by that person before their death. Logically, if breaching a deceased person's privacy is harmful to their interests despite that deceased person's inability to directly experience the breach, then similar harm can theoretically result from the inverse, for example, withholding exculpatory information or allowing distasteful rumours to persist. In this sense, I accept that a deceased person may benefit from the protection of their dignity or the integrity of their reputation.

[53] The difficulty in this case is that it is unclear how the applicant's request serves the Deceased's dignity or protects the integrity of their reputation. The applicant has not provided any evidence or explanation to establish that there is any speculation or misinformation surrounding the Deceased's death, or that such speculation is harmful to the Deceased's reputation or dignity.

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[29] Applicant's submission at para 54.
[30] Order F22-42, 2022 BCIPC 47 (CanLII) at para 27; Order F24-22, 2024 BCIPC 28 (CanLII) at paras 19 and 22; Order F23-80, 2023 BCIPC 96 (CanLII) at para 15; Order F24-85, 2024 BCIPC 97 (CanLII) at para 23.
[31] Applicant's submission at paras 52, 54, and 56-58.

[54] I recognize that unanswered speculation may be distressing to the Deceased's survivors. However, that does not persuade me that the Deceased's reputation or dignity are actually in jeopardy or that disclosing the circumstances of death would necessarily protect the Deceased's reputation and dignity.

[55] For these reasons, I am not persuaded that the possibility of unanswered speculation and misinformation, nor the applicant's desire to understand the circumstances of death, establish that the applicant's access request is for the benefit or in the best interest of the Deceased.

[56] Turning to institutional accountability, the applicant has not presented any evidence that persuasively establishes the Deceased held this goal or wanted their personal information to be disclosed to verify and address wrongdoing by the Ministry. In addition, there is no evidence or argument before me that the Deceased held institutional accountability as a goal even in a general sense. In the absence of such corroborating evidence, past orders have rejected this purpose as proof that a request is for the benefit or in the interest of a deceased person,[32] and I draw the same conclusion in this matter.

[57] In coming to this conclusion, I have considered the applicant's argument that the accountability purpose of FIPPA is heightened in cases of deaths that occur under a public body's custody. This is a sensible argument due to the seriousness of the death of a person who is incarcerated. However, the applicant's argument is equally true of FIPPA's other purpose of protecting personal privacy, particularly when the request is for intensely sensitive, personal medical information about the end of an individual's life. I am not persuaded by what the applicant says, that the accountability function of FIPPA is elevated above its privacy protection function in this matter. Similarly, I am not persuaded that the seriousness of the subject matter means that the Deceased's best interests are best served by maximizing institutional accountability at the expense of the Deceased's personal privacy.

[58] For the reasons given above, I conclude that the applicant is not acting on behalf of the Deceased in making his access request.

Conclusion, s. 5(1)(b)

[59] I determined that the applicant is an appropriate person to make access requests on behalf of the Deceased. However, having concluded that the applicant's access request is not made to benefit the Deceased, to achieve the Deceased's goals or objectives, or otherwise in the Deceased's best interest, I find that the applicant is not acting on behalf of the Deceased in making the access request at issue. Consequently, I will review the Ministry's severing

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[32] Order F24-05, 2024 BCIPC 7 (CanLII) at paras 25-26; Order F23-80, 2023 BCIPC 96 (CanLII) at paras 15-16; and Order F22-42, 2022 BCIPC 47 (CanLII) at paras 27-29.

decisions on the basis that the applicant makes his access request on his own behalf.

UNREASONABLE INVASION OF THIRD-PARTY PRIVACY – s. 22

[60] I determined that the applicant did not make the access request on behalf of the Deceased, therefore, I will now consider whether giving the applicant access to the records in dispute would be an unreasonable invasion of third-party personal privacy. If so, the Ministry must withhold that information under s. 22(1).

[61] The Ministry applied s. 22 to information on 89 pages of records. The severed information includes various details about events at a correctional institution across several days, biographical information from the Deceased's correctional file, and information about a specific incident involving the Deceased. The records containing this information include investigative reports, incident reports created by correctional officers, handwritten notes, photographs, and daily log entries. In some cases, the Ministry withheld the same information under both ss. 22 and 15.

[62] Past orders have established a four-step analytical approach to s. 22, which I will follow in this matter.[33]

Section 22(1) – Personal Information

[63] The first step in the s. 22 analysis is to determine whether the information in dispute is "personal information" within the meaning of FIPPA.

[64] Schedule 1 of FIPPA defines personal information as "recorded information about an identifiable individual other than contact information." Contact information is defined as "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual."

[65] The Ministry withholds names, titles and employee numbers of a police officer, many correctional employees, and several inmates. Some of this information is withheld in part and other information is withheld in full.

[66] The information relating to inmates is not intended to enable them to be contacted for a business purpose, so I find it is not contact information.

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[33] Each step of the analytical approach to s. 22 is described in greater detail in Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.

[67] Some of the names and badge numbers appear in the context of the CIR. Past Orders have repeatedly held that information arising in the context of a workplace investigation is not contact information.[34] While the primary focus of the CIR was not employee discipline, it was an investigation into a serious workplace incident which considered whether, and to what extent, any wrongdoing occurred. This context entails far more than simply enabling an individual to be contacted for a business purpose, so I find that none of the withheld correctional employees' names, badge numbers, email addresses or phone numbers are contact information wherever they appear in the context of CIR.

[68] The context in which the remaining correctional employees' names are located reveals other information, for example, the reasons for absences from work, details about employment discipline or injuries, and actions taken by specific employees. The applicant argues that this information is not personal information because it simply describes how a public body carries out its institutional functions.[35] Despite the information being about the Ministry's functions, it is nonetheless personal information because it is about identifiable individuals who carried out those functions. I will consider the applicant's reasoning further in the s. 22(4)(e) analysis below.

