Order F07-20

OFFICE OF THE CHIEF CORONER
MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL

Celia Francis, Senior Adjudicator

November 6, 2007

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Summary: Applicant requested copy of his son's suicide note. Public body denied access under s. 22. Relevant circumstances, including applicant's wish for "closure", do not rebut the presumed invasion of third-party privacy. Public body is ordered to deny access to the personal information in the note.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(3)(a), 22(2)(e), (g) & (h).

Authorities Considered: B.C.: Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 02-56, [2002] B.C.I.P.C.D. No. 58; Order 02-03, [2002] B.C.I.P.C.D. No. 3; Order No. 302-1999, [1999] B.C.I.P.C.D. No. 15; Order 02-44, [2002] B.C.I.P.C.D. No. 44; Order 04-12, [2004] B.C.I.P.C.D. No. 12; Order No. 305-1999 [1999] B.C.I.P.C.D. No. 18; Order 02-26, [2002] B.C.I.P.C.D. No. 26.

1.0 INTRODUCTION

[1] The applicant in this case is the father of a man who committed suicide. Under the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), the applicant requested a copy of his son's suicide note from the Office of the Chief Coroner ("OCC"), which responded by denying access to the note in its entirety under s. 22 of FIPPA. The applicant requested a review by this Office of the OCC's decision. Because the matter did not settle in mediation, a written inquiry was held under Part 5 of FIPPA. This Office invited and received submissions on this matter from the applicant and the OCC.

2.0 ISSUE

[2] The issue before me is whether the OCC is required by s. 22 of FIPPA to refuse the applicant access to the record in dispute, his son's suicide note (the "note"). Under s. 57(2) of FIPPA, the applicant has the burden of proof regarding third-party personal information.

3.0 DISCUSSION

[3] **3.1 Application of s. 22**—The OCC argued that s. 22(1) required it to withhold the record in dispute. Section 22(1) reads as follows:

> **Disclosure harmful to personal privacy**
>
> 22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[4] Numerous previous orders have dealt with the application and interpretation of s. 22, including Order 01-53[1] and Order 02-56.[2] Several orders have also considered s. 22 with respect to deceased individuals and their privacy rights.[3] I have, without repeating them, applied the principles set out in those orders.

[5] **3.2 Background**—The OCC said that it is responsible for the inquiry into and investigation of unexpected, unexplained or unattended deaths. Section 9 of the *Coroners Act* lists the types of deaths that must be reported to the OCC. The OCC is responsible for investigating and ascertaining the facts surrounding such deaths and must determine the deceased's identity and "[h]ow, when, where and by what means the deceased died". The death is then classified as natural, accidental, suicide, homicide or undetermined. Coroners may also make recommendations aimed at preventing future similar deaths.[4]

[6] The results of a coroner's investigation are included in a "Judgement of Inquiry" which includes information from other agencies, the findings from the autopsy and any recommendations arising from the Judgement of Inquiry. An inquest is mandatory when a death occurs in custody while, in other cases, the investigating coroner decides whether to hold an inquest.[5]

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[1] [2001] B.C.I.P.C.D. No. 56.
[2] [2002] B.C.I.P.C.D. No. 58.
[3] See, for example, Order 02-44, [2002] B.C.I.P.C.D. No. 44, Order 04-12, [2004] B.C.I.P.C.D. No. 12, and Order 02-26, [2002] B.C.I.P.C.D. No. 26.
[4] Paras. 4.01-4.06, initial submission.
[5] Paras. 4.07-4.09, initial submission.

[7] In this case, the OCC said that the Judgement of Inquiry in relation to the deceased was made public. The OCC has not however released a copy of the note to the public.[6]

[8] **3.3 Does s. 22 apply?**—The OCC said that the information in the note is "recorded information about an individual" and is thus personal information for the purposes of FIPPA. It referred to previous orders which have held that the deceased have privacy rights and that a deceased person does not lose all privacy rights immediately upon death, although such rights may diminish with time.[7] The OCC pointed out that s. 36 of FIPPA[8] and s. 3 of the FIPPA Regulation[9] also provide for the privacy rights of the deceased.[10]

[9] As for the record in dispute, the OCC said that it was hard to imagine a more sensitive document than a suicide note. The OCC is also unaware of any evidence indicating that the deceased would want the applicant to have access to the note.[11] The OCC provided an *in camera* description of the type of "very sensitive personal information" in the note, as well as an *in camera* copy of the note itself, in support of this argument. It said that, upon review of the note, it concluded that disclosure of the note would be an unreasonable invasion of third-party privacy and that s. 22 therefore required the OCC to refuse the applicant access to the note.[12]

[10] The applicant said that, when he divorced his son's mother, he was given custody of his son, who was nine years old at the time. The applicant acknowledged that, once his son came of age, this might no longer mean anything, but suggested that nevertheless he had more rights to the note than others. The applicant said he wished closure on the matter, as he did not understand why his son killed himself and hoped reading the note would help him "to put it behind me".

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[6] Para. 4.10, initial submission.

[7] The OCC referred here to Order No. 305-1999, [1999] B.C.I.P.C.D. No. 18, and Order 04-12 and noted that the latter also cites Order 02-44 on this issue.

[8] The relevant part of this section states: 36. The archives of the government of British Columbia, or the archives of a public body, may disclose personal information or cause personal information in its custody or under its control to be disclosed for archival or historical purposes if … (c) the information is about someone who has been dead for 20 or more years, …

[9] The relevant portion of s. 3 of the Regulation states: 3. The right to access a record under section 4 of the Act, the right to request correction of personal information under section 29 of the Act or the right to consent to disclosure of personal information under section 33 of the Act may be exercised as follows … (c) on behalf of a deceased individual, by the deceased's nearest relative or personal representative.

