



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F25-28

Fraser Health Authority

Alexander R. Lonergan
Adjudicator

April 3, 2025

CanLII Cite: 2025 BCIPC 34

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Summary: An applicant requested that the Fraser Health Authority (Fraser Health) provide access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to her deceased mother's (the Deceased) medical records. Fraser Health refused to disclose the requested records on the basis that the applicant was not authorized to 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 Act Regulation* (Regulation). Fraser Health also refused to disclose the records under s. 22 (unreasonable invasion of third-party personal privacy) of FIPPA and disputed the applicant's claim that the public interest required disclosure under s. 25(1) of FIPPA. The adjudicator found that the applicant was not acting on behalf of the Deceased under s. 5(1)(b) of FIPPA and s. 5 of the Regulation. The adjudicator further found that disclosing the Deceased's personal information would be an unreasonable invasion of her personal privacy under s. 22 but ordered Fraser Health to provide a summary under s. 22(5) of any information about the applicant that was supplied in confidence. Finally, the adjudicator determined that Fraser Health is not required to disclose the disputed information under s. 25(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 5, 22(1), 22(2), 22(2)(a), 22(2)(c), 22(2)(e), 22(2)(f), 22(2)(h), 22(2)(i), 22(3)(a), 22(4), 22(5), 25(1)(b); *Freedom of Information and Protection of Privacy Act Regulation*, BC Reg 155/2012, s. 5; *Wills, Estates and Succession Act*, SBC 2009, c 13, at s. 150(2); *Supreme Court Civil Rules*, BC Reg 168/2009, at Rule 1-1(1); *Health Care (Consent) and Care Facility (Admission) Act*, RSBC 1996, c 181; *Criminal Code*, RSC 1985, c C-46.

INTRODUCTION

[1] An applicant asked Fraser Health Authority (Fraser Health) for records about her deceased mother's (the Deceased) receipt of medical assistance in dying (MAID). Specifically, the applicant asked for the assessment forms that were used to determine the Deceased's eligibility for MAID.

[2] Fraser Health refused to disclose the requested records because it said that the applicant did not make her request 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 Regulation (Regulation).¹ Fraser Health also refused to disclose the responsive record under s. 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA.

[3] After receiving Fraser Health's response, the applicant asked Fraser Health to reconsider and said that the records must be disclosed under s. 25 (public interest disclosure) of FIPPA.

[4] The applicant subsequently applied to the Office of the Information and Privacy Commissioner (OIPC) for a review of Fraser Health's decision. Mediation by the OIPC did not resolve the issues and the matter proceeded to inquiry.

Preliminary Matters

New Issues

[5] In its submissions for this inquiry, Fraser Health discusses some background information related to this dispute. Fraser Health discusses the applicant and her family's objections to the Deceased's receipt of MAID, her family's actions under the *Mental Health Act*, and Fraser Health's characterization of the applicant's past communications with Fraser Health. The applicant says that these matters are new issues, outside the scope of this inquiry, irrelevant, and that it would be unfair for me to consider them.²

[6] These matters are not "issues" in the sense that a party is asking me to make a decision about them under FIPPA. However, the history of the applicant's interactions with Fraser Health and her attempted interventions in the Deceased's receipt of MAID provide relevant context for the issues that are listed in the Notice of Inquiry, namely, ss. 5, 22, and 25 of FIPPA. Therefore, I find that these matters are not new issues and that it is fair for me to consider them in my analysis below.

[7] I understand from the applicant's submissions that she is concerned I will take a negative view of her credibility and motivations after considering what Fraser Health says about the history of the parties' interactions. As noted above, I will not disregard that history because it is directly relevant to the FIPPA issues before me. However, I will approach the issues with an open mind and only consider this background to the extent that it is relevant to the FIPPA issues before me.

¹ Freedom of Information and Protection of Privacy Regulation, BC Reg 155/2012.

² Applicant's initial submission at 5-6.

Matters Outside the Scope of FIPPA

[8] In her submissions for this inquiry, the applicant explains why she thinks the Deceased should not have received MAID from Fraser Health. My jurisdiction as the Commissioner's delegate is limited to the FIPPA issues in dispute. I do not have the jurisdiction to decide whether Fraser Health correctly followed the MAID process or whether the Deceased met the medical and psychological requirements for receiving MAID. While I have considered the parties' entire submissions, I will only comment on the portions that are relevant to the issues I must decide under FIPPA.

Request to Exclude In Camera Material

[9] Section 56(2) permits the OIPC to conduct an inquiry in private and s. 56(4)(b) gives the OIPC the discretion to decide whether a person is entitled "to have access to or comment on representations made to the commissioner by another person." These provisions provide the OIPC with the ability to receive inquiry material *in camera*, that is, material that only the adjudicator can see.³

[10] An OIPC adjudicator approved Fraser Health's request to submit some information *in camera* in this inquiry. The applicant asks me to exclude the *in camera* material because she says she cannot address or contextualize Fraser Health's arguments, which creates procedural unfairness.⁴

[11] The BC Supreme Court recently said that receiving *in camera* material in an OIPC inquiry is not procedurally unfair if the Commissioner (or his delegate), in assessing fairness, weighs the value of accepting materials *in camera* against the negative impact on the other party's ability to respond to the case presented.⁵

[12] I can see that the adjudicator who allowed the *in camera* material did so because it includes information that Fraser Health could be required to refuse to disclose under FIPPA.