[69] The Ministry withheld one police officer's name and badge number. This information was clearly intended to enable that officer to be contacted for the purpose of any required follow-up between the correctional institution and the relevant police department. In this instance, I find that the officer's name and badge number are contact information so it may not be withheld under s. 22(1).[36]

[70] Next, the Ministry withheld some information from a standard form which instructs the reader about their options for disputing an administrative decision taken by the correctional institution. This information reveals nothing about any identifiable individuals, so I find that it is not personal information.[37]

[71] Finally, I find that all of the other information the Ministry withheld under s. 22 is personal information because it is about identifiable, individual inmates at a correctional institution. This information consists of descriptions of events, biographical information, descriptions of inmates' interactions with the court and correctional systems, assessments of correctional employees' compliance with protocols, and descriptions of medical conditions and treatments. For clarity, this information includes information about the Deceased, other identifiable individual inmates, as well as correctional and healthcare employees.

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[34] Order F23-33, 2023 BCIPC 39 (CanLII) at para 60; Order F20-13, 2020 BCIPC 15 at para 42; and Order F20-08, 2020 BCIPC 9 at para 52.
[35] Applicant's submission at paras 77-78.
[36] The records at p 29.
[37] The records at p 71.

[72] The Ministry is not required to withhold under s. 22(1), any of the information I have determined to not be personal information.

Section 22(4) - Not an Unreasonable Invasion of Privacy

[73] The second step of the analysis is to consider s. 22(4), which sets out circumstances where disclosure is not an unreasonable invasion of a third party's personal privacy. If the information falls into one of the circumstances listed at s. 22(4), then s. 22(1) does not apply and the Ministry is not required to withhold it on that basis.

[74] The Ministry says that it considered all of the s. 22(4) subsections and concluded that none of them apply. The applicant raises s. 22(4)(e) as an applicable circumstance.

<u>Information About a Third Party's Position or Functions – s. 22(4)(e)</u>

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

[76] Past orders have found that s. 22(4)(e) applies to information about a public body employee's job duties in the normal course of work, including objective, factual information about what the individual said or did while discharging their job duties. However, if the information at issue appears in a context that reveals more than just the third party's name, job title, duties, functions, remuneration, position, or what they did in the normal course of their work, then s. 22(4)(e) may not apply.[38]

[77] The applicant argues that some of the disputed information likely falls under s. 22(4)(e) because it relates to objective, factual statements about what correctional institution employees did in the ordinary course of discharging their job duties.[39]

[78] In reply, the Ministry says that the information in question does not only state the functions of a correctional officer but rather includes qualitative descriptions of how individually identifiable employees carried out work-related obligations on the day the Deceased died, including whether they complied with the applicable policies and procedures. The Ministry characterizes this

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[38] Order F23-28, 2023 BCIPC 32 (CanLII), at paras 41-42.
[39] Applicant's submission at paras 80-81, 93, and 108.

information as relating to employment history under s. 22(3)(d) instead of information about the employees' duties and functions.[40]

[79] Some of the information about correction officers is objective, factual information about what an individual said or did while discharging their job duties. For example, some information reveals the fact that correctional employees provided emergency medical treatment to the Deceased but does not reveal the precise nature or quality of that treatment. I also note that this information reveals nothing else about any third parties that is not already clear from the unsevered portions of the records. I find that s. 22(4)(e) applies and the Ministry may not withhold this information under s. 22(1).[41] I will not consider this information further in my analysis below.

[80] The remaining information about correctional employees' actions also reveals the personal information of individual inmates or includes a qualitative assessment of employees' compliance with institutional policies. Considering that this information reveals far more than objective, factual information about what the correctional employees said or did in the ordinary course of their job duties, I find that s. 22(4)(e) does not apply to it.

Section 22(3) – Presumed to be Unreasonable Invasion of Privacy

[81] The third step of the s. 22 analysis is to consider whether any of the presumptions listed at s. 22(3) apply. Section 22(3) lists circumstances in which disclosure of personal information is presumed to be an unreasonable invasion of personal privacy.

[82] The parties raise ss. 22(3)(a), (d), and (i) as relevant circumstances.

<u>Medical, Psychiatric or Psychological History – s. 22(3)(a)</u>

[83] Section 22(3)(a) states that disclosure is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment, or evaluation.

[84] The Ministry says that s. 22(3)(a) applies to a significant amount of the disputed information. The Ministry explains that much of the disputed information is about the Deceased or other third parties' medical histories, including details about their physical and mental health, medical treatments, and specific information about the Deceased's cause of death.[42]

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[40] Ministry's reply submission at paras 27-30.
[41] The records at pp 38, 39, 49, 57, 58, 61, 62, 73, 92, 93, 94, 95, 104, 106, 107, and 108.
[42] Ministry's initial submission at paras 107-109.

[85] The applicant accepts that s. 22(3)(a) likely applies to some of the Deceased's information but argues that the presumption is overcome by circumstances that I will discuss under the s. 22(2) stage of the analysis.[43]

[86] Based on my review of the disputed information, I can see that much of it consists of the Deceased's medical and psychological history, including conditions, treatments, and circumstances of death. I also see that a small amount of information relates to other third parties' medical information. Consequently, I find that s. 22(3)(a) applies to this information and disclosing it is presumptively an unreasonable invasion of third-party personal privacy.

Employment, Occupational or Educational History – s. 22(3)(d)

[87] Section 22(3)(d) states that disclosure is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to the employment, occupational, or educational history of a third party.

