



Order F24-85

Fraser Health Authority

Allison J. Shamas
Adjudicator

September 26, 2024

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Summary: An applicant requested access to her deceased mother's medical records from Fraser Health Authority (Fraser Health). Fraser Health refused the applicant's access request, taking the position that the applicant was not acting on behalf of her mother under s. 5(1)(b) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) and s. 5 of the Freedom of Information and Protection of Privacy Act Regulation, and that disclosure would be an unreasonable invasion of third-party personal privacy under s. 22(1) of FIPPA. During the inquiry, Fraser Health disclosed some information in the responsive records. The adjudicator determined that the applicant was not acting on behalf of her mother, and that disclosing the deceased's personal information would be an unreasonable invasion of her personal privacy under s. 22(1).

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

INTRODUCTION

[1] This inquiry concerns a request by an applicant for access to her deceased mother's medical records from Fraser Health Authority (Fraser Health).

[2] Fraser Health refused the applicant's access request, taking the position that the applicant was not acting on behalf of the deceased under s. 5(1)(b) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) and s. 5 of the Freedom of Information and Protection of Privacy Act Regulation (Regulation). Additionally, Fraser Health withheld the disputed information on the basis that disclosure of the information in dispute would be an unreasonable invasion of third-party personal privacy under s. 22(1) of FIPPA.

[3] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review Fraser Health's decision to refuse access to the disputed records. Mediation failed to resolve the issues in dispute, and the matter proceeded to inquiry.

[4] During the inquiry, Fraser Health reconsidered its position and released some of the disputed information to the applicant on the basis that it was the applicant's own personal information. Fraser Health continues to withhold the balance of the disputed information.

Preliminary Issue

[5] The access request that is the subject of this inquiry is the applicant's request for access to her mother's medical records from Eagle Ridge Hospital, a health care facility operated by Fraser Health.

[6] However, in her inquiry submission, the applicant seeks to expand the inquiry to include access requests she made for records from other health care facilities operated by Fraser Health. In its reply, Fraser Health submits that the other access requests are not properly before me in this inquiry.

[7] I agree. The scope of this inquiry is limited to whether Fraser Health is authorized to refuse the applicant access to the Eagle Ridge Hospital records, and I decline to expand the scope of the inquiry to include other access requests.

ISSUES

[8] The issues I must decide in this inquiry are:

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 Fraser Health required to refuse to disclose the information under s. 22?

[9] Neither FIPPA nor the Regulation address who has the burden of proof under s. 5(1) of FIPPA and s. 5 of the Regulation. In previous orders, the OIPC has stated that in this circumstance, as a practical matter, each party should submit arguments and evidence to support its position under these provisions.¹

[10] Section 57(2) of FIPPA places the burden on the applicant to prove that disclosure of any personal information would not be an unreasonable invasion of

¹ Order F18-08, 2018 BCIPC 10 (CanLII) at para. 7; and Order F07-10, 2007 CanLII 30395 (BC IPC) at paras. 10-11.

a third party's personal privacy under s. 22(1). However, the public body has the initial burden of proving the information at issue is personal information.²

DISCUSSION

Background

[11] The applicant's mother was admitted to Eagle Ridge Hospital (the Hospital) on several occasions in the two years prior to her death. Following her mother's death, the applicant requested access to her mother's medical records from the Hospital for a two year period prior to her death.

[12] The applicant's mother suffered from cognitive impairments. The applicant describes having a close relationship with her late mother and was present during many of her hospitalizations. Furthermore, until her mother's death, the applicant was her mother's health and personal care representative under s. 9 of the *Representation Agreement Act*,³ and she is the executor and a beneficiary under her mother's will.⁴

Records and information in dispute

[13] The records in dispute consist of 708 pages of medical records related to the applicant's mother's medical care at the Hospital.⁵ Most of the records are fully or partially redacted. They include notes from various healthcare workers including physicians, nurses, social workers, occupational therapists, nutritionists, and ambulatory care workers. There are also medical directives and orders, lab and imaging reports, assessments, vital sign records, and discharge summaries.

Authority to Act on behalf of a Deceased Individual – s. 5(1)(b)

[14] 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

...

² Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9-11.

³ [RSBC 1996] c. 405.

