



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
— for —  
British Columbia

Order 04-12

**OFFICE OF THE CHIEF CORONER**

James Burrows, Adjudicator  
April 22, 2004

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**Summary:** The applicants requested a judgement of inquiry regarding an individual's death. The OCC provided a severed copy of the judgement citing s. 22 as a basis for withholding information. The applicants argued that public interest and public health and safety required the full record be released. The OCC stated that disclosure would unfairly damage the reputation of third parties. Section 25 does not require the OCC to disclose information and s. 22 requires it to refuse disclosure.

**Key Words:** public interest – public scrutiny – public health and safety – unreasonable invasion of personal privacy – unfairly damage reputation.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 22 and 25.

**Authorities Considered: B.C.:** Order No. 54-1995, [1995] B.C.I.P.C.D. No. 27; Order 01-53 [2001] B.C.I.P.C.D. No. 56; Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order 02-44, [2002] B.C.I.P.C.D. No. 44.

## 1.0 INTRODUCTION

[1] On May 6 and 8, 2003, the applicants, both news reporters, submitted requests to the Office of the Chief Coroner (“OCC”) for the complete judgement of inquiry regarding the death of a named individual.

[2] On May 7 and 15, 2003, the OCC responded to applicants providing a severed copy of the judgement of inquiry under s. 22 of the *Freedom of Information and Protection of Privacy Act* (“Act”).

[3] On May 15 and 29, 2003, the applicants requested a review of the OCC's decision. As the matter did not settle in mediation, a written inquiry was scheduled under Part 5 of the Act for September 11, 2003.

[4] The third parties, who are family members of the deceased, were notified of the inquiry by this office by letter of August 21, 2003 and participated in the inquiry by sending both initial and reply submissions.

[5] I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

## **2.0 ISSUE**

[6] The issues before me in this inquiry are:

1. Does s. 25(1) require the OCC to disclose the requested information to the public?
2. Is the OCC required by s. 22 of the Act to deny access to personal information?

[7] Under s. 57(2) of the Act, the applicant has the burden regarding s. 22.

[8] Previous decisions of the Commissioner have held that, while s. 57 of the Act is silent on the burden of proof in determining whether s. 25 applies, as a practical matter, it is in the interests of each party to present evidence as to whether s. 25 applies and requires disclosure.

## **3.0 DISCUSSION**

[9] **3.1 Record at Issue** – The record at issue is the judgement of inquiry regarding the death of a named individual and prepared by the OCC. The OCC provided the applicants with a severed copy of the judgement. The severed personal information is a relatively small amount.

[10] The severed information contains unsubstantiated allegations against third parties and unrelated personal activities of the deceased. This clearly is third-party personal information.

[11] **3.2 Public Interest Disclosure** – In his initial submission, one of the applicants raised the issue of public interest disclosure. He argued that the information severed from the record could contain information which he states “may have significant public health consequences.”

[12] Section 25 states:

**Information must be disclosed if in the public interest**

- 25 (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
- (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
  - (b) the disclosure of which is, for any other reason, clearly in the public interest.

[13] To invoke s. 25 of the Act, there must be an immediate and pressing need to release the information as well as circumstances which are intended to “be of a clear gravity and present significance.” As discussed by the Commissioner in Order 02-38, [2002] B.C.I.P.C.D. 38, the term “without delay” requires this urgency of release:

[53] As the applicant notes, in Order 01-20 and other decisions, I have indicated that the disclosure duty under s. 25(1)(b) is triggered where there is an urgent and compelling need for public disclosure. The s. 25(1) requirement for disclosure “without delay”, whether or not there has been an access request, introduces an element of temporal urgency. This element must be understood in conjunction with the threshold circumstances in ss. 25(1)(a) and (b), with the result that, in my view, those circumstances are intended to be of a clear gravity and present significance which compels the need for disclosure without delay.

[14] In reply to the argument of the applicant, the OCC contends that s. 25 is not invoked simply because the matter is something the public would be interested to learn or is curious about. The section puts a duty on a public body to release information which is “about a risk of significant harm.” At para. 25 of its submission, the OCC points out that:

... the Coroner did not refer to that information when she cited the reasons for the deceased’s death. As well, that information was not included in the Coroner’s Medical Cause of Death/Antecedent Cause or Other Significant Conditions Contributing to Death.

[15] Having carefully reviewed the severed information I find that the severed information does not reach that threshold of urgent and compelling need for disclosure as described by the Commissioner. The OCC is not required to release the severed information under s. 25 of the Act.

[16] **3.3 Personal Privacy** – The protection of personal privacy as required under s. 22 of the Act has been the subject of many orders. In Order 01-53, [2001] B.C.I.P.C.D. No. 56, the Commissioner laid out the principles in applying this section. I have used the approach taken in that order without repeating it here.