[88] The Ministry argues that s. 22(3)(d) applies to all information about the employees that relates to the event of the Deceased's death. The Ministry explains that this event involved a formal investigation into employee compliance with policies and procedures, namely, the CIR. While employee discipline was not the focus of the CIR, the Ministry explains that findings from such investigations may disclose "just cause for employee discipline."[44]

[89] The Ministry points to past OIPC orders which found s. 22(3)(d) to apply to information created during a complaint investigation or disciplinary matter in the workplace. Those orders considered similar types of records and information to what is at issue in this matter, for example, witness statements, investigator observations, written reports, notes and findings.[45]

[90] In response, the applicant says that much of the information in the records concerns how the Ministry and its employees carried out institutional duties, rather than the personal employment history of specific employees. The applicant says that unlike an investigation initiated by a complaint about an employee's conduct, the purpose of the CIR was not about allegations against a particular employee or to determine whether disciplinary action should be imposed. Rather, the applicant argues that the CIR was a systemic review intended to understand the circumstances of a serious incident (the Deceased's death) and to assess whether institutional policies and procedures were followed.[46]

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[43] Applicant's submission at paras 84-85.
[44] Ministry's initial submission at paras 111-112.
[45] Ministry's initial submission at para 113.
[46] Applicant's submission at paras 86-92.

[91] Finally, the applicant says that information about the correctional employees' actions should not be considered their employment history under s. 22(3)(d) merely because it appears in the context of the CIR. The applicant says that this information is best characterized as objective factual accounts of how an incident unfolded rather than information about their individual employment history.[47]

[92] The applicant's arguments primarily apply to the personal information that I already decided is excluded from s. 22(1) because s. 22(4)(e) applies to it. Most of the personal information that remains at issue, which is generally information that is purely about inmates, does not relate to any third party's employment, occupational, or educational history so s. 22(3)(d) does not apply to it.

[93] Finally, there is a small amount of information about employees' reasons for absences from work and information is about an employee's failure to comply with a correctional policy immediately after the events that led to the Deceased's death. Although the employee's non-compliance is somewhat trivial, the information is nonetheless a qualitative assessment of the employee's job performance. I find that this information relates to a third party's employment history, therefore, s. 22(3)(d) applies to it and disclosure is presumptively an unreasonable invasion of the relevant correctional employee's personal privacy.

Origin, Sexual Orientation, Beliefs or Affiliations - s. 22(3)(i)

[94] Section 22(3)(i) says that disclosing personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information indicates a third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

[95] The Ministry says that some of the disputed information would reveal the kind of information about the Deceased that is captured by s. 22(3)(i).[48] The Ministry received permission from the OIPC to provide this aspect of its submission *in camera*, so I am aware of the characteristic but the applicant is not.[49]

[96] Based on my review of the relevant records, I find that s. 22(3)(i) applies to the information the Ministry identifies because it reveals information about the Deceased which falls into one or more of the categories indicated by that provision.

[97] The applicant argues that the Ministry's failure to identify which personal characteristic is at issue under s. 22(3)(i), "undermines the transparency and

[47] Applicant's submission at paras 93-97.
[48] Ministry's initial submission at paras 114-115.
[49] Adjudicator's letters to the parties, March 25 and April 9, 2026.

integrity of the process as it prevents the Applicant from making arguments that could rebut this presumption."[50]

[98] I understand that the applicant's task is complicated by not knowing which specific s. 22(3)(i) category the information in dispute is withheld under. However, the applicant is not prevented from rebutting the presumption because the applicant can still provide general arguments about why disclosing the kind of characteristics listed under s. 22(3)(i) would not be an unreasonable invasion of the Deceased's personal privacy. Furthermore, in this case the act of revealing the specific s. 22(3)(i) characteristic would also enable the applicant to accurately infer what the disputed information is.

[99] Having considered the applicant's ability to rebut any presumptions established under s. 22(3), and in light of my inability to reveal the s. 22(3)(i) characteristic without also enabling inferences of the information, I find that this approach is not unfair to the applicant.

[100] To summarize my analysis up to this point, I have determined that almost all of the disputed personal information that is not excluded under s. 22(4)(e) is subject to at least one presumption under s. 22(3). What remains not subject to a presumption is relatively innocuous information about actions taken by the Deceased during their incarceration and prior to the events that led to their death.

Section 22(2) – All Relevant Circumstances

[101] The final step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those listed in s. 22(2). It is at this stage that the applicant may rebut the presumptions established under ss. 22(3)(a), (d), and (i).

[102] The Ministry and applicant raise ss. 22(2)(a), (e), (f), (h), (i), the sensitivity of the information, and the applicant's existing knowledge as relevant circumstances.

<u>Subject the activities of a public body to public scrutiny - s. 22(2)(a)</u>

[103] Section 22(2)(a) asks whether the disclosure is desirable for the purpose of subjecting the activities of a public body to public scrutiny. The purpose of s. 22(2)(a) is to foster accountability of a public body as opposed to scrutinizing individuals or third parties.[51]

[104] The Ministry argues that its existing disclosure appropriately balances its accountability as a public body with the privacy rights of third parties. The

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[50] Applicant's submission at paras 98-99.
[51] Order F16-14, 2016 BCIPC 16 (CanLII), at para 40.

Ministry also notes that the existence of other completed investigations by the police, Coroner's Service, and the Investigation and Standards Office (an independent body operating primarily under the Ministry of Attorney General).[52]

[105] In response, the applicant argues that in cases where the government has assumed custody and an individual dies in that custody, the public interest in understanding how the government exercised that responsibility is extremely high. The applicant argues that there is an enhanced expectation of transparency under these circumstances which warrants disclosing the records in order to subject the actions of the Ministry to scrutiny. Without disclosure, the applicant says that the Ministry's conduct cannot be meaningfully scrutinized and the objectives of transparency and accountability underlying FIPPA are unfulfilled.[53]

[106] In my view, s. 22(2)(a) is not about the sufficiency of other investigative processes to achieve public scrutiny, nor is disclosure under FIPPA a replacement for those processes. Section 22(2)(a) simply asks whether disclosing the personal information at issue in this specific case, is desirable for subjecting the activities of a public body to public scrutiny.