⁴ The applicant provided copies of the representation agreement, will and other supporting documents with her submissions.

⁵ While the fact report states that there are 732 pages of responsive records, in its initial submission Fraser Health provided 708 pages records and stated that the reference to 732 pages in the fact report was in error. The applicant did not take issue with this statement. Accordingly, I accept that the responsive records are the 708 pages of records that Fraser Health provided with its initial submission.

(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 ...

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. The term “appropriate person” is defined in s. 5(1) of the Regulation

(a) in respect of a deceased adult, one of the following:

...

(ii) if there is no committee acting for the deceased, the personal representative of the deceased;

In order to be entitled to exercise the deceased’s rights under FIPPA, an applicant must establish that they are an “appropriate person” pursuant to s. 5(1) of the Regulation and that they are “acting on behalf of” the deceased pursuant to s. 5(1)(b) of FIPPA.

[15] In this case, the parties agree that the applicant is an appropriate person to act for her deceased mother as required by s. 5 of the Regulation.⁶ Having considered the documentary evidence the applicant submitted to Fraser Health in support of her access request, I agree. Accordingly, the sole issue is whether, in seeking access to her mother’s medical records, the applicant is “acting on behalf” of her mother as required by s. 5(1)(b) of FIPPA.

Parties’ submissions

[16] Fraser Health submits that the applicant did not provide sufficient evidence to establish that she is acting on behalf of her deceased mother in seeking access to the medical records. In support of this position, Fraser Health references the applicant’s access request which states that the applicant’s reason for seeking access was for a “review of admissions and medications.”⁷ Fraser Health argues that the applicant’s reasons for her request do not meet the test set out in past OIPC orders because the applicant appears to be seeking access for her own purposes, rather than to further the goals, objectives or interests of her late mother.

[17] The applicant makes extensive submissions detailing her concerns about the care her mother received at the Hospital, as well as the failure of Hospital personnel to act when, in the applicant’s view, it was clear that her mother was

⁶ See paragraph 16 of Fraser Health’s initial submission and paragraph 2 of the applicant’s response submission.

⁷ See Authorization for Release of Health Records pp 3.

not receiving adequate care at home. The applicant says the care her mother did receive at the Hospital was “shameful,”⁸ and believes that the lack of care at the Hospital, and in other facilities hastened her mother’s decline and ultimate death.

[18] The applicant states that she is seeking access to her mother’s medical record to get answers and to advocate for changes to the system so others are not treated in the same way her mother was. While making clear that she does not want to sue,⁹ the applicant refers to herself as her mother’s voice. She also describes her mother’s charitable and community work and says her mother “would appreciate the legacy of having her experience used in the betterment of others and society as a whole.”¹⁰

[19] In reply, Fraser Health submits that the applicant’s reason for seeking access – out of concern about the medical care her mother received while in hospital – is substantially the same reason that has been considered and rejected in past orders.

Findings and analysis

[20] While the phrase “acting on behalf of” is not defined in FIPPA, previous orders have consistently interpreted it to mean acting to benefit the other individual, to further the other individual’s own goals or objectives, and in the other individual’s best interest.¹¹

[21] I accept the applicant’s submissions about her reasons for seeking access to the deceased’s medical records. Based on those submissions, I find that the applicant’s reasons are two-fold: to get answers about what happened to her mother, and to use the information to advocate for change so that others are not treated in the same way her mother was.

[22] I have considerable sympathy for the applicant, and in my view, her reasons for seeking the information are entirely understandable. However, the difficulty is that the applicant’s submissions lead me to conclude her reasons for making the access request relate to her own interests, not the interests of her mother.

[23] I begin with the applicant’s desire to get answers about her mother’s care. The OIPC has repeatedly held that requests motivated by the desire to understand or make sense of a deceased’s medical history or treatments prior to

⁸ Applicant’s response at para 20.

⁹ Applicant’s response at para 27.

¹⁰ Applicant’s response at para 22.