[13] It is clear to me that the adjudicator appropriately weighed the value of accepting the materials *in camera* against the negative impact on the applicant's ability to respond to the case presented. Nothing the applicant says persuades me that the *in camera* process was unfair, that I should reconsider the *in camera* decision, or that I should disregard the *in camera* material.

³ Order F24-76, 2024 BCIPC 86 (CanLII) at para 5.

⁴ Applicant's initial submission at 6-7.

⁵ *Cimolai v British Columbia (Information and Privacy Commissioner)*, 2024 BCSC 948 (CanLII) at paras 32, 34, and 36.

[14] The applicant also argues that she should have received a summary of the *in camera* material and an additional opportunity to respond to it. The applicant refers to a document she calls the “*OIPC Guide for Written Inquiries*”, which she says requires she receive a summary of the *in camera* information to ensure procedural fairness. The applicant did not provide a copy of or hyperlink to this document, nor did she explain where she found it.

[15] I am not aware of any OIPC guidance document titled *OIPC Guide for Written Inquiries* that mandates a party get a summary of *in camera* materials. However, I have reviewed the OIPC’s guidance document titled *Instructions for Written Inquiries (Instructions)*, which is currently in effect and was provided to the parties along with the Notice of Inquiry.⁶ The *Instructions* do not impose a requirement on the OIPC or a public body to provide a summary of submissions that the OIPC receives *in camera*. I am not satisfied that such an obligation exists. Additionally, in my view it would not be possible to provide a summary of the *in camera* material without also revealing the *in camera* information.

[16] I decline to provide the applicant with a summary of the *in camera* material and an opportunity to provide further submissions.

DISCUSSION

Background

[17] The applicant is a daughter of the Deceased and the executor of the Deceased’s estate.

[18] The Deceased suffered from complicated health problems, causing her to apply to Fraser Health for MAID. The applicant did not think the Deceased qualified for MAID and she tried to stop it. Ultimately, Fraser Health granted the Deceased’s application and she passed away using MAID services.

[19] Under FIPPA, the applicant asked Fraser Health for access to the MAID assessment forms that were used for assessing the Deceased’s eligibility for MAID services.

Records and Information at Issue

[20] The records at issue consist of 19 pages of the Deceased’s medical records.

⁶ Available online at: <https://www.oipc.bc.ca/documents/guidance-documents/1658>.

⁷ 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.

Issues and burden of proof

[21] The issues I must decide in this matter are as follows:

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 disputed information under s. 22(1)?
3. Is Fraser Health required to disclose the disputed information without delay under s. 25(1)?

[22] FIPPA does not specify who has the burden to prove whether an applicant is acting on behalf of another individual under s. 5 of FIPPA and s. 5(1)(b) 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.⁸

[23] Similarly, FIPPA is silent about whether there is a burden on either party to prove or disprove that s. 25(1) applies. Past orders have said that it is in the best interest of both parties to provide whatever evidence and arguments they have, but that it is ultimately up to the Commissioner to determine whether s. 25(1) applies.⁹

[24] Consistent with the approach of past orders, I will not impose a burden of proof on either party with respect to ss. 5 or 25(1).

[25] Section 57(2) places the burden on the applicant to establish that disclosure of the information withheld under s. 22 would not be an unreasonable invasion of a third party's personal privacy.¹⁰ However, as the public body in this matter, Fraser Health has the initial burden of proving that the information withheld under s. 22 is personal information.¹¹

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

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

⁸ 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.

⁹ Order 02-38, 2002 CanLII 42472 (BC IPC) at para 39; Order 03-02, 2003 CanLII 49166 (BC IPC) at para 16; Order F22-64, 2022 BCIPC 72 (CanLII) at para 6; Order F23-24, 2023 BCIPC 28 (CanLII) at para 5.

¹⁰ 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.

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

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 ...

[27] 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:

5(1) In this section:

"appropriate person" means,

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

- (i) a committee acting under section 24 of the *Patients Property Act* for the deceased;
- (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.

[28] Past OIPC orders have established a two-part test for an applicant to exercise a deceased person’s access rights in accordance with the requirements described above.

[29] First, the applicant must be the appropriate person under s. 5(1)(a) of the Regulation. Secondly, the applicant’s access request must have been made “on behalf of” the deceased person.¹²

[30] 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.¹³

[31] I will now apply the two-part test to the access request in the current matter.

¹² Order F18-08, 2018 BCIPC 10 (CanLII) at para 10; Order F22-42, 2022 BCIPC 47 (CanLII) at para 16.

¹³ Order F23-92, 2023 BCIPC 108 (CanLII) at para 27; Order F24-22, 2024 BCIPC 28 (CanLII) at para 12.

Is the applicant an appropriate person?

[32] The term “personal representative” is defined in the *Interpretation Act* as including an executor of a will.¹⁴ Fraser Health acknowledges that the applicant is the Deceased’s personal representative, and therefore an appropriate person under s. 5(1)(b) of the Regulation.¹⁵

[33] The applicant provided me with a copy of the Deceased’s will which appoints her as the Deceased’s executor.¹⁶ There is no evidence before me that the applicant’s appointment as executor is invalid, or that a court has granted administration of the Deceased’s estate to someone else. There is also no evidence before me that a committee is currently acting on behalf of the Deceased.

[34] Taking these circumstances into account, I am satisfied that the applicant is the Deceased’s personal representative and an appropriate person under s. 5(1) of the Regulation.

Was the applicant’s request made on behalf of the Deceased?