***Privacy rights of deceased***

[18] The Commissioner has ruled in several orders that the deceased have rights to privacy. For example, in Order 02-44, [2002] B.C.I.P.C.D. No. 44 at para. 53, the Commissioner said this:

[53] My predecessor and I have acknowledged in previous orders that an individual's death may be a relevant factor under s. 22(2). We have accepted, however, that the dead do have privacy rights. See, for example, Order 00-11, at p. 9, and Order 02-26, [2002] B.C.I.P.C.D. No. 26, at paras. 15, 16, 27 and 28. While the applicant has not touched on her son's death as a factor here, the Commission argues, at para. 81 of its initial submission, that the short passage of time between his death and the access request had not diminished the son's privacy interests. Particularly in light of the highly sensitive nature of the personal information in issue here, I do not consider that the son's privacy rights requesting [*sic*] that information have diminished at all or appreciably since his death and I find that his death does not favour disclosing his personal information.

[19] I agree with this analysis and, recognizing that the privacy rights of the deceased diminish over time, note that the matter before me is relatively recent. The deceased in this case still has rights to privacy.

***Unreasonable invasion of privacy***

[20] One of the applicants has argued that release of the information would not be an unreasonable invasion of privacy "as it relates to a health issue" as set out in s. 22(4)(b).

22(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

...

(b) there are compelling circumstances affecting anyone's health or safety and notice of disclosure is mailed to the last known address of the third party.

[21] For this section to be applicable, the information must invoke "compelling circumstances" for health and safety. In Order No. 54-1995, [1995] B.C.I.P.C.D. No. 27, p. 9, Commissioner Flaherty discussed the need for these circumstances to be more than simply a health issue:

The purpose of this section is clearly to permit a public body to release personal information about a third party in circumstances that meet a dictionary's definition of "compelling" circumstances, which has at least the connotation of some kind of health or safety emergency, such as is definitely not the case in the present matter.

[22] The third-party personal information at issue here does not meet this criterion of a "health or safety emergency." Section 22(4)(b) does not apply to this information.

[23] The OCC has submitted that the release of the information is inappropriate as the information contains personal medical information falling under s. 22(3)(a).

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

- (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation

[24] Some of the severed record is medical information that clearly falls within the scope of s. 22(3)(a).

***Relevant circumstances***

[25] One applicant argues that "further investigation and dissenting opinions of a cause of death are lost without a full and complete public record." Later in his initial submission, he continues that "the Commissioner should be loathe [*sic*] to allow these judgements of inquiry to be severed in any way considering the important public role they play." I disagree. As with many issues that are reviewed under the Act, there is often a need to balance the public's desire to know with the need for personal privacy. If the relevant circumstances surrounding the release of third-party personal information do not favour disclosure of information covered under s. 22(3), that information must be withheld.

[26] Having accepted that the release of the third party information is presumed to be an unreasonable invasion of privacy under s. 22(1) and 22(3)(a), I must now consider the relevant circumstances. These are the sections raised in the arguments of the parties:

22(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

- (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,
- (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,
- ...
- (e) the third party will be exposed unfairly to financial or other harm,
- (f) the personal information has been supplied in confidence,
- ...
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

[27] Both applicants have submitted that the release of the severed information is required to properly scrutinize the work of the OCC. My review of the information leads

me to determine that its release is not desirable for the public scrutiny of the activities of the OCC, as the information concerns the unrelated personal activities of third parties. I find that s. 22(2)(a) is not relevant.

[28] The applicants have also argued that release of the severed information would be likely to promote public health. The OCC argues that the Coroner did not refer to this third-party personal information when she cited the reasons for the deceased's death. Having reviewed this third-party personal information, I conclude that its release would not promote public health or safety. I find that s. 22(2)(b) is not relevant here.

[29] The submission of the third parties is that information that they supplied was provided in confidence. I have not been provided with any further documentation that supports this, but I accept that the third parties had that intention. Not all the severed information was provided by the third parties, so this circumstance would only apply to that information. Based on the evidence before me, I find that s. 22(2)(f) is a relevant circumstance to the information provided by the third parties.

[30] The OCC has also raised the issue of "unfairly damaging the reputation of any person referred to in the record." Although I cannot go into detail about the information, given its nature – which involves unsubstantiated allegations about third parties and unrelated personal activities – I find that s. 22(2)(h) is a relevant circumstance and applies to the remainder of the third-party personal information.

[31] Finally, as I have determined that other parts of s. 22(2) require the withholding of all the severed information, I have not considered the application of s. 22(2)(e).

[32] I find that the relevant circumstances favour the application of s. 22(1) of the Act, so that OCC must withhold the severed information.

#### **4.0 CONCLUSION**

[32] For the reasons given above, under s. 58 of the Act, I make the following orders:

1. I require the Office of the Chief Coroner to refuse to disclose the information that it has severed under s. 22 of the Act.
2. Given my findings above respecting s. 25, no order is necessary in that regard.

April 22, 2004

#### **ORIGINAL SIGNED BY**

James Burrows  
Adjudicator