[107] Some of the personal information I am considering, in particular the information that is about both the Deceased and correctional employees, would clearly assist the applicant and other members of the public to scrutinize the Ministry's actions during the events that resulted in the Deceased's death. I accept that the seriousness of a death in custody is an issue that can be expected to attract a high level of warranted public scrutiny.

[108] The fact that other entities have scrutinized these actions does not mean that disclosure would not enhance <u>the public's</u> ability to scrutinize them as well. Furthermore, it is not clear from the parties' submissions whether any reports, findings, or conclusions of the other investigations have ever been publicly released.[54] For these reasons, I find that s. 22(2)(a) is a factor that favours disclosing this information.

[109] The other personal information I am considering is not sufficiently connected to the circumstances of the Deceased death to be desirable for subjecting the Ministry's activities to public scrutiny, and I do not see how it is desirable for that purpose on any other basis.

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[52] Ministry's initial submission at paras 121-122.
[53] Applicant's submission at paras 103-105.
[54] Past orders have concluded that disclosure would not add meaningfully to the public's understanding of an issue if other investigations have already enabled public scrutiny of the same issue: Order F09-19, 2009 CanLII 63567 (BC IPC) at para 22; Order F15-62, 2015 CanLII 68 (BCIPC) at paras 29-30.

Unfair Exposure to Financial or Other Harm - s. 22(2)(e)

[110] Section 22(2)(e) asks whether disclosure will unfairly expose a third party to financial or other harm. Previous orders have said that s. 22(2)(e) can apply to mental harm if it constitutes "serious mental distress or anguish or harassment."[55] However, embarrassment, upset, or negative reactions fall below the required level of mental harm.[56]

[111] The Ministry does not refer to s. 22(2)(e) in its submissions, however, the Ministry argues that disclosure would expose third-party public body employees and their families to targeted intimidation, retaliation or harassment insofar as that disclosure exposes their full names. The Ministry explains that violent encounters are common in correctional facilities and that many inmates have affiliations with organized crime or histories of directly harming others.[57]

[112] The Ministry's affidavit evidence from its Assistant Deputy Warden (ADW) also indicates that the Deceased's death resulted in serious mental distress among some third parties. The same affidavit evidence sets out the ADW's opinion, belief, and explanation that disclosing the personal information about correctional employees would cause some third-party individuals significant mental distress.[58] Finally, the ADW's affidavit evidence also explains that identifying correctional employees by their full names would enable their identification outside the custodial setting, thereby exposing the employees and their families to a reasonably foreseeable risk of targeted intimidation, retaliation, or harassment by released inmates and their affiliates.[59]

[113] The applicant argues that the Ministry has not sufficiently explained how disclosure would harm any third parties to the level of serious mental distress, anguish or harassment. The applicant submits that the Ministry's affidavit is tantamount to a bare assertion that any disclosure would cause some individuals significant mental distress. The applicant argues that this is not sufficient to establish how disclosure would lead to that harm, particularly in the case of information about actions taken by correctional employees in the course of their duties.[60]

[114] Having considered the parties' arguments and evidence, I am not persuaded that disclosing any of the information I am considering can be reasonably expected to expose any third parties to a level of mental harm that constitutes serious mental harm, distress, or anguish. The Ministry's evidence

[55] Order 01-37, 2001 CanLII 21591 (BC IPC) at para 42.
[56] Order 01-15, 2001 CanLII 21569 (BC IPC), at paras 49-50; Order F20-37, 2020 BCIPC 43 (CanLII), at para 120.
[57] Ministry's initial submission at paras 70-72.
[58] Affidavit #1 of Assistant Deputy Warden, Standards, at paras 54, 58-59.
[59] *Ibid.,* at para 45.
[60] Applicant's submission at paras 106-108.

and submissions (some of which I received *in camera*), as well as the facts surrounding the Deceased's death, satisfy me only that disclosure would expose some third parties to a moderate amount of upset and negative reactions which is not sufficient to meet the requirements of s. 22(2)(e). Moreover, the Ministry does not sufficiently or persuasively explain why disclosure would have this effect on certain third parties, beyond the ADW's belief that it would. Therefore, I find that this factor does not weigh against disclosure for the vast majority of the information I am considering.

[115] On the other hand, I accept the evidence from the ADW that correctional employees with inmate-facing roles who become identifiable by their full names will be exposed to unfair harassment outside the custodial setting. I find the ADW's explanation of why he expects this harm to result from disclosure is sensible, grounded in fact, and consistent with the Ministry's severing decisions. Therefore, I find that disclosing the severed names or initials of third-party correctional employees can be reasonably expected to expose them to unfair harassment and significant mental distress. Consequently, s. 22(2)(e) weighs against disclosing this information.

Supplied in confidence – s. 22(2)(f)

[116] Section 22(2)(f) asks whether the personal information was supplied to the public body, explicitly or implicitly, in confidence. If it was, this circumstance weighs in favour of withholding the information. To establish that s. 22(2)(f) applies, there must be evidence that an individual supplied the information at issue and did so with an objectively reasonable expectation of confidentiality when the information was supplied.[61]

[117] The Ministry argues that interviewed witnesses and employees who submitted reports understood that the information they supplied would be confidential, and that witnesses for the purposes of the CIR were explicitly told that their interviews would be confidential. For this reason, the Ministry says that s. 22(2)(f) is a factor that favours withholding the disputed information.[62]

[118] The applicant says that the fact that interviews may have been conducted on a confidential basis does not mean the entire CIR report consists of confidential information, and notes that the Ministry has not particularized which information was supplied in confidence.[63]

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[61] Order F11-05, 2011 BCIPC 5 (CanLII) at para 41, citing Order 01-36, 2001 CanLII 21590 (BC IPC) at paras 23-26.
[62] Ministry's submission at paras 123-125.
[63] Applicant's submission at para 110.