¹¹ See for example 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.

death is insufficient to show an applicant is “acting on behalf of” the deceased.¹² I agree with this line of cases. In my view, an applicant’s desire to resolve matters in their own mind by getting answers about a deceased family member’s medical care and death, absent some reason for doing so that connects to the deceased’s interests, relates to the applicant’s interest in knowing what happened, not to the interests of the deceased. In this case, the applicant does not connect her desire for answers to her mother’s interests. Accordingly, I find that the applicant’s desire to get answers about her mother’s care does not satisfy the requirement that the request be “on behalf of” the deceased.

[24] I come to the same conclusion about the applicant’s desire to use the information in her mother’s medical records to advocate for change.

[25] From the records, I can see that the applicant was often with her mother at the Hospital. The applicant also provided an executed will which named the applicant as an executor and beneficiary of her mother’s will, and an executed representation agreement in which the applicant’s mother authorized her to make decisions for her relating to her personal and health care pursuant to ss. 9(1)(a) and 9(3) of the *Representation Agreement Act* (the Representation Agreement).¹³ The Representation Agreement gave the applicant authority to make decisions about her mother’s day-to-day medical and personal care,¹⁴ while her mother was alive, but came to an end when her mother died.¹⁵ Taking all of this information into account, I accept that the applicant had a close and trusting relationship with her mother, and that the applicant’s mother trusted her to make certain decisions for her both during her life and after her death. In these circumstances, I accept that the applicant may have insight into her mother’s wishes, and as a result, I accept the applicant’s statement that her mother would have appreciated the legacy of having her experience used for the betterment of society.

[26] However, in my view, appreciating your legacy being used for the betterment of society is not the same as wanting your personal health information disclosed and used for that purpose. The applicant does not assert that her mother ever expressed the desire for her medical information to be used to advocate for change after her death. While I have carefully considered the applicant’s perspective about her mother’s wishes, I am not persuaded the applicant’s mother ever turned her mind to how she wanted her medical information treated after her death. For these reasons, the applicant’s statement

¹² Order F24-05, 2024 BCIPC 7 (CanLII) at para. 35; Order F23-80, 2023 BCIPC 96 (CanLII) at paras. 13-16; and Order F22-42, 2022 BCIPC 47 (CanLII) at paras. 27-29.

¹³ [RSBC 1996] c 405.

¹⁴ See section 4 of Representation Agreement.

¹⁵ Section 29 of the *Representation Agreement Act* and s. 11 of the Representation Agreement provide that a representation agreement ends on the death of the adult who made the agreement.

about her mother's views do not satisfy me that the applicant's access request is in her mother's interest.

[27] Ultimately, having considered the applicant's submission, I find that the idea to advocate for change is the applicant's own idea and project, not her mother's. Past orders make clear that if an applicant is seeking information to further their own interests, they are not acting on behalf of another individual.¹⁶ Similarly, in this inquiry, I find that the access request was made to further the applicant's own goals and objectives, not those of the deceased. For this reason, I am not satisfied that the applicant made this access request "on behalf of" the deceased.

[28] In summary, while I accept that the applicant is an appropriate person pursuant to s. 5 of the Regulation, I am not persuaded that the access request was made "on behalf of" the deceased as required by s. 5(1)(b) of FIPPA.

[29] Where an applicant is not truly acting "on behalf" of another individual, the OIPC treats the access request as an ordinary, arm's-length request by one individual for another's personal information.¹⁷ Fraser Health additionally relies on s. 22 to withhold the disputed information. Consequently, I will consider whether disclosing the information in dispute would be an unreasonable invasion of third-party personal privacy under s. 22(1).

Unreasonable Invasion of Third-Party Personal Privacy – s. 22

[30] Section 22(1) of FIPPA requires a public body to refuse to disclose personal information if disclosure would be an unreasonable invasion of a third party's personal privacy. Numerous orders have considered the analytical approach to s. 22, and I will apply those same principles here.¹⁸

Section 22(1) – personal information

[31] As s. 22(1) applies to personal information, the first step in the s. 22(1) analysis is to determine whether the information in dispute is "personal information" within the meaning of FIPPA.

[32] Personal information is defined in Schedule 1 of FIPPA as "recorded information about an identifiable individual other than contact information."