[35] Next, I must determine whether the applicant made her request “on behalf” of the Deceased.

[36] FIPPA does not define what it means to be “acting 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.¹⁷ Additionally, if an applicant requests information to further their own interests, then this is not enough to establish they are acting on behalf of the other individual.¹⁸

Parties’ submissions, Acting on Behalf of the Deceased

[37] The applicant says that she made her access request in order to verify whether the legal requirements for receiving MAID were met in the Deceased’s case. She says the Deceased had a right to not have her life ended except in

¹⁴ *Interpretation Act*, RSBC 1996, c 238, s. 29.

¹⁵ Fraser Health’s initial submission at para 40.

¹⁶ Applicant’s submission at Appendix H.

¹⁷ 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.

¹⁸ 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.

accordance with the MAID provisions of the *Criminal Code*.¹⁹ Based on what I see in the material before me, I can see that the applicant questions the Deceased's eligibility for MAID on multiple grounds, including the Deceased's mental capacity, the diagnosis of underlying conditions, and compliance with minimum MAID waiting periods.

[38] The applicant argues that she is under a legal duty as the Deceased's executor to confirm that all procedural safeguards were followed when the Deceased received MAID.²⁰ She refers to her duties as executor under the *Wills, Estates and Succession Act* (WESA). She specifically cites s. 150(2) of WESA, which says:

(2) Subject to this section, the personal representative of a deceased person may commence or continue a proceeding the deceased person could have commenced or continued, with the same rights and remedies to which the deceased person would have been entitled, if living.²¹

[39] Finally, the applicant also says that disclosure is required for transparency and accountability.²²

[40] In response, Fraser Health argues that investigating the circumstances of a deceased person's death is not an executor's duty under WESA.²³ Fraser Health says that in response to the applicant's complaints, the local police department, the Ministry of Health, the College of Physicians and Surgeons, the BC College of Nurses and Midwives, the BC Coroners Office, and Fraser Health Patient Quality Review Office all conducted their own investigations into the Deceased's use of MAID. No criminal or disciplinary charges resulted from those investigations.²⁴

[41] Fraser Health also argues that the applicant is requesting the records for her own purposes. Fraser Health points to the applicant's initial access request, where she said that the reason for her access request was for "personal record".²⁵ Fraser Health says that this language means that the applicant requested the records for her own personal records. Fraser Health also points to the applicant's history of challenging the Deceased's use of MAID services as evidence that the Deceased and the applicant did not share the same views or goals about the Deceased's use of MAID. Fraser Health says that there is no

¹⁹ *Criminal Code*, RSC 1985, c C-46.

²⁰ Applicant's submission at 17-18.

²¹ *Wills, Estates and Succession Act*, SBC 2009, c 13, s. 150(2).

²² Applicant's submission at 15-17.

²³ Fraser Health's reply submission at paras 17-19.

²⁴ Fraser Health's reply submission at paras 19 and 45; Affidavit #1 of MW at para 5.

²⁵ Applicant-completed "Authorization for the release of health records" form.

basis to conclude that disclosure would be in the Deceased's interests or consistent with her goals, opinions or wishes.²⁶

Analysis and Findings, Acting on Behalf of the Deceased

[42] I will first address the applicant's choice of language in her original access request. In the section of Fraser Health's form that asked for a reason for the request, the applicant wrote "Access to MAID assessment forms for personal record".²⁷ Fraser Health says this language means that the applicant requested access for her own personal records, whereas the applicant says that she was referring to the Deceased's personal records.²⁸ I find that either interpretation is reasonably possible, therefore, the original access request form is unhelpful for this analysis.

[43] Next, I accept that the applicant is genuinely seeking access to the disputed records in order to verify that the Deceased was eligible to receive MAID, both in the sense of the Deceased's medical eligibility for MAID and the healthcare providers' compliance with MAID's procedural requirements. However, based on the content of the records and Fraser Health's affidavit evidence, it is clear to me that the Deceased's goal was to receive MAID. There is no evidence before me that the Deceased wanted the applicant to verify her eligibility for MAID, for any reason.

[44] While I understand the applicant has concerns about multiple aspects of the Deceased's receipt of MAID, in my view, the applicant's submissions and evidence do not establish that it would benefit the Deceased's interests or further her goals or objectives for the applicant to verify the Deceased's MAID eligibility.

[45] Similarly, I am not persuaded that an executor's duties include verifying compliance with the *Criminal Code's* MAID eligibility and procedural requirements. The legislation and decisions cited by the applicant do not support this principle and I am not aware of any authority that does.

[46] I have also considered s. 150(2) of WESA, cited by the applicant, which allows a personal representative to commence or continue a proceeding the deceased person could have commenced or continued with the same rights and remedies to which the deceased person would have been entitled if living. On this point, Fraser Health argues that investigating the circumstances of a deceased person's death is not an executor's duty under WESA.²⁹

²⁶ Fraser Health's initial submission at paras 39-42; Fraser Health's reply submission at para 2.

²⁷ Applicant-completed "Authorization for the release of health records" form.

²⁸ Applicant's submission at 15; Fraser Health's initial submission at paras 14 and 40.

²⁹ Fraser Health's reply submission at paras 17-19.

