

## Purpose of this document

This guide provides general information about requesting access to records of a deceased individual and how British Columbia's [Freedom of Information and Protection of Privacy Act \(FIPPA\)](#) protects the privacy of their **personal information**.<sup>1</sup>

Under FIPPA, individuals have the right to request access to records from public bodies, including records about deceased individuals.<sup>2</sup> These requestors are called FIPPA “applicants.” There are many reasons why an applicant may request records about a deceased individual, such as for the purposes of managing their estate, learning about the healthcare they received, or navigating the process of grieving and finding closure.

Although public bodies must respond to these requests, it is important to know that the ability for applicants to successfully access records about deceased individuals under FIPPA is limited. Under FIPPA, an individual's privacy rights continue past death. There are many situations where FIPPA requires public bodies to deny an applicant access to an individual's personal information, including personal information about a deceased individual.

## How do I request access to records of a deceased individual?

Under [section 5](#) of FIPPA, an applicant can request access to records of a deceased individual that are in the custody or under the control of a public body by:

1. making an access request “**on behalf of**” the deceased individual under section 5(1)(b) of FIPPA (only if they meet criteria below); or
2. making an access request on their **own behalf** (as a separate third party).

General information about how to request records from a public body is available on our website at: <https://www.oipc.bc.ca/for-the-public/how-do-i-request-records/>.

For an applicant to be eligible to act “on behalf of” the deceased in making an access request, they must be able to demonstrate that they: 1) are acting “**on behalf of**” the deceased; and 2) are the “**appropriate person**” to act, as defined under [s. 5 of FIPPA Regulation 155/2012](#) (both of these criteria are described further below).

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<sup>1</sup> [Schedule 1](#) of FIPPA defines “**personal information**” as “*recorded information about an identifiable individual other than contact information.*” “**Contact information**” means business contact information.

<sup>2</sup> “**Public body**” is broadly defined under [Schedule 1](#) of FIPPA and includes entities such as provincial government ministries, local governments, crown corporations, schools, hospitals, and health authorities. Private organizations, including many family doctors, are not included, and fall under a different privacy law in BC: the [Personal Information Protection Act \(PIPA\)](#).

An applicant requesting records “on behalf of” the deceased, if they are eligible under FIPPA, may be entitled to receive more information from a public body than they would if they were acting on their own behalf.

### What does “acting on behalf” of the deceased mean?

Previous OIPC orders have interpreted “acting on behalf of” to mean acting to benefit the deceased individual, to further the deceased individual’s own goals or objectives, or acting in the deceased individual’s best interests.

If an applicant is solely requesting personal information about the deceased individual to further their *own* interests, then this is not enough to establish they are acting on behalf of the deceased individual under [s. 5\(1\)\(b\)](#) of FIPPA.

The following orders from the OIPC provide examples of how “acting on behalf of” a deceased individual has been assessed in various situations.

In one case, an adjudicator found that the wife of a deceased individual was acting on the deceased’s behalf in requesting medical records to prove that he was incapacitated at the time he made choices about his pension payout options.<sup>3</sup>

In other cases, adjudicators have found that applicants were not acting on the deceased’s behalf when seeking their deceased relatives’ health records for the following purposes: to get answers about what happened, to determine if the deceased received adequate medical care, to investigate their own suspicions of negligence, to seek accountability, and/or to use the information to advocate for systemic change.<sup>4</sup>

Further cases where adjudicators have found that applicants were not acting on the deceased’s behalf include:

- Order [F15-36](#), where the applicant was seeking her deceased mother’s hospice records to help her grieve and find closure;
- Order [F18-08](#), where the applicant requested hospital discharge summaries relating to her deceased husband in order to defend a legal action against her and reduce legal costs; and
- Order [F23-80](#), where the applicant requested her deceased son’s medical records for the purpose of “investigating medical history”.

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<sup>3</sup> See OIPC order [03-07](#).

<sup>4</sup> See OIPC orders [F22-42](#), [F24-05](#), [F24-22](#), [F24-85](#), and [F25-28](#).