[119] The applicant also argues that some records, such as incident reports and logbook entries, are mandatory records created in the ordinary course of an employee's job duties and should not be considered supplied "in confidence".[64] The applicant distinguishes between information that is supplied and operational information that is gathered or created by an employee of a public body in the course of their duties. The applicant submits that the personal information at issue is more appropriately characterized as the latter.[65]

[120] I recognize that some of the disputed personal information is purely a record of what a correctional employee did or said in the ordinary course of their duties. However, I determined that s. 22(4)(e) applies to this information so it is not included in this part of the s. 22 analysis.

[121] The personal information that I am considering consists of, or is inextricably intertwined with, personal information of correctional employees, the Deceased and other inmates. I can see that much of this information was supplied to the Ministry by correctional employees, for example, by providing interview answers as witnesses or by entering information into standard forms that are used to record incidents.

[122] Turning to whether the information was supplied in confidence, the ADW deposes that the witnesses for the CIR were told that their interviews were confidential and that they must not discuss their interviews with anyone except their union representative. The ADW also deposes that the incident reports the employees generated "are confidential" and that the employees are trained to view and treat such reports as confidential.[66] In examining the disputed records themselves, there are no meaningful indicia of confidentiality (including the information sheet provided to interviewees) apart from a boilerplate statement on the CIR report that the report itself is confidential.

[123] Taking the circumstances discussed above into account, I am satisfied that the correctional employees supplied personal information for the purposes of the CIR under a reasonable belief that it would be treated with strict confidence and used only for the purpose of the CIR and related investigations. For the individual incident reports, I am similarly satisfied that the correctional employees supplied the personal information in those reports under a reasonable belief that it would be used only for purposes relating to that incident. There is no indication in either case that the employees believed this information would be disclosed broadly or treated as anything other than confidential.

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[64] Applicant's submission at para 111.
[65] Applicant's submission at paras 112-114.
[66] Affidavit #1 of Assistant Deputy Warden, Standards, at para 55.

[124] While the Ministry does not precisely indicate which personal information was supplied by a correctional employee as opposed to collected by some other means, I find that this distinction can be readily drawn from the nature of the information at issue. Almost all of the personal information severed under s. 22(1) from the CIR and the incident reports could only be known by direct witnesses or participants in the events surrounding the Deceased's death. Moreover, the CIR report also contains language explaining which correctional employee supplied certain explanations and observations.

[125] After considering these circumstances and the parties' arguments, I find that the personal information in the individual incident reports and the personal information provided by CIR interviewees that is contained in the CIR report, is information that was supplied by correctional employees under a reasonable expectation of confidentiality. Consequently, I find that this is a factor which weighs against that information's disclosure. The exception to this finding within the CIR is a small amount of personal information which I can see was taken from the Deceased's intake forms and general correctional records.

[126] I am not satisfied that the other personal information in dispute was supplied in confidence considering the absence of persuasive evidence or circumstances to draw that conclusion.

Unfair Damage to Reputation - s. 22(2)(h)

[127] Section 22(2)(h) asks whether disclosing the disputed personal information would unfairly damage the reputation of any person referred to in the records. If so, this favours withholding the information.

[128] Section 22(2)(h) has two requirements. First, the information must damage an individual's reputation. Second, the damage to that individual's reputation must be unfair.[67]

[129] The Ministry argues that disclosing any of the personal information at issue may unfairly damage the reputations of inmates, correctional employees, or the Deceased. The Ministry explains that:

- In the case of the inmates and the Deceased, stigma attaches to criminal charges and the behaviours described in the records;
- In the Deceased's case specifically, stigma is associated with the nature and circumstances of the Deceased's death; and

[67] Order F19-02, 2019 BCIPC 2 at para 69; Ministry's initial submission at para 112.

- In the case of the correctional employees, disclosing the effects they experienced following their involvement in the circumstances of the Deceased's death may unfairly damage their reputation.[68]

[130] Finally, the Ministry says that the reputational damage it describes would be unfair because none of the relevant third parties have had notice of the disclosure or an opportunity to explain or defend their behaviour.[69]

[131] The applicant argues that "societal stigma regarding criminal charges, convictions and behavioural issues is not sufficient" to meet the s. 22(2)(h) threshold, and that information regarding a person's criminal charges is already accessible online through the BC Court Service's website.

[132] Regarding the information about the correctional employees' job performance, the applicant argues that any damage to their reputations resulting from disclosure would not be unfair. The applicant submits that "accountability requires transparency," and that information describing how public employees carried out their official duties cannot be said to be "unfair" merely because it may reflect negatively on those actions.[70]

[133] Some of the personal information I am considering is about inmates and their criminal charges, correctional offences, medical or psychological conditions, and behaviours. I accept that disclosing information about an individual's incarceration can harm their reputation given that incarceration is inevitably intertwined with allegations of criminal activity. In light of what the disputed information reveals about the third-party inmates and the various stigmas that can reasonably be expected to apply to their incarceration, I find that disclosing this information may expose the inmates to reputational harm.

[134] I disagree with the applicant's argument that the existence of the BC Court Services website means that no additional reputational harm would follow disclosure. The information before me is more detailed and complete than what is found in the public record. Moreover, the information before me is not limited to court appearances, charges, and convictions in BC. For example, I can see that some of the inmates' criminal charges were laid in other Canadian jurisdictions whereas the relevant inmates were being temporarily held in BC pending extradition. In addition, some correctional offences and behaviours are not addressed by the BC court system at all so they would not be publicly accessible on a court services website as the applicant says.

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[68] Ministry's initial submission at paras 126-130.
[69] Ministry's initial submission at para 131.
[70] Applicant's submission at paras 115-119.