[47] Neither WESA nor the *Interpretation Act* define “proceeding”, but the *BC Supreme Court Civil Rules*, which govern estate litigation proceedings in BC, define a “proceeding” as “an action, a petition proceeding and a requisition proceeding, and includes any other suit, cause, matter, stated case under Rule 18-2 or appeal”.³⁰

[48] The applicant does not explain what kind of proceeding she would pursue using the information contained in the disputed records, what the legal basis of that proceeding would be, or what remedy she would seek on behalf of the Deceased. I do not see how the applicant’s goal of verifying compliance with *Criminal Code* requirements for MAID in her capacity as executor would constitute a “proceeding”. Therefore, I am not persuaded that the applicant’s request is for the purpose of commencing or continuing a proceeding as the Deceased’s executor.

[49] I also note that in the applicant’s request to Fraser Health to reconsider its initial severing decision, the applicant said that she sought the records for mental health advocacy purposes and that the Deceased would have wanted disclosure to help her daughters understand her final wishes.³¹ Previous OIPC orders have rejected these types of arguments in the absence of clear evidence that the deceased person shared such goals while they were alive, and I agree with the reasoning of those decisions.³² What the applicant says does not persuade me that the Deceased held these goals or wanted her personal information disclosed for these purposes. Therefore, I find that the purposes of advocacy and family understanding do not establish that the applicant made the request on the Deceased’s behalf.

[50] Next, the applicant says that disclosure is required for transparency and accountability.³³ As Fraser Health points out, there have already been several formal investigations into the Deceased’s use of MAID.³⁴ There is no persuasive evidence that the Deceased held accountability or transparency as personal goals or asked the applicant to pursue those goals on her behalf. Additionally, the existing investigations are sufficient, in my view, to satisfy any need for accountability and transparency. Therefore, I find that the purposes of accountability and transparency do not establish that the applicant made her request on behalf of the Deceased.

[51] Finally, I have also considered whether it is in the Deceased’s interests, for any other reason, for the applicant to request the disputed records. It is not apparent to me that disclosing the disputed records would further the Deceased’s

³⁰ Supreme Court Civil Rules, BC Reg 168/2009, at Rule 1-1(1).

³¹ Applicant’s request for reconsideration at 3-4.

³² Order F24-85, 2024 BCIPC 97 (CanLII), at para 23, and the orders cited therein.

³³ Applicant’s submission at 15-17.

³⁴ Fraser Health’s reply submission at paras 19 and 45.

goals or otherwise benefit the Deceased in any meaningful way. Therefore, I find that the applicant's request for access is not made on behalf of the Deceased.

Conclusion, s. 5(1)(b)

[52] For the reasons given above, I find that the applicant's request for the disputed records was not made "on behalf of" the Deceased.

Unreasonable invasion of third-party personal privacy – s. 22

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

[54] Past orders have established the analytical approach to s. 22, which I will follow in this matter.³⁵

Section 22(1) – personal information

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

[56] 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".

[57] I find that all of the information in dispute is the personal information of the Deceased. This includes information that at first seems innocuous, such as pre-printed instructions on certain forms. However, the use of certain forms and versions of certain forms is itself revealing of how and when the Deceased progressed through the MAID process. Therefore, the fact that certain forms were used in the Deceased's case qualifies them as her personal information.

[58] Some of the information in dispute consists of the names and work phone numbers of various medical professionals. This type of information may be considered "contact information" depending on the context in which it appears.³⁶ In this case, I find that this information is not contact information because disclosing it would reveal details about the Deceased's receipt of healthcare

³⁵ 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.

³⁶ Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

services. Specifically, it would reveal the identity and type of healthcare professional who provided services to the Deceased at a point in time. Therefore, I find it is the personal information of the Deceased and also the personal information of the health care professionals.

[59] Finally, a very small amount of information is about both the Deceased and the applicant.

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

[60] 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 Fraser Health cannot withhold it on that basis.

[61] Fraser Health argues that none of the circumstances set out at s. 22(4) apply.³⁷ The applicant does not address s. 22(4) in her submissions.

[62] The only circumstance that may be relevant is s. 22(4)(e), that is, whether any of the personal information is information about a third party's position or functions as an officer, employee or member of a public body. The records include healthcare professionals' observations about the Deceased, so this information is simultaneously the personal information of the Deceased and the healthcare professionals. I find that s. 22(4)(e) does not apply because the personal information is, in substance, about the Deceased and not about the healthcare professionals' positions, functions or remuneration.³⁸

[63] I find that none of the circumstances set out at s. 22(4) apply in this matter.

Section 22(3) – Presumed unreasonable invasion of privacy

[64] The third step in the s. 22(1) analysis is to consider whether any of the presumptions in s. 22(3) apply to the personal information at issue. Section 22(3) lists circumstances in which disclosure of personal information is presumed to be an unreasonable invasion of personal privacy.

[65] Fraser Health says that s. 22(3)(a) is relevant.³⁹ The applicant does not address s. 22(3) in her submission.

³⁷ Fraser Health's initial submission at paras 55-57.

³⁸ For examples of similar reasoning, see: Order F24-22, 2024 BCIPC 28 (CanLII) at paras 34-36; Order F22-42, 2022 BCIPC 47 (CanLII) at para 35.

³⁹ Fraser Health's initial submission at paras 58-61.

[66] Section 22(3)(a) says as follows:

- (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,

[67] In this matter, it is clear on the face of the records that all the personal information in dispute relates to the Deceased's medical or psychological history, diagnoses, conditions, evaluations and treatments. Therefore, I find that s. 22(3)(a) applies and disclosure of this information is presumed to be an unreasonable invasion of the Deceased's personal privacy.