## Who is the “appropriate person” to act for the deceased?

[Section 5\(1\)](#) of FIPPA Regulation 155/2012 provides a list of who may be the “appropriate person” to act for a deceased individual, **ranked in order of priority**.<sup>5</sup>

In descending order, an appropriate person to act for a deceased **adult** is one of the following:

- a **committee** acting under section 24 of the *Patients Property Act* for the deceased;<sup>6</sup>
- if there is no committee acting for the deceased, the **personal representative** of the deceased;<sup>7</sup>
- if there is no committee acting for the deceased and no personal representative of the deceased, the **nearest relative** of the deceased.<sup>8</sup>

For a deceased **minor**, the appropriate person to act is one of the following, ranked in order:

- the **personal representative** of the deceased;
- if there is no personal representative of the deceased, a **guardian** of the deceased immediately before the date of death;<sup>9</sup>
- if there is no personal representative or guardian of the deceased, the **nearest relative** of the deceased;

Public bodies may ask applicants to provide documentation to prove they are the appropriate person to act for the deceased.

Previous orders from the OIPC provide examples where applicants were found not to be the appropriate person to act for the deceased individual. In one case, the applicant was found not to be the appropriate person to request records from BC Emergency Health Services on behalf of her deceased father, since her step-mother had priority over her as the “nearest relative” according to [s. 5\(1\)](#) of FIPPA Regulation 155/2012.<sup>10</sup> In another case, it was determined that the

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<sup>5</sup> Note that [ss. 5\(3\), 5\(4\), and 5\(5\)](#) of FIPPA Regulation 155/2012 set out additional rules for determining which person listed under [s. 5\(1\)](#) is the “appropriate person” in specific situations; for example, when the “nearest relative” is unable or unwilling to act, or when there are multiple relatives of equal rank in the listed order for “nearest relative”.

<sup>6</sup> There is no definition of “**committee**” in FIPPA, FIPPA Regulation 155/2012, or the *Interpretation Act*. See the definition of “**committee**” in [s. 1](#) of the *Patients Property Act*. According to the BC Government’s [definition](#), “A committee is granted the authority under the *Patients Property Act* to manage the affairs of an adult who is incapable of managing [their] own affairs. A committee can be the Public Guardian and Trustee, a private individual, or a trust company.”

<sup>7</sup> See the definition of “**personal representative**” in [s. 29](#) of the *Interpretation Act*.

<sup>8</sup> See the definition of “**nearest relative**” in [s. 5\(1\)](#) of FIPPA Regulation 155/2012.

<sup>9</sup> There is no definition of “**guardian**” in FIPPA, FIPPA Regulation 155/2012, or the *Interpretation Act*. [Section 1\(1\)](#) of the *Child, Family and Community Service Act* provides that “**guardianship**” includes “all the rights, duties and responsibilities of a parent”. Also see the definition of “**guardian**” under [s. 1](#) of the *Family Law Act*.

<sup>10</sup> See OIPC order [F23-92](#).

mother of a deceased minor was not the appropriate person to make an access request to the Ministry of Children and Family Development on behalf of her deceased son, because the Director of Child and Family Services was the minor's guardian immediately before his death; therefore, the Director was the appropriate person rather than the deceased's mother.<sup>11</sup>

### What does acting on one's own behalf mean?

An applicant can always request records on their own behalf (as a separate third party), if they are not eligible to request records on behalf of a deceased individual because they are not "acting on behalf of" the deceased and/or they are not the "appropriate person" according to [s. 5](#) of FIPPA Regulation 155/2012. This is done in the same way that any applicant would make a freedom of information ("FOI") request to a public body under [s. 5](#) of FIPPA.

In these situations, it is likely that the public body will deny access to the deceased's personal information on the basis of [s. 22](#) of FIPPA (disclosure harmful to personal privacy).<sup>12</sup> Section 22 requires a public body to refuse disclosure of personal information to an applicant if the disclosure would be an *unreasonable invasion of a third party's personal privacy*. Under FIPPA, an individual's privacy rights continue past death, although [s. 22\(2\)\(i\)](#) recognizes that these rights may diminish over time.

