



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F25-63

VANCOUVER ISLAND HEALTH AUTHORITY

Rene Kimmett
Adjudicator

August 11, 2025

CanLII Cite: 2025 BCIPC 73
Quicklaw Cite: [2025] B.C.I.P.C.D. No. 73

Summary: An applicant asked Vancouver Island Health Authority (Health Authority) for access to the health records of a deceased individual. The Health Authority determined that the applicant was not acting on behalf of the deceased individual under s. 5(1)(b) of the *Freedom of Information and Protection of Privacy Act* (FIPPA) and withheld all of the responsive records under s. 22(1) of FIPPA. The adjudicator found that the applicant was not acting on behalf of the deceased individual and determined that the Health Authority was required to withhold the information in dispute under s. 22(1).

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

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant (Applicant) asked Vancouver Island Health Authority (Health Authority) for the health records of a deceased individual (the Deceased). The health records include forms related to the Deceased receiving Medical Assistance in Dying (MAID).

[2] The Health Authority withheld the records responsive to the Applicant's access request under s. 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA. It did so after determining that the Applicant was an appropriate person under s. 5(1) of *Freedom of Information and Protection of Privacy Regulation* (Regulation), but that she was not acting on behalf of the Deceased under s. 5(1)(b) of FIPPA.¹

¹ From this point forward, whenever I refer to section numbers, I am referring to sections of FIPPA unless otherwise specified.

[3] The Applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Health Authority’s decision to withhold records responsive to her access request.

[4] The OIPC engaged the parties in mediation, but it did not resolve the issues in dispute and the matter proceeded to this inquiry. Both parties participated in this inquiry.

PRELIMINARY ISSUES

Applicant’s request to amend her access request

[5] In her submissions, the Applicant asks to modify her original request to include “emails and other communications regarding the Deceased’s MAID application and other care prior to his death including those mentioning [the Applicant and one of her sons].”²

[6] An inquiry is not the appropriate place for an applicant to request additional records from a public body.³ The Applicant must make a request for any additional records directly to the public body and give it the opportunity to respond in accordance with FIPPA before seeking a review from the OIPC. For this reason, I decline the applicant’s request and will not consider it further.

Applicant’s complaint about doctor’s use of personal cellphone

[7] In her submissions, the Applicant expresses concern that one of the Deceased’s doctors used their personal cellphone to communicate with the Applicant’s son about the Deceased’s health care. In response, the Health Authority says this is a “valid issue that is deserving of follow up”.⁴ Given the Health Authority’s acknowledgement of the issue, I expect it will seek to resolve the matter directly with the Applicant. The Applicant’s concern about the doctor’s use of their personal cellphone is not an issue in this inquiry and I will only discuss it where it is relevant to the issues I must decide.

Applicant’s request to respond to the Health Authority’s evidence

[8] The submission schedule for this inquiry was as follows: Health Authority’s initial submission; Applicant’s response submission; and Health Authority’s reply submission.⁵ The Health Authority attached affidavit evidence to its reply submission (reply affidavit) and the Applicant asked for the opportunity to respond to this affidavit.⁶

² Applicant’s submission at para 26.

³ Order F24-42, 2024 BCIPC 49 (CanLII) at para 6.

⁴ Health Authority’s reply submission at para 75.

⁵ Notice of Inquiry dated January 8, 2025.

⁶ Email from Applicant’s son dated June 2, 2025.

[9] Normally, submissions and evidence are not accepted after the close of the submission schedule. However, in administrative decision-making, all parties have the right to be heard as a principle of procedural fairness, which means parties affected by a decision should be given an opportunity “to put forward their views and evidence fully and have them considered by the decision-maker.”⁷ For this reason, there may be situations where it is appropriate to give a party the opportunity to respond to some or all of a reply submission such as when a public body’s reply submission raises new issues.

[10] I have reviewed the Health Authority’s reply submission and affidavit. These materials only reply to the Applicant’s response submission and do not raise new issues; therefore, I find the Applicant does not need to respond to the Health Authority’s reply affidavit in order for me to fairly decide the issues in dispute in this inquiry. For this reason, I deny the Applicant’s request to respond to the Health Authority’s reply affidavit.