Section 22(2) – All relevant circumstances

[68] The final step in the s. 22 analysis is to consider the impact of disclosing the personal information in light of all relevant circumstances, including those listed in s. 22(2). It is at this step, after considering all relevant circumstances, that the applicant may rebut the presumption created under ss. 22(3)(a).

[69] Fraser Health says that ss. 22(2)(e), (f), (h), and (i) support withholding the disputed personal information.⁴⁰ The applicant raises ss. 22(2)(a), (c), and other circumstances that she says supports disclosure.⁴¹ I will address each of these circumstances.

Public scrutiny, s. 22(2)(a)

[70] Section 22(2)(a) states that a relevant circumstance to consider under s. 22(1) is whether disclosure is desirable for the purpose of subjecting the activities of a public body to public scrutiny.

[71] The applicant says that s. 22(2)(a) favours disclosure because it is desirable to use the disputed information to hold Fraser Health accountable. Specifically, the applicant complained to the police that Fraser Health failed to comply with MAID procedural safeguards required by the *Criminal Code*, and she says Fraser Health should be held accountable for that as well as for allegedly obstructing the police investigation by refusing to give the records to the police. Finally, the applicant says that public scrutiny of Fraser Health's practices would deter future procedural lapses and restore confidence in the healthcare system.⁴²

⁴⁰ Fraser Health's initial submission at para 63.

⁴¹ Applicant's submission at 19-22.

⁴² Applicant's submission at 3, 15, 16, 19 and 25.

[72] In response, Fraser Health says that it adhered to its legal requirements when it declined to voluntarily disclose the records to the police, noting the police did not seek to compel production. Fraser Health denies the applicant's allegations that it obstructed the police investigation and that the police had to close their investigation due to the unavailability of the records. Fraser Health quotes from the police's general occurrence report which concluded: "After a full investigation into the matter of MAiD and their role in assisting [the Deceased] at the end of her life, investigators could not find any criminality on the part of MAiD that was contrary to the Criminal Code of Canada."⁴³

[73] I have considered whether the disclosing disputed records would subject the activities of Fraser Health to public scrutiny. The information in those records, in my view, would not indicate the kind of non-compliance and obstructive behaviour that the applicant says it would. I am not persuaded that disclosure of this information to the applicant is desirable for subjecting Fraser Health's activities to scrutiny.

Relevant for a fair determination of the applicant's rights, s. 22(2)(c)

[74] Section 22(2)(c) requires a public body to consider whether the personal information in dispute is relevant to a fair determination of an applicant's rights. Past orders have found that s. 22(2)(c) applies where all of the following circumstances exist:

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
3. The withheld personal information must have some bearing on, or significance for, determination of the right in question; and
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.⁴⁴

[75] I will apply the same analytical framework in this matter.

[76] The applicant raises s. 22(2)(c) as a relevant factor.⁴⁵ However, the applicant does not discuss whether and how the Deceased's personal information is relevant to a fair determination of the applicant's rights. The

⁴³ Applicant's submission, Appendix G (final page); Fraser Health's reply submission at paras 24-26.

⁴⁴ Order 01-07, 2001 CanLII 21561 (BCIPC) at para 31; Order F15-11, 2015 BCIPC 11 (CanLII) at para 24.

⁴⁵ Applicant's submission at 19.

applicant's discussion of rights is about the Deceased's rights and the rights of other persons undergoing the MAID process.

[77] Although I have read all of the applicant's submission, I find that the applicant has not identified a legal right drawn from common law or statute that belongs to her. It is not apparent to me how the disputed information could be relevant to any of the applicant's own rights. I find that s. 22(2)(c) is not a circumstance that favours disclosure.

Unfair exposure to reputational and other harm, ss. 22(2)(e) and (h)

[78] Fraser Health provides the same arguments to support its position that both ss. 22(2)(e) and 22(2)(h) apply to the personal information in dispute. Therefore, I will consider these subsections at the same time. The applicant did not discuss ss. 22(2)(e) or (h) in her submission.

[79] Section 22(2)(e) asks whether disclosure will unfairly expose a third party to financial or other harm. "Harm" under s. 22(2)(e) includes "serious mental distress or anguish or harassment."⁴⁶ Embarrassment, upset, or negative reactions do not rise to the required level of mental harm.⁴⁷

[80] Similarly, s. 22(2)(h) requires a public body to consider whether disclosure of personal information may unfairly damage the reputation of any person referred to in the records. The analysis under s. 22(2)(h) has two requirements. First, the public body must establish that disclosing the disputed information may damage the reputation of a person referred to in the records. Second, the reputational damage must be unfair.⁴⁸

[81] Fraser Health says that disclosure may unfairly damage the Deceased's reputation because the applicant believes that the Deceased lacked sufficient mental capacity to proceed with MAID whereas the Deceased is no longer able to defend against those allegations. Fraser Health says that this position is incorrect and potentially stigmatizing. Finally, Fraser Health says it is relevant that the Deceased cannot defend against such allegations or repair any resulting reputational harm.⁴⁹

[82] I find this argument unpersuasive. Fraser Health has not clearly explained how disclosing the disputed information to the applicant would expose the Deceased to broader stigma and reputational harm due to the applicant's personal beliefs about the Deceased's use of MAID. If Fraser Health is implying

⁴⁶ Order 01-37, 2001 CanLII 21591 (BC IPC) at para 42.