¹⁶ Order No. 53-1995, 1995 CanLII 1121 (BC IPC) at p. 6; Order 02-44, 2002 CanLII 42478 (BCIPC) at paras. 39-40; Order F07-16, 2007 CanLII 35477 (BC IPC) at paras. 19-20; Order 17-04, 2017 BCIPC 4 (CanLII) at paras. 18-20; Order F18-34, 2018 BCIPC 47 (CanLII) at paras. 14 and 15; and Order F18-38, 2018 BCIPC 41 (CanLII) at paras. 10 and 11 in which the OIPC specifically refused to accept an applicant's statements about what the deceased wanted or would have wanted as evidence that the request was on behalf of the deceased.

¹⁷ Order 00-40, 2000 CanLII 14405 (BC IPC) at p. 8.

¹⁸ For example, see Order F15-03, 2015 BCIPC 3 at para 58.

Information is “about an identifiable individual” when it is “reasonably capable of identifying an individual, either alone or when combined with other available sources of information.”¹⁹

[33] Contact information is defined in Schedule 1 of FIPPA 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.”²⁰ The purpose of the “contact information” exclusion is to clarify that information relating to the ability to communicate with a person at that person’s workplace, in a business capacity, is not personal information.²¹

[34] Fraser Health submits that the information at issue is the deceased’s personal information because it relates to her social history, health conditions, time in hospital, and medical treatment.

[35] The applicant does not address s. 22 in her submissions. Accordingly, my analysis of s. 22(1) and all other subsections of s. 22 below will proceed based on Fraser Health’s submissions and any information and records in the applicant’s submissions that I find to be relevant to the analysis under s. 22.

[36] For the reasons that follow, I find that all the information in dispute is personal information.

[37] The information in dispute is found in medical records that name the applicant’s mother. Furthermore, given that the applicant requested her mother’s medical records, the applicant knows that the information is about her mother. Fraser Health withheld both specific information about the deceased and also the forms on which that information is provided. There is no question that the specific information about the deceased is her personal information. I make the same finding about the information that comprises the forms because, in the circumstances, disclosing the forms would reveal information about the kind of medical care the deceased received. Accordingly, I find that all the withheld information is identifiable information about the deceased.

[38] Some of the information is, in addition to being about the deceased, also about other individuals who interacted with the deceased in relation to her medical care. These individuals are the applicant, other members of the deceased’s family, and health care providers. These individuals are identified by name, the date on which they interacted with the deceased, and in some cases also their role, and relationship to the deceased. Some of the information about

¹⁹ Order F19-13, 2019 BCIPC 15 at para 16, citing Order F18-11, 2018 BCIPC 14 at para 32.

²⁰ Schedule 1.

²¹ Order F05-31, 2005 BCIPC 39585 (CanLII) at para 26. See also Order F08-03, 2008 BCIPC 13321 (CanLII) at para 82.

health care providers also includes their activities, assessments, and opinions about, and in relation to, the deceased. I find that this information is, in addition to being about the deceased, also the personal information of these other individuals.

[39] Section 22(1) protects the personal information of third parties – that is, of persons other than the applicant and the public body.²² While some of the information in dispute is the personal information of the applicant, that information is also the personal information of the applicant's mother. As the applicant's mother is a third party to the inquiry, all information about her is covered by s. 22(1).

[40] Finally, I find that the personal information described above is not contact information. While the records do include the names of some health care professionals, the names are found in notes and records those professionals prepared about the deceased's medical care. In this context, I find that the names were provided to identify the professional who provided the care or opinion, not for contact purposes.

[41] Therefore, I find that all the information in dispute is personal information.

Section 22(4) - not an unreasonable invasion of privacy

[42] The second step in the s. 22 analysis is to consider whether s. 22(4) applies to any of the information that I have found is "personal information." Section 22(4) lists circumstances where disclosure of personal information is not an unreasonable invasion of a third party's personal privacy. If information falls into one of the circumstances enumerated in s. 22(4), the public body is not required to withhold the information under s. 22(1).

[43] Fraser Health submits that none of the categories listed in s. 22(4) apply to the information in dispute.

[44] Having considered the categories listed under s. 22(4), I find that it is appropriate to consider the application of s. 22(4)(e) to the personal information of the third party health care providers.

Third party's position, functions, or remuneration – s. 22(4)(e)

[45] Section 22(4)(e) provides that disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the information is

²² Schedule 1 of FIPPA defines a "third party" as "... any person, group of persons or organization other than (a) the person who made the request, or (b) a public body.

about the third party's position, functions, or remuneration as an officer, employee, or member of a public body.