Custody or control of the MAID forms

[11] To be subject to an access request under FIPPA, a record must be either “in the custody” or “under the control” of a public body.⁸ The Health Authority submits that even though it has physical custody of the MAID forms, the Ministry of Health (Ministry) has “legal custody and control” of these records.⁹

[12] The issue of whether the Health Authority has custody or control of the records was not included in the Fact Report or the Notice of Inquiry. The Notice of Inquiry states that parties may not add new exceptions or issues without the OIPC’s prior consent. While the Health Authority did not appropriately request permission to add this issue, I have decided to add it in order to provide guidance to the Health Authority in the event that it receives future requests for MAID forms.¹⁰

ISSUES AND BURDEN OF PROOF

[13] The issues I must decide in this inquiry are as follows:

1. Are the records in the custody or under the control of the Health Authority pursuant to s. 4(1)?

⁷ *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 22.

⁸ FIPPA, s. 4(1).

⁹ Ministry’s initial submission at para 34.

¹⁰ I considered whether I should give the Applicant an opportunity to make submissions specifically on this issue. Ultimately, I decided that I do not need to because she has already responded to the Health Authority’s submission and evidence on this issue. See Applicant’s submission at para 27.

2. Is the Applicant acting on behalf of the Deceased under s. 5(1)(b) of FIPPA and s. 5 of the Regulation?
3. Is the Ministry required to withhold the information in dispute under s. 22(1)?

[14] FIPPA does not specify which party has the burden of proof regarding the issue of custody or control. However, previous OIPC orders have found that the public body has the burden to prove its assertion that a record is not in its custody or under its control.¹¹ I adopt this approach here.

[15] FIPPA also does not specify which party has the burden to prove whether an applicant is acting on behalf of another individual under s. 5(1)(b) of FIPPA or s. 5 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.¹² I find it appropriate to adopt this approach here.

[16] Section 57(2) places the burden on the Applicant to establish that disclosure of the information withheld under s. 22(1) would not be an unreasonable invasion of a third party's personal privacy. However, as the public body in this matter, the Health Authority has the initial burden of proving that the information withheld under s. 22(1) is personal information.¹³

DISCUSSION

Background

[17] The Applicant and the Deceased were previously married but separated more than 20 years before the Deceased's death by MAID. The Applicant and the Deceased continued to have a close relationship after their separation, and the Applicant was involved with the Deceased's care from March 2021 until he received MAID in July 2021 in the presence of the Applicant and the couple's adult sons.

Records and information at Issue

[18] The records are the Deceased's health records from January 2021 to his death in July 2021. The records total 214 pages. The Health Authority is entirely withholding most of the records in dispute but has disclosed portions of a psychological evaluation.

¹¹ Order F24-96, 2024 BCIPC 110 (CanLII) at para 13.

¹² Order F25-28, 2025 BCIPC 34 (CanLII) at para 22.

¹³ Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

Custody or control – s. 4(1)

[19] Section 4(1) gives an applicant a right of access to a record in the custody or under the control of a public body. The right of access applies to a record that is *either* in the custody *or* under the control of a public body; a public body is not required to establish both.

[20] FIPPA does not define “custody”. Previous OIPC orders have established a method to determine whether a record is “in the custody of the public body”,¹⁴ and I will apply the same method here. The first step is to determine whether the public body has physical possession of the record. If so, then the second step is to determine whether the public body also has a legal right or obligation related to the record in its possession, including respecting the use, disclosure or destruction of the record. A public body has custody where it has “some right to deal with the records and some responsibility for their care and protection.”¹⁵ Previous orders have also considered whether the records are integrated with other records that the public body holds.¹⁶

[21] The Health Authority acknowledges that it has physical possession of the MAID forms.¹⁷ Therefore, I find the first part of the custody test has been met. Regarding the second part of the test, the Health Authority submits, and the records themselves indicate, that the original versions of the completed MAID forms are stored in each patient’s medical file.¹⁸ I understand the Health Authority also has physical possession of the patients’ medical files; therefore, I find that the original MAID forms are integrated with other records held by the Health Authority. Further, it is clear from its submissions and evidence that the Health Authority has some right to deal with the MAID forms, for the purpose of administering health care,¹⁹ and acknowledges that it has some responsibility for the care and protection of these forms.²⁰ Accordingly, I find both parts of the custody test are met. I do not need to consider whether the Health Authority also has control of the disputed records because s. 4(1) requires custody *or* control, not both.