[10] Paras. 4.11-4.21, initial submission.

[11] The applicant acknowledged that this might be so but said that equally the son had not left instructions saying his father was not to receive a copy of the note; applicant's reply submission.

[12] Paras. 4.22-5.01, initial submission.

[11] He also said he would accept the note in severed form, that is, anything that "would embarrass or hurt some innocent Person could be Blanked out. I could live with that". He added that members of the media had read the note and asked why he, "the legal Parent", should not be able to read the note, if the media have read it.[13]

[12] The applicant also suggested that, in denying him access to the note, the OCC is not protecting his son's privacy. Rather, it is protecting the privacy of those the son wrote about in his note, people who, he alleges, harassed his son after the son was released from prison.[14]

[13] With respect to the applicant's allegation that the media had reviewed a copy of the suicide note, the OCC said it had not disclosed a copy of the note to the media. The OCC noted that the applicant had not provided any evidence that the media had seen the note and argued that he had not discharged his burden of proof.[15]

[14] This response prompted a round of supplementary submissions from the parties.[16] The applicant first supplied a series of emails between himself and a member of the media who stated she had seen a copy of the "death note" and was willing to tell him what it said. The OCC responded that it was not clear if the applicant was alleging that the OCC had given the media a copy of the note but that, if he was, it denied having done so. It said it had also contacted a named municipal police department which stated that the note "was not found at the scene" but turned over to the police by a friend of the deceased, who received the note some time before the son's death. The police department had said further that it did not, as a matter of policy, disclose suicide notes and had not provided the media with a copy of this note in response to a FIPPA request. The OCC said it assumed that, if the media had obtained access to the note, it might have been through the friend. In the OCC's view, this does not however mean that the applicant is entitled under FIPPA to a copy of the note. In this regard, the OCC referred to Order 02-03[17] and Order No. 302-1999.[18]

Discussion

[15] The note contains recorded information about identifiable individuals, principally the son. It thus contains personal information as defined in Schedule 1 of FIPPA.[19]

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[13] Initial submission.
[14] Reply submission.
[15] Reply submission.
[16] This Office does not normally accept or consider supplementary submissions. In this case, however, the OCC was permitted to comment on new issues that the applicant raised in his reply submission.
[17] [2002] B.C.I.P.C.D. No. 3.
[18] [1999] B.C.I.P.C.D. No. 15. OCC's letters of November 15 and 23, 2007.
[19] There is no basis for concluding that s. 22(4) applies to the note.

[16] The OCC argued only that s. 22(1) applies to the note. Although I cannot say much about the note, I am able to state that it sheds light on the deceased's state of mind before he died. The information, in my view, thus relates to his medical or psychological condition or history. As such, I conclude that the information in the note falls under s. 22(3)(a), which reads as follows:

> 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, …

[17] Neither party referred, implicitly or explicitly, to the relevant circumstances set out in s. 22(2) and I do not consider most to be relevant here. However, I would say that there is some indication that ss. 22(2)(e) and (h) apply, as well as s. 22(2)(g). These sections, which all favour withholding the note, read as follows:

> 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 …
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> (e) the third party will be exposed unfairly to financial or other harm, …
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> (g) the personal information is likely to be inaccurate or unreliable, and
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> (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

[18] The parties did raise other arguments, some of which have been found in previous orders to be relevant circumstances: the fact of the son's death; the timing of his death; the applicant's motives; possible access by the media.

[19] I agree with previous orders and with the OCC's submission that a deceased individual's privacy rights survive his death. I also accept that such rights may diminish with time but, where death occurred in the near past, the deceased's privacy rights will normally have diminished little, if at all. The material before me does not explicitly state when the son died but it appears that the applicant made his request within a few months of his son's death. I do not consider that the short passage of time since death in this case diminishes the deceased son's privacy rights at all.

[20] While I sympathize with the applicant's wish to understand why his son died and to put this sad event behind him, his motives, while undoubtedly

sincere, do not in my view overcome the presumption in s. 22(3)(a). I note that Commissioner Loukidelis made a similar finding in Order 02-44.

[21] I also do not consider that the applicant's allegation that the media have seen the note assists him. First of all, despite the emails, there is no evidence members of the media have seen the note or revealed its contents to the applicant. Even if they have, this does not mean the note should be disclosed under FIPPA and it does not overcome the presumption raised here by s. 22(3)(a).

[22] There is also no indication either way of the son's wishes respecting the applicant's possible access to the note. This factor is therefore not applicable.

[23] To conclude, disclosure of the personal information in the note is presumed under s. 22(3)(a) to be an unreasonable invasion of third-party personal privacy. Moreover, taken together, the relevant circumstances weigh in favour of withholding the note. The note also cannot, in my view, reasonably be severed under s. 4(2) of FIPPA.[20] I therefore find that s. 22(1) requires the OCC to withhold the note.

4.0 CONCLUSION

[24] For the reasons given above, under s. 58 of FIPPA, I require the OCC to deny the applicant access to the personal information in the note.

November 6, 2007

ORIGINAL SIGNED BY

Celia Francis
Senior Adjudicator

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[20] This section states that, if information that is subject to an exception can reasonably be severed, the applicant is entitled to the remainder of the record.