[46] As discussed above, the information about health care providers includes their names, roles, activities, assessments, and opinions. While in some contexts this kind of information may be captured by s. 22(4)(e), in this case I find s. 22(4)(e) does not apply. The information is, in addition to being the personal information of the health care providers, simultaneously about the deceased so it is also her personal information. Section 22(4)(e) clearly does not apply to the deceased's personal information because it is about her as a patient, not as a public body employee.

[47] I find that the exclusion in s. 22(4)(e) does not apply to any of the personal information in dispute because all the information is about the deceased, and s. 22(4)(e) does not apply to any of the deceased's personal information..²³

[48] Having reviewed the information in dispute, I find that none of the other categories listed in subsection 22(4) apply to the information in dispute.

Section 22(3) – disclosure presumed to be an unreasonable invasion of privacy

[49] Section 22(3) lists circumstances where disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. The third step is to consider whether the presumptions listed in s. 22(3) apply to any of the personal information at issue that is not excluded under s. 22(4).

[50] Fraser Health argues that s. 22(3)(a) applies to all the withheld information.

Section 22(3)(a) – medical, psychiatric, or psychological information

[51] Section 22(3)(a) creates a presumption that it is an unreasonable invasion of a third party's personal privacy to disclose personal information that relates to a medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation.

[52] The information in dispute is found in the notes, medical directives and orders, lab and imaging reports, assessments, vital sign records, and discharge summaries that comprise the deceased's medical records. I find that all the information in dispute relates to the deceased's medical diagnosis, condition, treatment, and evaluation. For that reason, I find that s. 22(3)(a) applies to all the

²³ Order F22-42, 2022 BCIPC 47 (CanLII) at para. 35, and Order F24-22, 2024 BCIPC 28 (CanLII) at para 36.

information in dispute. Disclosure of this information is, therefore, presumed to be an unreasonable invasion of the deceased's personal privacy.

[53] I have considered all other presumptions in s. 22(3) and I find that no others apply.

Section 22(2) – All relevant circumstances

[54] The final step in the s. 22 analysis is to consider the impact of disclosing the personal information that is not excluded under s. 22(4) in light of all relevant circumstances, including those listed in s. 22(2). It is at this step, after considering all relevant circumstances, that any presumptions under s. 22(3) may be rebutted.

[55] Fraser Health asserts that ss. 22(2)(f) and (i), as well as the applicant's pre-existing knowledge are relevant factors. I will also consider the relationship between the applicant and the deceased.

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

[56] Section 22(2)(i) requires a public body to consider 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.

[57] Fraser Health submits that insufficient time has elapsed since the deceased passed away for s. 22(2)(i) to weigh in favour of disclosure.

[58] 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 orders have noted that in most Canadian jurisdictions, the law provides that disclosing information about someone who has been deceased for at least 20-30 years is unlikely to be an unreasonable invasion of their privacy.²⁴ Relying on the approach in other jurisdictions, the OIPC has held that an individual's personal privacy rights are likely to continue for at least 20 years past their death.²⁵

²⁴ Order F18-08, 2018 BCIPC 10 (CanLII) at paras. 31-32; Order F14-09, 2014 BCIPC 11 (CanLII) at para. 30; Order F23-92, 2023 BCIPC 108 (CanLII) at paras. 60-62; Order F24-05, 2024 BCIPC 7 (CanLII) at para. 48.

²⁵ Order F18-08, 2018 BCIPC 10 (CanLII) at paras. 31-32; Order F14-09, 2014 BCIPC 11 (CanLII) at para. 30; Order F23-92, 2023 BCIPC 108 (CanLII) at paras. 60-62; Order F24-05, 2024 BCIPC 7 (CanLII) at para. 48.

[59] In this case, the applicant's mother passed away less than two years ago.²⁶ In my view, the deceased has ongoing privacy rights which have not been diminished by this relatively short passage of time. Therefore, I find that s. 22(2)(i) does not weigh in favour of disclosing the deceased's personal information.