[22] The Health Authority submits that the Ministry, and not itself, has “legal custody and control” of the MAID forms and that it needs authorization from the Ministry in order to disclose information in the MAID forms in response to an access request made under FIPPA.²¹ To support this position, the Health

¹⁴ Order F23-08, 2023 BCIPC 10 at para 9.

¹⁵ Order F25-16, 2025 BCIPC 20 (CanLII) at para 61.

¹⁶ For example, see Order F18-45, 2018 BCIPC 48 at para 17.

¹⁷ Health Authority’s initial submission at para 34.

¹⁸ Director’s Affidavit at para 11, quoting from a MAID form.

¹⁹ Health Authority’s initial submission at paras 10-16.

²⁰ Health Authority’s reply submission at paras 4-6.

²¹ Ministry’s initial submission at para 37.

Authority provides affidavit evidence from the Ministry's Director of FOI, Litigation Records & Reporting (Director).

[23] The Director states that the Ministry is the "legal custodian and, therefore, has legal control of all completed Provincial MAID forms."²² She says this is because the Ministry developed and implemented the MAID forms to satisfy its obligations under the Regulations for the Monitoring of Medical Assistance in Dying,²³ which designates the Ministry as the recipient of MAID forms and other information health professionals are required to report related to MAID.²⁴

[24] I understand the Health Authority's argument to be that, because the Ministry has control of the MAID forms, the Health Authority does not have custody of these forms. However, nothing the Health Authority or the Director says persuades me that the Health Authority does not have custody of the MAID forms. The fact that the Ministry created the MAID form templates and that it is required to receive copies of the completed MAID forms does not mean that the Health Authority does not have custody, for the purposes of FIPPA, of the original copies of the completed MAID forms contained in each patient's medical file. In other words, even if the Ministry has control of the MAID forms, as argued by the Health Authority, that does not mean that the Health Authority does not have custody of these forms.

Acting on behalf of a deceased adult – s. 5(1)(b)

[25] An applicant who is found to be "acting on behalf" of a deceased individual, when requesting records containing the personal information of that deceased individual, may be entitled to receive more information from a public body than they would if they were acting on their own behalf when requesting those records. This is because, when an applicant is "acting on behalf of" a deceased individual, their request is treated as if the deceased individual is requesting access to their own information. In contrast, where an applicant is found *not* to be acting "on behalf of" another person, the OIPC treats the applicant's access request as an ordinary, arm's-length request for another person's personal information.²⁵

[26] The requirements for determining whether an applicant is acting on behalf of a deceased individual are set out in s. 5(1)(b) of FIPPA and s. 5 of the Regulation.

[27] The relevant parts of s. 5(1)(b) of FIPPA read:

²² Director's Affidavit at para 7.

²³ Regulations for the Monitoring of Medical Assistance in Dying, SOR/2018-166, issued under the *Criminal Code*, RSC 1985, c. C-46.

²⁴ Director's Affidavit at paras 8 and 9(c).

²⁵ Order F24-47, 2024 BCIPC 55 (CanLII) at para 23.

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 ...

[28] 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. The parts relevant to this inquiry are:

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

[...]

(ii) if there is no committee acting for the deceased [under the *Patients Property Act*], the personal representative of the deceased;

[29] As a consequence of these provisions, the Applicant must establish that she is an “appropriate person” pursuant to s. 5(1)(a) of the Regulation and that she is “acting on behalf of” the Deceased pursuant to s. 5(1)(b) of FIPPA, in order to be entitled to exercise the Deceased’s access rights under FIPPA.²⁶

Appropriate person

[30] There is no evidence or argument before me that the Deceased had a committee acting for him under the *Patients Property Act*; therefore, I am unable to conclude he had a committee. The next step is to consider whether the Deceased has a personal representative.

[31] The definition of “personal representative” in the *Interpretation Act* includes an executor of a will.²⁷ The parties both say that the Applicant is an “appropriate person” under s. 5(1) of the Regulation because she is the executor of his will.

[32] I have reviewed the portions of the Deceased’s will attached to the Applicant’s access request. This will was made in Ontario in December 2002 and appoints the Applicant as executor.

²⁶ Order F24-22, 2024 BCIPC 28 (CanLII) at para 12.

²⁷ *Interpretation Act*, RSBC 1996, c. 238, s. 29.