⁴⁷ Order 01-15, 2001 CanLII 21569 (BC IPC), at paras 49-50; Order F20-37, 2020 BCIPC 43 (CanLII), at para 120.

⁴⁸ Order F21-69, 2021 BCIPC 80 (CanLII) at para 80.

⁴⁹ Fraser Health's initial submission at para 65; Fraser Health's reply submission at para 69.

that the applicant plans to harm the Deceased's character by publicly stating that the Deceased did not know whether MAID was in her own best interest, I am not persuaded by the material before me that this is reasonably likely to happen.

[83] In addition, Fraser Health has not explained how the Deceased could suffer any of the types of harm contemplated by s. 22(2)(e), such as financial harm or serious mental distress given she is no longer alive to experience them.

[84] Finally, Fraser Health does not say, and it is not apparent to me, that anyone else referred to in the records would be exposed to any harm under ss. 22(2)(e) or (h) if the disputed personal information is disclosed to the applicant.

[85] For these reasons, I am not persuaded disclosing the information in dispute will cause the type of harms set out in ss. 22(2)(e) and (h).

Information supplied in confidence, s. 22(2)(f)

[86] Section 22(2)(f) says that a relevant circumstance to consider is whether the personal information was supplied in confidence. Section 22(2)(f) requires evidence that an individual supplied the information under an objectively reasonable expectation of confidentiality at the time they supplied the information.⁵⁰

[87] Fraser Health argues that the disputed information was supplied to Fraser Health under an objectively reasonable expectation of privacy, and that this weighs against disclosure under s. 22(2)(f).⁵¹ The applicant does not discuss s. 22(2)(f).

[88] Having reviewed the disputed records, I can see that the personal information at issue consists of sensitive medical and psychological information supplied by the Deceased and individual healthcare professionals to Fraser Health. The context under which this information was supplied was that of an ill person seeking MAID despite objections from some of their family members.

[89] The nature of the information and the context in which it was supplied, satisfy me that each party who supplied this information did so with an objectively reasonable expectation that Fraser Health would treat it with utmost confidentiality. I find that the personal information at issue was supplied in confidence within the meaning of s. 22(2)(f), and that this weighs against its disclosure.

⁵⁰ Order F23-66, 2023 BCIPC 77 (CanLII) at para 69 citing Order F11-05, 2011 BCIPC 5 (CanLII) at para 41, citing Order 01-36, 2001 CanLII 21590 (BCIPC) at paras 23-26.

⁵¹ Fraser Health's initial submission at para 64.

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

[90] 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.

[91] 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.⁵²

[92] In this case, the Deceased received MAID fewer than five years ago. There are no circumstances here that persuade me that her personal privacy rights are extinguished after such a brief period of time. Therefore, I find that the short length of time since the Deceased's passing is a factor that weighs against disclosure.

Applicant's knowledge

[93] While not listed in s. 22(2), past orders have considered whether the applicant's pre-existing knowledge of the information in dispute weighs for or against disclosure.⁵³

[94] The extensive background information provided by the applicant satisfies me that she has detailed knowledge of much of the information in dispute. Although I will not confirm whether she has complete knowledge of the withheld information, I find that her knowledge is sufficient to weigh in favour of disclosure.

Applicant's own personal information

[95] Among the information I determined to be supplied in confidence, there is a very small amount of information in one of the withheld records that is simultaneously about both the Deceased and the applicant. Consistent with the approach taken by past orders, the fact that it is the applicant's personal information weighs in favour of disclosing it.⁵⁴

⁵² 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.

⁵³ Order F18-48, 2018 BCIPC 51 at para 27; Order F20-22, 2020 BCIPC 26 at para 51.

⁵⁴ Order F14-47, 2014 BCIPC 51 (CanLII) at para 36, citing Order F10-10, 2010 BCIPC 17 (CanLII) at para 37 and Order F06-11, 2006 CanLII 25571 (BC IPC) at para 77.

Consent

[96] The applicant says that some medical information was provided to her from the Deceased's healthcare providers, which she says could only happen if the Deceased consented to that disclosure pursuant to the *Health Care (Consent) and Care Facility (Admission) Act*.⁵⁵ Furthermore, the applicant says that when the Deceased was alive, she told the applicant that she consented to her medical information being disclosed to the applicant.⁵⁶ The applicant argues that the fact the Deceased consented to disclosing her personal information to the applicant should favour disclosure.

[97] In response, Fraser Health says that the requirements for consent to disclosure under the *Health Care (Consent) and Care Facility (Admission) Act* and FIPPA are different, that it has no knowledge of the kind of consent the applicant says supports disclosure of the disputed records now, and that any consent that was provided is not relevant to the current s. 22 analysis.⁵⁷

[98] Based on the content of the applicant's submissions (including its appendices), I can see that the Deceased must have shared some of her personal medical information with the applicant in the past. However, there is no evidence before me that the Deceased agreed to disclose the specific records that I am considering in this inquiry. The fact that the Deceased shared some of her personal information with the applicant, regardless of whether that information was shared in compliance with other legislation, does not prove that she consented to disclosing the records at issue in this inquiry.

[99] Having considered these circumstances, I conclude that there is not enough supporting evidence to establish that the Deceased consented to disclosing the disputed records. I find that the Deceased's purported consent to disclosure is not a factor that supports disclosing the disputed information to the applicant.