Section 22(2)(f) – supplied in confidence

[60] Section 22(2)(f) provides that whether “the personal information has been supplied in confidence” is a factor to consider in determining whether disclosure would be an unreasonable invasion of a third party's personal privacy.

[61] For s. 22(2)(f) to apply, there must be evidence that an individual supplied the personal information, and that they did so under an objectively reasonable expectation of confidentiality at the time the information was provided.²⁷

[62] Fraser Health submits that information supplied within the context of medical care is generally understood to be provided with an expectation that it will be kept confidential by the recipient.

[63] I find that some of the personal information was not supplied to Fraser Health but rather was generated through Fraser Health's own systems or by its own employees and contractors. I make this finding about the standard language on medical forms found in the deceased's records, and the information found in notes, lab and imaging reports, assessments and discharge summaries. Section 22(2)(f) requires that the information be *supplied*, not generated by the public body or its employees or contractors.²⁸ As the information described above was generated by, rather than supplied to Fraser Health, I find that s. 22(2)(f) does not apply to this information.

[64] I find that the balance of the information, which is about the deceased's symptoms, personal circumstances, medical history, and medical directives, was provided to Fraser Health by the deceased or by family members involved in her care. I find that this information was “supplied” within the meaning of s. 22(2)(f).

[65] There are no express statements of confidentiality in the medical records. However, it is generally understood that information supplied to a healthcare provider is supplied in confidence.²⁹

²⁶ While I have not been provided with the date on which the deceased passed, I can see from the records that she was alive and receiving care at the Hospital as recently as 2022.

²⁷ Order F11-05, 2011 BCIPC 5 at para 41 citing and adopting the analysis in Order 01-36, 2001 CanLII 21590 (BC IPC) at paras. 23-26 regarding s. 21(1)(b).

²⁸ Order F21-64, 2021 BCIPC 75 (CanLII) at para 102.

²⁹ *R. v. Spencer*, 2014 SCC 43 at para 39 in which the Supreme Court of Canada recognized that a patient has a reasonable expectation that their medical information will be held in trust and

[66] In this case, the deceased was suffering from cognitive impairments during the relevant time, and was regularly accompanied by the applicant and other family members when at the Hospital. I find that some of the information was supplied in the presence of the deceased's family members (including the applicant). Furthermore, given the extent of the deceased's cognitive issues, I find that it is reasonable to conclude that at least some of the supplied information was supplied by those family members (again, including the applicant), rather than the deceased herself.

[67] In my view, the fact that the deceased's family members were present for the supply and supplied some of the information at issue does not alter the analysis. The expectation of confidentiality over health information supplied to a medical professional is well-established, and I find that this expectation holds true whether the information was supplied in the presence of, or even by a family member of the patient. Accordingly, I find it reasonable to conclude that all the supplied information was supplied to the deceased's medical team in confidence.

[68] I find that s. 22(2)(f) weighs against disclosure of the information the deceased or her family members supplied to Fraser Health.

Applicant's pre-existing knowledge

[69] Prior knowledge is not an enumerated factor under s. 22(2), but many past orders have held that the fact that an applicant already knows the third party personal information in dispute is a relevant circumstance that may weigh in favour of disclosure.³⁰

[70] Fraser Health acknowledges that, given the applicant's involvement with her mother's care, the applicant supplied information to her mother's medical team, completed some forms on behalf of her mother, and visited her while she was in the Hospital. It states that where information was supplied by the applicant and where information documented her attendance at the Hospital, those portions of the records were disclosed to the applicant.

[71] However, Fraser Health submits that the applicant would not have knowledge of the detailed medical information contained in the remaining records in dispute. Thus, ultimately, it argues that the applicant's prior knowledge is not relevant to the information that it has not already disclosed.

[72] On the face of the records, I can see that the applicant was present at the Hospital for much of the medical care documented in the records. While Fraser

confidence by the patient's physician. See also Order F22-42, 2022 BCIPC 47 (CanLII) at para 49; and Order F22-62, 2022 BCIPC 70 at para 51.

³⁰ Order F17-02, 2017 BCIPC 2 (CanLII) at paras 28-30, Order 03-24, 2005 BCIPC 11964 (CanLII) at para 36, and Order F15-14, 2015 BCIPC 14 (CanLII) at paras 72-74.