In a small number of cases, the OIPC has decided that disclosing a deceased's personal information would not be an unreasonable invasion of their personal privacy and ordered the public body to disclose the information. In these cases, the length of time that had passed since the person died was a significant factor weighing in favour of disclosure.<sup>13</sup> Order [F14-09](#), where an applicant requested a copy of all medical information and family history about her extended relative who had been deceased for 42 years, and order [F14-32](#), where an applicant requested information regarding the care and cause of death of her daughter who passed away 34 years ago while in foster care, provide examples where the passage of time was a relevant factor in authorizing disclosure.

This information is not meant to exclude anyone from making a request for a deceased individual's records. Rather, it is to help prepare applicants for the high likelihood that their request to access personal information about the deceased will be denied if they are acting for their own reasons, rather than on the deceased's behalf.

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<sup>11</sup> See OIPC order [F22-44](#).

<sup>12</sup> Numerous orders from our office have upheld the public body's decision to deny access to a deceased individual's personal information based on the disclosure being an unreasonable invasion of the deceased's privacy under [s. 22](#) of FIPPA. For example, see orders [F07-20](#), [F15-36](#), [F18-08](#), [F22-42](#), [F24-05](#), [F24-22](#), [F24-60](#), [F24-85](#), and [F25-28](#).

<sup>13</sup> [Section 22\(2\)\(i\)](#) of FIPPA provides that the length of time a person has been deceased is a factor that must be considered in assessing whether a disclosure would be an unreasonable invasion of the deceased's personal privacy. FIPPA does not specify a number of years after which disclosing a deceased individual's personal information will not be an unreasonable invasion of privacy, but previous orders state that an individual's personal privacy rights are likely to continue for at least 20 years past their death. For example, see OIPC order [F14-09](#) at paras. 30 and 33, and order [F25-28](#) at para. 91.

## What can I do if a public body refuses to disclose part or all of the personal information of the deceased?

Even if a public body determines that an applicant is not entitled to access the requested information, it is still required to respond to the applicant in the manner described under [s. 7](#) and [s. 8](#) of FIPPA.

Applicants who request records from a public body and are denied access to some or all of the information have the right to request a review by our office. Information about the review process is available on our website: <https://www.oipc.bc.ca/for-the-public/how-do-i-request-a-review/>.

Depending on the situation, there may be other ways that individuals can access the personal information they seek. For example, it may be possible to learn the cause of death for an individual by applying to [BC Vital Statistics](#) for a copy of their death certificate or death registration photocopy/extract/medical certificate of death (cause of death).<sup>14</sup> It may also be possible to get personal information through legal proceedings. If the information being sought is historical or archival in nature, the [BC Archives](#) at the Royal BC Museum is a valuable resource. The Archives contain publicly available records and publications from court registries, government agencies, as well as private individuals and families. The [BC Archives Genealogy Collection](#), for example, allows individuals to search for vital events such as births, marriages, and deaths from the past.<sup>15</sup>

## Conclusion

Applicants can only request access to a deceased person's records in the custody or under the control of a public body "on behalf of" the deceased if they can demonstrate that they are acting in the best interests of the deceased and are the "appropriate person," as defined under [s. 5](#) of FIPPA Regulation 155/2012.

If these criteria are not met, applicants still have the right to request a deceased's records on their own behalf, but they should be prepared for the high likelihood that the public body will be required to refuse disclosure of the deceased's personal information on the basis that the disclosure would be an unreasonable invasion of the deceased's personal privacy under [s. 22](#) of FIPPA. Applicants who request records from a public body and are denied access have the right to request a review by our office. In addition, there may be other avenues open to them for pursuing the information they are looking for.

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<sup>14</sup> Information about how to order a death certificate or death registration photocopy/extract/medical certificate of death is available here: <https://www2.gov.bc.ca/gov/content/life-events/death/death-certificates>.

<sup>15</sup> According to the [BC Archives Genealogy Research Guide](#), marriage and death registrations are available from 1872, and birth registrations from 1854. Birth registrations are available 120 years following the date of birth, marriage registrations 75 years after the date of marriage, and most death registrations 20 years after the date of death.

For further information, please visit our website at <https://www.oipc.bc.ca/> or contact:

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Callers outside Victoria can contact the office toll-free by calling Service BC requesting a transfer to (250) 387-5629.

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