[33] In many provinces, including BC and Ontario, unless a contrary intention appears in the will, if a person makes their spouse the executor of their will and then the couple separates, the former spouse's status as an executor is revoked by the separation.²⁸

[34] The Applicant submits that she and the Deceased have been separated for 20 years.²⁹ I asked the Applicant if she could be more specific and she said they separated in 1999 or 2000. Based on this information, and my review of the will, I conclude that the Deceased made the Applicant his executor (in 2002) after the couple had already separated (in 2000) and, therefore, the separation did not impact the Applicant's status as executor.

[35] There is no suggestion that the Applicant's appointment was challenged by any person or nullified by any court.

[36] For the reasons given above, I find that the Applicant is the Deceased's personal representative and, therefore, qualifies as an appropriate person under s. 5(1) of the Regulation.

Acting on behalf of the Deceased

[37] I will now consider whether the Applicant is "acting on behalf" of the Deceased as required by s. 5(1)(b) of FIPPA. The phrase "acting on behalf of" is not defined in FIPPA. Previous OIPC orders have interpreted this phrase to mean acting to benefit the other individual, to further that individual's goals and objectives, or acting in the other individual's best interests.³⁰

[38] Previous OIPC orders also say that a personal motivation or desire for closure or to understand or make sense of a deceased individual's medical history or treatments prior to death is insufficient to show an applicant is "acting on behalf of" the deceased.³¹

Parties' submissions – acting on behalf of

[39] The Applicant submits she has an established history of acting on the Deceased's behalf throughout his life,³² and that she provided and was provided with detailed information about his health and care needs during his life.³³

²⁸ *Wills, Estates and Succession Act*, SBC 2009, c 13, ss. 56(1) and 56(2)(b); *Succession Law Reform Act*, R.S.O. 1990, c. S.26, ss. 17(1) – 17(5).

²⁹ Applicant's submission at para 162.

³⁰ Order F24-85, 2024 BCIPC 97 at para 20.

³¹ Order F24-22, 2024 BCIPC 28 at para 19; Order F24-05, 2024 BCIPC 7 (CanLII) at para 35; Order F23-80, 2023 BCIPC 96 (CanLII) at paras 13-16; Order F22-42, 2022 BCIPC 47 (CanLII) at paras 27-29; and Order F02-44, 2002 CanLII 42478 (BC IPC).

³² Applicant's submission at para 48.

³³ *Ibid* at para 49 and 170.

[40] The Applicant submits that the Deceased's goals and wishes were to qualify for and receive MAID in accordance with the law.³⁴ The Applicant submits that her sole reason for seeking the Deceased's health records is to determine what information the Health Authority used to find the Deceased had sufficient capacity and was eligible to receive MAID.³⁵ The Applicant explains why she currently believes MAID was unlawfully administered to the Deceased, contrary to his desire to receive MAID legally.³⁶ She submits that the "Deceased's interests are therefore best served by ensuring, contrary to evidence available to the Applicant, that his death was in keeping with his wishes and for his benefit".³⁷

[41] The Applicant submits her reasons for seeking access to the records are analogous to the applicant's reasons in Order 03-07 and can be distinguished from the applicant's reasons in Order F25-28.³⁸

[42] The Ministry submits the Applicant's purpose for making the request does not connect to the Deceased's goals and objectives because there is no evidence that the Deceased had any concerns about his MAID assessments or requested that the Applicant pursue any concerns about MAID on his behalf.³⁹

Analysis – acting on behalf of

[43] It is clear the Applicant has concerns that the Deceased's MAID procedure was not lawful and is seeking access to the records to find evidence to alleviate, or confirm, her concerns. While I have considerable sympathy for the Applicant, her submissions lead me to conclude that her reasons for making the access request relate to her own interests and not the interests of the Deceased.

[44] The Applicant says the Deceased's goal was to only receive MAID if it was lawful and that this fact is not disputed.⁴⁰ However, she has not provided evidence to support the idea that the Deceased was ever concerned about the legality of his death by MAID. While I can conclude that the Deceased wanted to receive MAID, I cannot conclude that he was concerned about his eligibility. In the absence of evidence that the Deceased wanted the Applicant to get answers about whether his MAID procedure was lawful, I can only conclude that this is the Applicant's own goal and not the goal of the Deceased.

[45] The Applicant submits that her reasons are different from the applicant in Order F25-28 because she says, unlike that applicant, she has no personal

³⁴ *Ibid* at para 3.