Health disclosed information that was clearly supplied by the applicant, or about her attendance at the Hospital, it did not disclose the remaining medical information that related to those attendances.

[73] Several factors suggest that the applicant knows some of the information in dispute. The applicant was present at the Hospital with her mother when some of the medical records were created. Furthermore, in addition to empowering the applicant to make decisions about her mother's medical care decisions, the Representation Agreement granted the applicant "the same right to all information and records" that her mother had while the applicant's mother was alive.³¹ Finally, from the applicant's submissions, it is clear to me that she has some knowledge about her mother's medical issues in general.

[74] In the circumstances, I find that the applicant has some knowledge about the content of her mother's medical records. However, I do not have evidence about what specific information the applicant knows, or whether the applicant ever accessed her mother's medical records using the powers granted to her by the Representation Agreement. In addition, general knowledge of the deceased's medical conditions is not equivalent to knowledge of the information contained in 708 pages of detailed medical records.

[75] In all of the circumstances, I find that the applicant's pre-existing knowledge weighs in favour of disclosure of the information in dispute. However, I assign limited weight to this factor since it is not clear what information the applicant actually knew and to what level of detail.

Applicant's relationship to the deceased

[76] In past orders involving requests for access to a deceased person's personal information, the OIPC has considered the applicant's relationship to the deceased.³²

[77] In this case there was a familial relationship between the applicant and the deceased. The applicant's mother named the applicant as a beneficiary in her will. The applicant was present for and involved in her mother's medical care. I also accept that the applicant's statement that she cared deeply for her mother. In short, I accept that the applicant had a close relationship with the deceased.

³¹ See section 4 of Representation Agreement, referencing s. 18 of the *Representation Agreement Act*. I note that this right was limited to access information that related to the applicant's areas of authority or her mother's incapability. To be clear, as the Representation Agreement ended when the applicant's mother died (see note 12) I do not find that it gives the applicant any ongoing right to access her mother's medical records.

³² Order 96-1996, [1996] BCIPCD No. 22; Order 00-11, 2000 CanLII 10554; Order F14-09, F14-32, 2014 BCIPC 35; and Order F22-42, 2022 BCIPC 47 (CanLII) at para 52.

[78] Furthermore, the applicant's mother named her as her health and personal representative and as the executor of her will. In my view, these decisions suggest that the deceased placed a significant amount of trust in the applicant to make decisions for her both during her life and after her death.

[79] I find that the nature of the relationship between the applicant and the deceased favours disclosure.

Section 22(1) - Conclusion

[80] All the information Fraser Health withheld under s. 22(1) is the personal information of the deceased.³³ Section 22(4) does not apply to any of this information.

[81] The presumption against disclosure of information about an individual's medical history, diagnosis, condition, treatment, or evaluation in s. 22(3)(a) weighs against disclosure of all the information in dispute. In addition, the fact that some of the information was supplied in confidence within the meaning of s. 22(2)(f) weighs against disclosure.

[82] While the applicant clearly has some prior knowledge of some of the information in dispute and shared a close relationship with the deceased, I find that these factors are not sufficient to outweigh the s. 22(3)(a) presumption against disclosure. Medical information attracts significant privacy interests, and despite the close relationship between the applicant and the deceased and the applicant's involvement in the deceased's medical care, I do not have sufficient evidence about what the deceased would have wanted or what information the applicant already knows to find otherwise. Accordingly, I find that it would be an unreasonable invasion of the applicant's mother's personal privacy to disclose any of the information in dispute to the applicant, and I require Fraser Health to withhold it under s. 22(1).

CONCLUSION

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

1. I confirm Fraser Health's decision that the applicant is not acting on behalf of the deceased in respect of her access request pursuant to s. 5(2)(b) of FIPPA and s. 5 of the FIPPA Regulation.

³³ I note that some of the information in dispute is also about other identifiable and is therefore simultaneously the personal information of the deceased and these other individuals. However, given my conclusion about the deceased's privacy interests, I need not also consider the privacy interests of these other third parties.

2. I require Fraser Health to refuse to disclose the information in dispute under s. 22(1).

September 26, 2024

ORIGINAL SIGNED BY

Allison J. Shamas, Adjudicator

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