Section 22(1) - Conclusion

[100] I found that all of the information Fraser Health withheld under s. 22(1) is personal information. I found that none of the circumstances in s. 22(4) apply here. I found that the disclosing of any of the information in dispute is presumed to be an unreasonable invasion of the Deceased's personal privacy under s. 22(3)(a) because the information at issue relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation.

⁵⁵ *Health Care (Consent) and Care Facility (Admission) Act*, RSBC 1996, c 181.

⁵⁶ Applicant's submission at paras 19-20.

⁵⁷ Fraser Health's reply submission at paras 34-39.

[101] I found that the personal information at issue was supplied in confidence under s. 22(2)(f), which supports the presumption created by s. 22(3)(a). On the other hand, the fact that the applicant has considerable knowledge of the disputed information weighs in favour of disclosure. Similarly, a small amount of the disputed information is about both the applicant and the Deceased, which favours disclosure.

[102] Taking all of the matters discussed above into consideration, I conclude that the applicant has not rebutted the presumption created by s. 22(3)(a). I find that disclosing the disputed personal information would be an unreasonable invasion of the Deceased's personal privacy under s. 22(1). Therefore, Fraser Health must refuse to give the applicant access to all of the disputed personal information.

Section 22(5) – Summary of Applicant's Personal Information

[103] Section 22(5)(a) says that if a public body refuses to disclose personal information supplied in confidence about an applicant, the public body must give the applicant a summary of that information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information. Neither party discussed s. 22(5) in their submissions.

[104] In this case, I can see that the applicant already knows that the Deceased supplied the limited personal information about her to Fraser Health. I draw this conclusion based on the applicant's existing knowledge of these matters, the narrow scope of her access request, and the content of that information.

[105] Given that the Deceased is already known as the supplier of this information, providing the applicant with a summary of this information would not "reveal" the supplier's identity. Therefore, I find that it is possible for Fraser Health to provide the applicant with a summary of the applicant's personal information that the Deceased supplied in confidence. That information is on pages 16 and 17 of the records.

Public Interest Disclosure – s. 25(1)

[106] Section 25(1) overrides all of FIPPA's discretionary and mandatory exceptions to disclosure.⁵⁸ The applicant asks that I order Fraser Health to disclose the disputed records under s. 25(1)(b).⁵⁹

⁵⁸ Note that s. 25(1) cannot, however, compel disclosure of information or records that are subject to solicitor-client privilege: *British Columbia (Children and Family Development) v. British Columbia (Information and Privacy Commissioner)*, 2024 BCCA 190 (CanLII) at para 63.

⁵⁹ Applicant's submission at 23-32.

[107] The applicant's submission does not address s. 25(1)(a), so I find that s. 25(1)(a) is not an issue in this inquiry. Therefore, I will only consider whether s. 25(1)(b) applies in the analysis below.

Section 25(1)(b) – Disclosure that is clearly in the public interest

[108] The relevant parts of s. 25 are as follows:

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

...

(b) the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

[109] Section 25(1)(b) requires the head of a public body to disclose information without delay if disclosure is clearly in the public interest for any reason other than the circumstances described in s. 25(1)(a).⁶⁰ This obligation exists only in the clearest and most serious situations, where the disclosure is unmistakably, not just arguably, in the public interest.⁶¹

[110] Past orders have approached the s. 25(1)(b) analysis by first determining whether the information at issue concerns a subject, circumstance, matter or event that engages the public interest.⁶² The term “public interest” relates to matters of a broader, systemic or widespread significance, however, the “public interest” does not encompass everything that the public might be interested in learning.⁶³

[111] If the information does engage the public interest, then the nature of the information itself must be considered to determine whether it meets the high threshold for disclosure.⁶⁴ I will follow this same approach in the analysis below.

⁶⁰ Section 25(1)(a) includes situations where the information is about a risk of significant harm to the environment or to the health or safety of the public or a group of people.

⁶¹ Order No. 165-1997, 1997 CanLII 754 (BC IPC) at 3; Order 02-38, 2002 CanLII 42472 (BC IPC) at paras 45-46; Order F24-40, 2024 BCIPC 48 (CanLII) at para 62.

⁶² Order F20-42, 2020 BCIPC 51 (CanLII) at para 38; Investigation Report F16-02, 2016 CanLII Docs 4591 [*Report F16-02*] at 26-27.

⁶³ *Clubb v. Saanich (Corporation Of The District)*, 1996 CanLII 8417 (BC SC) at para 33; Order F20-47, 2020 BCIPC 56 (CanLII) at para 20.

⁶⁴ *Report F16-02*, *supra* note #62 at 26-27.

Parties' positions, s. 25(1)(b)

[112] The applicant says that s. 25(1)(b) applies to the Deceased's MAID assessment records because there is "a significant public interest in ensuring systemic accountability and compliance with federal and provincial safeguards for life-ending medical procedures." She explains that disclosure of these records is essential to verify compliance with MAID's procedural safeguards, to address systemic accountability for non-compliance in MAID practices, and to restore public trust in the MAID process.⁶⁵

[113] The applicant argues that compliance with procedural safeguards for MAID is a subject that engages the public interest because disclosure would:

- Highlight systemic deficiencies;
- Encourage public discourse and educate the public on safeguarding the rights of individuals seeking MAID;
- Allow the public to form informed opinions on the adequacy of Canada's MAID safeguards and influence political decisions regarding future legislative amendments;
- Substantially contribute to the body of evidence available on MAID compliance and procedural integrity; and
- Hold Fraser Health accountable for its actions in administering MAID.⁶⁶

[114] Fraser Health says that s. 25(1)(b) is not applicable and the public interest is not engaged.⁶⁷ Fraser Health argues that disclosure is not in the public interest because the disputed records are specific to the diagnostic, assessment, and health care decisions made in the Deceased's particular circumstances. Fraser Health disagrees with every reason the applicant gives for disclosure under s. 25(1)(b) and argues that disclosure would have none of the desirable effects the applicant says it would.⁶⁸

Does the information concern a matter that engages the public interest?