³⁵ *Ibid* at paras 2 and 11.

³⁶ *Ibid* at paras 5-23; 51; 53-101; 105-119.

³⁷ *Ibid* at para 102.

³⁸ *Ibid* at para 39 citing Order F25-28, 2025 BCIPC 34 (CanLII).

³⁹ Ministry's initial submission at para 57.

⁴⁰ Applicant's submission at para 38.

project and is not looking to get answers for her personal benefit.⁴¹ However, I find that the present circumstances are similar to those in Order F25-28. In both instances, the applicants requested access to their deceased loved one's MAID records to verify that the deceased was eligible to receive MAID. As is the case here, in Order F25-28, there was no evidence that the deceased individual wanted the applicant to verify their eligibility for MAID, for any reason.⁴²

[46] The Applicant says that her reason for seeking access to the Deceased medical records is the same as in Order 03-07. I do not agree. In Order 03-07, the applicant sought access to records related to whether her deceased husband had capacity to select the appropriate pension for him and his family.⁴³ The adjudicator found that the applicant, as the executor of the deceased's estate, was following the deceased's wishes set out in his will. Specifically, the adjudicator found the applicant was duty bound to inquire about the appropriateness of the deceased's pension selection on behalf of the beneficiaries of the deceased's estate.⁴⁴ Here, there is nothing to suggest that the Applicant was acting in her capacity as an executor or following the Deceased's express wishes when making the access request for records about the Deceased's MAID assessments.

Conclusion - acting on behalf of a deceased adult

[47] In conclusion, I find that while the Applicant is an "appropriate person" under s. 5(1)(a) of the Regulation, she is not "acting on behalf of" the Deceased in making the access request.

[48] The consequence of this finding is that I will treat the Applicant's request as a request for the records a third party when determining 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

[49] Section 22(1) requires a public body to refuse to disclose personal information if its disclosure would unreasonably invade a third party's personal privacy. A third party is any person other than the Applicant and a public body.⁴⁵

[50] The information the Health Authority has withheld under s. 22(1) can be summarized as:

⁴¹ Applicant's submission at para 38.

⁴² Order F25-28, 2025 BCIPC 34 (CanLII) at para 43.

⁴³ Order 03-07, 2003 CanLII 49171 (BC IPC) at para 12.

⁴⁴ *Ibid* at para 15.

⁴⁵ FIPPA, Schedule 1, definition of "third party".

- a partially withheld psychological evaluation, which includes information about and provided by the Deceased and another third party.
- entirely withheld MAID assessment and administration forms related to the Deceased.
- entirely withheld health care records related to the Deceased.

[51] There are four steps in the s. 22(1) analysis, and I apply each step of this analysis under the headings that follow.⁴⁶

Is the withheld information “personal information”?

[52] The first step in the s. 22(1) analysis is to determine if the information in dispute is personal information. Personal information is defined in FIPPA as “recorded information about an identifiable individual other than contact information”.⁴⁷ Information is about an identifiable individual when it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.⁴⁸

[53] 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”. Whether information is “contact information” depends on the context in which it appears.⁴⁹

[54] The Health Authority submits the information in dispute is not contact information and is the personal information of third parties, specifically the Deceased and another third party who provided information about the Deceased.⁵⁰ The Applicant does not make submissions on this subject.

[55] I have reviewed the records in dispute and find that all of the withheld information is the personal information of the Deceased. Some of this information is also simultaneously the personal information of

- the Deceased’s health care providers;
- other third parties who provided information about the Deceased to his health care providers; or

⁴⁶ Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.

⁴⁷ FIPPA, Schedule 1.

⁴⁸ Order F05-30, 2005 CanLII 32547 (BC IPC) at para 35.

⁴⁹ Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

⁵⁰ Health Authority’s initial submission at para 68 and Records Access Advisor’s Affidavit #1 at para 44.

- other third parties whom the Deceased discussed with his health care providers.

Is disclosure not an unreasonable invasion of personal privacy under s. 22(4)?

[56] The second step in the s. 22(1) analysis is to determine if the personal information falls into any of the categories of information listed in s. 22(4). Section 22(4) sets out circumstances where disclosure of personal information is not an unreasonable invasion of personal privacy. If s. 22(4) applies to the information in dispute, then the Health Authority cannot withhold it under s. 22(1).