[135] The third-party inmates are largely unable to contextualize or defend themselves against the reputational damage that would follow disclosure. Furthermore, not all of the charges and behaviours indicated by the disputed information are associated with convictions because some inmates are being held pending their trials.[71] For these reasons, I also find that the reputational harm would be unfair.

[136] In summary, I find that s. 22(2)(h) weighs against disclosing the personal information that relates to third party inmates' behaviour, medical or psychological conditions, or criminal charges.

[137] For the rest of the personal information I am considering, I do not think that disclosure can be reasonably expected to lead to any third parties incurring unfair reputational harm. For example, there is only a small amount of personal information which indicates that a correctional employee failed to adhere to established correctional procedures, and in that case, it was a relatively minor administrative error which is not causally linked to anyone's physical harm or death. Additionally, the information about the correctional employees' personal reactions to the Deceased's death does not, in my view, reveal anything that would attract stigma or unfair reputational harm at all. Therefore, I find that s. 22(2)(h) does not weigh against disclosing this information.

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

[138] Section 22(2)(i) asks whether the information is about a deceased person, and if so, whether the length of time the person has been deceased indicates that the disclosure is not an unreasonable invasion of the deceased person's personal privacy.

[139] FIPPA does not specify the length of time after which disclosing a deceased individual's personal information will not be an unreasonable invasion of privacy. Previous OIPC orders have found that an individual's personal privacy rights are likely to continue for at least 20 to 30 years after they have passed away.[72]

[140] The Ministry argues that s. 22(2)(i) does not weigh in favour of disclosure of the Deceased's personal information because they died only approximately four years ago.[73] The applicant argues that, notwithstanding the Deceased's relatively recent death, the public interest in timely scrutiny in this case should outweigh any concern arising from the recency of the death.[74]

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[71] Ministry's initial submission at para 14.
[72] Order F18-08, 2018 BCIPC 10 (CanLII) at paras 31-32; Order F14-09, 2014 BCIPC 11 (CanLII) at paras 30-33; Order F23-92, 2023 BCIPC 108 (CanLII) at paras 60-62.
[73] Ministry's initial submission at paras 135-137.
[74] Applicant's submission at paras 120-121.

[141] Several past OIPC orders have found s. 22(2)(i) does not apply when the deceased individual has been dead for approximately two years.[75] I agree that this short length of time since the Deceased's death usually means the Deceased's privacy rights under FIPPA have not diminished to such a degree that there are no longer any privacy concerns about disclosing the Deceased's personal information. On this basis, I find that the fact the Deceased is dead does not weigh in favour of disclosing their personal information.

<u>Sensitivity</u>

[142] Past orders have found that information's lack of sensitivity can weigh in favour of disclosure, whereas information's highly sensitive character may favour disclosure.[76]

[143] The Ministry argues that most of the disputed personal information is sensitive, in particular, where a presumption against disclosure applies or where disclosure would result in unfair reputational damage.[77] The Applicant argues this factor should receive little weight considering that substantial public interest concerns favouring disclosure.[78]

[144] In my view, most of the personal information I am considering is of a highly sensitive nature, including inmates' interactions with the legal system, medical information, psychological information, and other deeply personal characteristics that are relevant to the management of their incarceration. In many cases, the personal information is about the mechanism and circumstances of the Deceased's death which is relevant to all of these sensitive categories of information at once. Consequently, I find that the high sensitivity of nearly all the personal information I am considering weighs against its disclosure.

<u>Applicant's Existing Knowledge</u>

[145] While not listed in s. 22(2), past orders have considered whether the applicant's pre-existing knowledge of the information in dispute weighs in favour of disclosure.[79]

[146] The Ministry accepts that the applicant may know some information about the Deceased's death. However, the Ministry says that this does not weigh in favour of disclosure in this case because disclosure under FIPPA is considered

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[75] Order F23-92, 2023 BCIPC 108 (CanLII) at paras 62-63 and Order F15-36, 2015 BCIPC 39 (CanLII) at paras 29-30.
[76] Order F25-89, 2025 BCIPC 103 (CanLII) at para 51; Order F16-52, 2016 BCIPC 58 (CanLII) at para 91; Order F19-15, 2019 BCIPC 17 at para 99.
[77] Ministry's initial submission at para 138.
[78] Applicant's submission at para 124.
[79] Order F18-48, 2018 BCIPC 51 at para 27; Order F20-22, 2020 BCIPC 26 at para 51.

disclosure to the entire world, and the world does not currently know of the disputed personal information which includes the personal information of third parties beyond the Deceased.[80]

[147] The applicant submits this factor weighs in favour of disclosure as he is already aware of much of the medical, psychiatric, and criminal history of the Deceased, who is his child.[81] After considering the nature of the disputed personal information of the Deceased, I find that the applicant's existing knowledge weighs in favour of disclosing some of the Deceased's personal information.

[148] At the same time, the applicant has not established that he is aware of the circumstances of the Deceased's death or that he is already aware of some of Deceased's personal characteristics which the disputed information would reveal. Therefore, the applicant's existing knowledge does not support disclosure for all of the Deceased's personal information.

<u>Applicant's motives for requesting the Deceased's personal information</u>

[149] It is apparent from the applicant's submission that he is seeking the information in dispute because he has questions about how and why the Deceased died.

[150] In past orders, the OIPC has held that an access applicant's motives weigh in favour of disclosure where the applicant is seeking information to deal with the aftermath of a family member's death, including to better understand the circumstances surrounding the death or to hold the public body accountable.[82]

[151] Consistent with past OIPC orders, I find the fact that the applicant has questions and concerns about the causes of the Deceased's death is a factor that favours disclosing some of the disputed personal information. Specifically, this finding applies to the disputer personal information that would help the applicant understand the circumstances surrounding the Deceased's death.