[115] On the face of the records, I can see that the disputed information relates to the Deceased's journey through Fraser Health's MAID program. While the information is about the Deceased's personal medical situation, it is also about Fraser Health's MAID program.

⁶⁵ Applicant's submission at 23.

⁶⁶ Applicant's submission at 24-25.

⁶⁷ Fraser Health's initial submission at para 32

⁶⁸ Fraser Health's initial submission at paras 79-80; Fraser Health's reply submission at paras 57, 61, 63-65, and 70.

[116] The parties' submissions provide a history of intense public discussion and litigation about MAID in Canada. Clearly, Fraser Health's MAID program directly affects anyone in its jurisdiction who seeks MAID and their healthcare providers, family members, and friends. For these reasons, I am satisfied that Fraser Health's MAID program, as well as MAID generally, are subjects that engage the public interest.

Is disclosing the disputed information clearly in the public interest?

[117] Having found that the disputed information concerns a matter that engages the public interest, the second step is to determine whether disclosing any of the disputed information meets the high threshold of being clearly in the public interest.

[118] Although I have read and considered everything the parties say about s. 25(1)(b), given the length of their submissions, I will not provide a complete summary of their submissions here. The analysis below will focus on the essence of the applicant's arguments.

[119] For the reasons that follow, I find that Fraser Health is not required to disclose the information in dispute under s. 25(1)(b).

[120] First, I do not see how disclosure would enhance accountability of Fraser Health for its MAID program or highlight what the applicant calls systemic deficiencies. As noted earlier in this order, six entities with investigative powers reviewed the applicant's complaints about the Deceased's case. None of those entities concluded that anyone should be held to account after the Deceased received MAID. Furthermore, my own review of the disputed information leads me to conclude that disclosure would reveal nothing to enhance accountability or public scrutiny of Fraser Health's MAID program.

[121] I have also considered the applicant's argument that disclosure would substantially contribute to the available body of evidence and public knowledge about MAID and its requirements. The circumstances that led to the Deceased qualifying for MAID are highly unique. While I understand the applicant believes that certain procedural steps were not taken, her concerns are fundamentally based on a disagreement about whether the Deceased was correctly and adequately diagnosed by her healthcare team before undergoing MAID.

[122] Given that the applicant's concerns about compliance are intertwined with the Deceased's unique medical circumstances, I do not think the disputed information has any meaningful evidentiary value about systemic MAID compliance issues. Therefore, I am not persuaded by the applicant's argument that disclosure would substantially contribute to the existing body of public knowledge about MAID and its requirements.

[123] Finally, I have considered the applicant's argument that disclosure would encourage public discourse and facilitate political decision-making on safeguarding the rights of individuals seeking MAID.

[124] I recognize that an example of a single case can sometimes encourage meaningful public discourse on issues of systemic importance. However, the information at issue here is narrowly focused on the Deceased's medical conditions and her use of MAID. Considering the narrow focus of this information, I think that disclosure would, at most, encourage discussion about the Deceased's medical circumstances instead of discussion about Fraser Health, its MAID program, systemic compliance with MAID protocols and future options for legislative action. Therefore, I find that disclosure is unlikely to have the effects on public discourse that the applicant says it would.

[125] In concluding my analysis, I note that the applicant's arguments are almost entirely based on the assumption that the disputed information includes evidence of non-compliance with MAID protocols. I cannot describe the disputed information in detail without inadvertently disclosing it. However, my own review of the records satisfies me that the disputed information does not contain the type of evidence the applicant claims, nor does it have the broad, discourse-promoting value that the applicant says it does.

Conclusion, s. 25(1)(b)

[126] For the reasons given above, I find that the information at issue does not meet the high threshold for disclosure under s. 25(1)(b) because disclosure is not clearly in the public interest. Therefore, Fraser Health is not required by s. 25(1)(b) to disclose the disputed information.

CONCLUSION

[127] 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(1)(b) of FIPPA and s. 5 of the FIPPA Regulation.
2. I require Fraser Health to refuse to disclose the information in dispute under s. 22(1).
3. I confirm Fraser Health's decision that it is not required under s. 25 to disclose the information in dispute.

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4. Under s. 58(2)(a), I require Fraser Health to perform its duty under s. 22(5) to provide the applicant with a summary of the personal information that the Deceased supplied in confidence about the applicant, which I have highlighted in a copy of pages 16 and 17 of the records that will be provided to Fraser Health along with this Order.
 5. As a condition under s. 58(4), I require Fraser Health to provide me with a copy of the s. 22(5) summary described in item 4 above for my approval no later than **May 12, 2025**.
 6. Pursuant to s. 59(1) of FIPPA, I order Fraser Health to copy the OIPC's registrar of inquiries on the response to the applicant in compliance with this order on or before **May 20, 2025**.

April 3, 2025

ORIGINAL SIGNED BY

Alexander R. Lonergan, Adjudicator

OIPC File No.: F22-91569, F23-95152