[57] The Health Authority submits none of the s. 22(4) scenarios apply to the records in dispute. The Applicant submits that the information in dispute falls under s. 22(4)(b) and 22(4)(e).

[58] Having reviewed the information in dispute, I find that none of the categories listed in subsection 22(4) apply to the information in dispute. I specifically address the parties' submissions regarding ss. 22(4)(b) and (e) under the subheadings that follow.

Compelling circumstances affecting health or safety – s. 22(4)(b)

[59] Section 22(4)(b) says that disclosure of personal information is not an unreasonable invasion of privacy where there are compelling circumstances affecting anyone's health or safety and notice of the disclosure is mailed to the third party involved.

[60] The Applicant submits there is evidence of shortcomings regarding MAID⁵¹ and that the Deceased's death by MAID was unlawful and, therefore, "others could be at risk without disclosure of the Disputed Records for public and formal scrutiny".⁵² The Health Authority says that s. 22(4)(b) only applies where a public body has decided to disclose information, and does not apply where a public body has refused to disclose information.⁵³

[61] I agree with previous orders that have said s. 22(4)(b) is a relevant consideration in the context of a complaint about the public body's decision to disclose personal information, but that it is not relevant or applicable in a request for review of a public body's decision to refuse to disclose information.⁵⁴

⁵¹ Applicant's submission at para 124 and 125, citing "FOI Request - HTH-2023-31879", online: <<https://www2.gov.bc.ca/enSearch/detail?id=26EE74C124B8476EA280E7A3C823A2D8&recorduid=HTH-2023-31879>>.

⁵² Applicant's submission at para 123.

⁵³ Health Authority's reply submission at para 55.

⁵⁴ For example, see Order F25-25, 2025 BCIPC 31 (CanLII) at paras 63-65.

[62] There is no evidence that the Health Authority has disclosed personal information and sent notice of this disclosure to the third party involved. Instead, the issue in this inquiry is whether the Health Authority is authorized to withhold the records in dispute. For this reason, I find that s. 22(4)(b) does not apply to the records in dispute.

Position, functions, or remuneration of a public body employee – s. 22(4)(e)

[63] Section 22(4)(e) says that disclosure of personal information would not be an unreasonable invasion of privacy where the information is about a third party's position, functions, or remuneration as an officer or employee of a public body.

[64] The Health Authority submits that while the records contain information about the position and function of third-party health care providers, in the context of the records, this information is also the medical history of the Deceased and, therefore, it cannot be disclosed under s. 22(4)(e).⁵⁵ The Health Authority cites Order F24-85 to support this position.⁵⁶

[65] The Applicant submits that the present circumstances are different from Order F24-85 because that order was “unrelated to MAID and did not involve allegations of an unlawful death contrary to the *Criminal Code* that undermined [the deceased's] goals and objectives.”⁵⁷ She submits that it would not be an unreasonable invasion of the Health Authority's employees' personal privacy to disclose the information about them contained in the records.⁵⁸

[66] I find that the information about the health care professionals is simultaneously information about the Deceased's medical history and treatment and, therefore, it cannot be disclosed without revealing the Deceased's personal information. This information is about the Deceased as a patient and not a public body employee and, therefore, it does not fall under s. 22(4)(e). The fact that the records are about a MAID death and the Applicant has concerns about MAID or about the Deceased's death specifically does not change the fact that the information in dispute is the Deceased's personal information. I find that s. 22(4)(e) does not apply to the records in dispute.

Is disclosure presumed to be an unreasonable invasion of personal privacy under s. 22(3)?

[67] The third step in the s. 22(1) analysis is to determine whether any of the presumptions listed under s. 22(3) apply to the personal information in dispute.

⁵⁵ Health Authority's initial submission at para 73, citing Order F24-85, 2024 BCIPC 97 (CanLII) at para 47.

⁵⁶ Order F24-85, 2024 BCIPC 97 (CanLII) at para 46.

⁵⁷ Applicant's submission at para 126.

⁵⁸ Applicant's initial submission at para 132.

If one or more apply, then disclosure of that personal information is presumed to be an unreasonable invasion of personal privacy.

[68] Section 22(3)(a) provides that disclosure of a third party's personal information is presumed to be an unreasonable invasion of privacy where the information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment, or evaluation.

[69] The Health Authority submits it is clear from the records that all the withheld information is the Deceased's medical information under s. 22(3)(a), even if that information is supplied by a third party.⁵⁹ The Applicant submits that s. 22(4)(b) must prevail over s. 22(3)(a).