Section 22(1) - Conclusion

[152] I determined that a small amount of information is contact information so it is not personal information and may not be withheld under s. 22(1). Additionally, I found that some of the personal information at issue is about what a public body employee did or said in the ordinary course of their duties, but does not reveal anything else about any individual third parties. Therefore, disclosure would not

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[80] Ministry's submission at paras 139-141.
[81] Applicant's submission at para 124.
[82] Order F15-36, 2015 BCIPC 39 (CanLII) at para 31; Order F23-92, 2023 BCIPC 108 at para 64; Order F24-05, 2024 BCIPC 7 (CanLII) at para 51.

be an unreasonable invasion of third-party personal privacy under s. 22(4)(e) and the Ministry is not required to withhold this information under s. 22(1).

[153] Nearly all of the rest of the disputed personal information is subject to at least one presumption that disclosure would constitute an unreasonable invasion of personal privacy under s. 22(3). The reason for this finding is that almost all of the information is about one or more third parties' medical history, employment history, or indicates a characteristic about their ethnic origin, sexual orientation, beliefs or affiliations.

[154] There are additional factors I determined to weigh against disclosure. Some of the personal information is sensitive and would expose third-party inmates to unfair reputational harm if disclosed. Additionally, some of the personal information would expose third parties to harassment if disclosed.

[155] On the other hand, weighing in favour of disclosure are my findings that the applicant is aware of some of the disputed information and that disclosure is desirable for subjecting the activities of the Ministry and its branch, BC Corrections, to public scrutiny. The applicant's motive for making his request - to understand the circumstances of the Deceased's death - also weighs in favour of disclosure.

[156] Taking all of the circumstances, arguments, and evidence discussed above into consideration, I find that disclosure would constitute an unreasonable invasion of third-party personal privacy for almost all of the personal information at issue. The Deceased, inmates, and correctional employees all have privacy interests in the disputed personal information, several presumptions against disclosure apply to this information, and I am persuaded that disclosure would expose those third parties to a variety of harms in the unique circumstances of this case.

[157] I recognize the applicant's argument that institutional accountability requires transparency and that the protection of personal information cannot be allowed to supersede institutional accountability in all cases, particularly where the underlying issue is as extremely serious as a death in custody. However, the seriousness of the underlying event does not mean that all personal information must be disclosed in the pursuit of institutional accountability, especially sensitive medical information or personal information that would unfairly expose third parties to considerable harm. In my view, the Ministry's careful severing reflects a serious attempt to respond to the applicant's request while protecting the personal privacy of third parties.

[158] Subject to a few limited exceptions, I find that disclosure of all the personal information that is not excluded under s. 22(4)(e) would constitute an unreasonable invasion of third-party personal privacy so the Ministry is required

to withhold it under s. 22(1). The exceptions include personal information that is innocuous and would not unreasonably invade anyone's personal privacy if disclosed, so the Ministry is not required to withhold it under s. 22(1).[83]

DISCLOSURE HARMFUL TO LAW ENFORCEMENT – s. 15

[159] Section 15 of FIPPA aims to prevent harm to law enforcement that could reasonably be expected to result from the disclosure of information.

[160] The Ministry withholds a significant amount of the disputed information under both ss. 22(1) and 15. The information that I confirmed the Ministry must withhold under s. 22(1) includes all of the information simultaneously withheld under both sections. Therefore, in this s. 15 analysis I will only consider the information that is not withheld under s. 22(1).[84] Generally, this information is about schedules, correctional institution operations, and routine actions performed by correctional employees at specific times. I will refer to this information as the "Remaining Information".

[161] The Ministry applies ss. 15(1)(f) and 15(1)(l) which state as follows:

> 15 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
>
> …
>
> (f) endanger the life or physical safety of a law enforcement officer or any other person,
>
> …
>
> (l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

Reasonable Expectation of Harm

[162] Section 15 is about the harm that could reasonably be expected to arise from disclosure. The phrase "could reasonably be expected to" establishes a standard of proof that is a middle ground between that which is merely possible and that which is probable.[85] In addition, there must be a clear and direct connection between the disclosure of the withheld information and the anticipated harm.[86] The amount and quality of the evidence required will vary

[83] The records at pp 92 and 105.
[84] The small amount of information that I determined may not be withheld under s. 22(1) was not simultaneously withheld under ss. 15(1)(f) or (l).
[85] *Merck Frosst Canada Ltd v Canada (Health)*, 2012 SCC 3 (CanLII) at para 201 [*Merck Frosst*].
[86] Order 02-50, 2002 CanLII 42486 (BC IPC) at para 137; Order F13-06, 2013 BCIPC 6 (CanLII) at para 24.

depending on the nature of the issue and the "inherent probabilities or improbabilities or the seriousness of the allegations or consequences".[87]

[163] Finally, the anticipated harm must be considered in light of the principle that disclosure to an access applicant should be considered a disclosure to the world.[88]

Sections 15(1)(f) and 15(1)(l), Harm to Person or System

[164] Section 15(1)(f) says that a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person.

[165] Section 15(1)(l) says that a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm the security of any property or system, including a building, a vehicle, a computer system, or a communications system. While FIPPA does not define the term "system", past orders have interpreted it to include "a series of clear security principles or procedures," which I will adopt for this analysis.[89]

[166] The Ministry combines its submissions with respect to both ss. 15(1)(f) and 15(1)(l). Given the similar mechanism of harm raised by the Ministry, I will consider both provisions simultaneously in my analysis below.

Parties' Submissions, ss. 15(1)(f) and 15(1)(l)

[167] The Ministry argues that disclosure can be reasonably expected to endanger the lives and physical safety of correctional employees, inmates, and members of the public. The Ministry explains that disclosing the withheld operational and security system details would provide detailed insight into the daily operational rhythms of the correctional institution which could reasonably be expected to compromise both individual safety and institutional security.[90]

[168] The Ministry provides examples of specific ways in which the Remaining Information may be used by inmates or their affiliates, including identifying gaps in supervision, locations and times in which correctional employees congregate, staffing levels and activities at specific times or during unusual events at the institution, and the precise roles and identities of specific correctional employees. The Ministry explains that this type of knowledge can be used to facilitate or

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[87] *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para 54, citing *Merck Frosst*, *supra* note #85 at paras 94 and 195-206. See also: Order F08-02, 2008 CanLII 70316 (BC IPC) at para 48.
[88] Order 03-33, 2003 CanLII 49212 (BC IPC) at para 44.
[89] Order F16-52, 2016 BCIPC 58 (CanLII) at para 37. See also Order F21-01, 2021 BCIPC 1 (CanLII) at para 36.
[90] Ministry's initial submission at paras 45-49.

enable violence and escape attempts or interfere with the management of contraband.[91]

[169] In support of its position, the Ministry provides affidavit evidence from the Ministry's Privacy Analyst who provides statistical information about the volume and nature of violent incidents at the relevant correctional institution.[92] The Ministry also provides supporting affidavit evidence its ADW who has first-hand experience at the relevant correctional institution.[93]

[170] In response, the applicant submits that the Ministry has not discharged its burden to demonstrate that ss. 15(1)(f) or 15(1)(l) authorize the withholding of the specific records at issue. The applicant acknowledges that the relevant correctional institution is a "property" and its surveillance system is a "system" under s. 15(1)(l). However, the applicant also submits that ss. 15(1)(f) and 15(1)(l) should not establish an informal class-based exception for custodial or correctional environments. The applicant asks that these provisions be justified on a record-by-record basis through clear, cogent and disclosure-specific evidence of harm.

[171] The applicant argues that, while the Ministry's affidavit evidence describes real and important occupational risks associated with correctional settings, this evidence does not establish a reasonable expectation of harm for the purposes of s. 15(1).[94] I understand the applicant's position to be that the Ministry's expected harms are not cogently or rationally connected to disclosure of the specific information at issue, and for this reason the anticipated harms are too speculative to be considered a reasonable expectation beyond a mere possibility.

<u>Analysis and Findings, ss. 15(1)(f) and 15(1)(l)</u>

[172] The Ministry's submissions include several explanations as to precisely how inmates or others could use knowledge of staffing levels, congregation locations, and times or zones of reduced supervision to inflict physical harm on other inmates, correctional employees, or the security systems of the correctional institution. Significant portions of these explanations were provided to me *in camera*, however, which restricts my ability to repeat these explanations in detail.

[173] Having considered the nature of the Remaining Information, I am satisfied that it is rationally connected to the Ministry's expectation of these harms. Specifically, I am satisfied that disclosure of each piece of the Remaining Information can reasonably be expected to lead to the harms in ss. 15(1)(f) and (l) because disclosure would:

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[91] Ministry's initial submission at paras 50-69; Ministry's reply submission at paras 24-26.
[92] Affidavit #1 of Privacy Analyst.
[93] Affidavit #1 of Assistant Deputy Warden, Standards.
[94] Applicant's submission at paras 67-75.

- Enable accurate prediction of correctional employee movements while an inmate is under their supervision;
- Enable accurate prediction of changes to the supervision level of inmates at specific times or locations;
- Reveal vulnerabilities of the correctional institution and its operations that can be exploited to inflict physical harm on third party individuals; or
- Facilitate an enhanced ability to conceal contraband.

[174] This conclusion is supported by the Ministry's coherent explanations as to how specific types of information could be exploited by inmates and their affiliates. Moreover, the Ministry provides several real examples in its evidence where these harms have materialized after inmates and their affiliates exploited the same types of information that are at issue here. Finally, it is clear to me that certain facts about the circumstances of the Deceased's death can be expected to result in serious physical harm to third parties if disclosed because disclosure would reveal a novel mechanism of physical harm that is immediately available for other inmates to exploit.

[175] In coming to this conclusion, I acknowledge the applicant's concerns about ss. 15(1)(f) and (l) being applied to all operational information relating to a correctional institution. However, the Ministry has not applied these provisions to all operational information in the disputed records. Rather, I can see that the Ministry applied these provisions carefully and that each instance of severing is accompanied by a rational explanation, frequently supported by real examples, demonstrating how each piece of information may lead to harm if disclosed.

Conclusion, ss. 15(1)(f) and 15(1)(l)

[176] I find that disclosing the Remaining Information can be reasonably expected to result in harm to the security of the Ministry's property and systems, as well as harm to the physical safety of inmates, correctional employees, and members of the public. The Ministry is authorized to withhold all of the Remaining Information under ss. 15(1)(f) and 15(1)(l).

CONCLUSION

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

1. I confirm the Ministry's decision that the applicant is not acting on behalf of the Deceased in exercising his access right under s. 5(1)(b) of FIPPA.

2. Subject to item #4 below, I require the Ministry to refuse access under s. 22(1) to all of the information it withholds under s. 22(1).

3. I confirm the Ministry's decision to refuse to disclose the information it withheld under ss. 15(1)(f) and 15(1)(l), where such information was not simultaneously withheld under s. 22(1).

4. The Ministry is not required or authorized to refuse to disclose any of the information I have highlighted in the colour green on pages 29, 38, 39, 49, 57, 58, 61, 62, 71, 73, 92-95, and 104-108, in a copy of the records that will be provided to the Ministry with this order.

5. I require the Ministry to give the applicant access to the information it is not required or authorized to refuse to disclose.

6. Under s. 58(4) of FIPPA, I require the public body to copy the OIPC Registrar of Inquiries with its cover letter to the applicant, together with a copy of the information described in item #4.

[178] Pursuant to s. 59(1) of FIPPA, Ministry is required to comply with this order by **October 7, 2026**.

August 25, 2026

ORIGINAL SIGNED BY

Alexander R. Lonergan, Adjudicator

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