[70] Based on my review of the records, I find that all of the information in dispute is the medical history, diagnosis, condition, treatment, or evaluation of the Deceased. I have also already found that s. 22(4)(b) does not apply to the records in dispute. For these reasons, I find that disclosure of any of the information in dispute is presumed to be an unreasonable invasion of the Deceased's personal privacy.

Considering all relevant circumstances, including those listed in s. 22(2), would disclosure be an unreasonable invasion of personal privacy?

[71] The final step in the s. 22(1) analysis is to consider all relevant circumstances, including those listed in s. 22(2), to determine whether the disclosure of personal information would be an unreasonable invasion of a third-party's personal privacy. It is at this step that the applicant may rebut the presumption created by s. 22(3)(a).

[72] The Health Authority and Applicant make submissions about ss. 22(2)(a), (f), (g), and (i) and other circumstances, specifically, the Applicant's relationship to the Deceased, the Applicant's knowledge of the information in dispute, and the sensitivity of the personal information in dispute.

Subject the activities of a public body to public scrutiny - s. 22(2)(a)

[73] Section 22(2)(a) requires a public body to consider whether the disclosure is desirable for the purpose of subjecting the activities of a public body to public scrutiny. However, for s. 22(2)(a) to apply, the disclosure of the specific information at issue must be desirable for subjecting the public body's activities

⁵⁹ Health Authority's initial submission at para 76. The Health Authority made a typographical error and said s. 22(3)(i) applied to the record in dispute. However, it was clear from the content of the Health Authority's submission that it intended to write s. 22(3)(a). The Health Authority confirmed this was typographical error in its reply submission (Health Authority's reply submission at para 56-57).

to public scrutiny as opposed to subjecting an individual third party's activities to public scrutiny.⁶⁰

[74] The Applicant submits that s. 22(2)(a) weighs in favour of disclosure.⁶¹ She submits that there is a need to subject the Health Authority's activities to public scrutiny because "an unlawful death under MAID is an urgent and serious matter".⁶²

[75] I accept that there may be public interest in knowing whether a health authority has properly administered MAID and that a patient's medical records may provide insights on this subject. However, a patient's medical records contain highly sensitive personal information about their medical experiences and choices. I find that disclosure of the Deceased's medical records would simultaneously subject him and the Health Authority to public scrutiny. Subjecting individual third parties to public scrutiny is not the intended purpose of s. 22(2)(a). Therefore, while I find that disclosing the records in dispute could be desirable for the purpose of subjecting the Health Authority to public scrutiny, I give this factor little to no weight.⁶³

Supplied in confidence – s. 22(2)(f)

[76] Section 22(2)(f) asks whether the personal information was supplied in confidence. If so, this factor weighs in favour of withholding the personal information. For s. 22(2)(f) to apply, there must be evidence that a third party supplied personal information to another person and, that, when they did so, the third party had an objectively reasonable expectation of confidentiality.⁶⁴

[77] The Applicant submits that s. 22(2)(f) does not weigh in favour of withholding the information in dispute because there "is likely very little health information the Applicant does not know already [...] given the close relationship between the Applicant [and the Deceased]".⁶⁵ She also submits that the Health Authority has inconsistently applied s. 22(2)(f) to the records in dispute because it disclosed some information in the psychological evaluation, which was created in the context of the Deceased's health care provider-patient relationship. She submits that due to the inconsistent application of s. 22(2)(f), the Health Authority's argument regarding this factor should be given little weight.⁶⁶

⁶⁰ Order F16-14, 2016 BCIPC 16 (CanLII) at para 40, and Order F24-48, 2024 BCIPC 56 (CanLII) at para 105.

⁶¹ Applicant's submission at para 158.

⁶² *Ibid.*

⁶³ For a similar finding see: Order F25-48, 2025 BCIPC 56 (CanLII) at para 169.

⁶⁴ 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).

⁶⁵ Applicant's submission at para 138.

⁶⁶ *Ibid* at para 145.

[78] The Health Authority submits that s. 22(2)(f) weighs strongly against disclosure. The Health Authority submits that the records contain information supplied by the Deceased and another third party in the context of the Deceased's relationship with his health care providers. The Health Authority submits that information supplied in this context is supplied in confidence unless there is evidence that shows otherwise.⁶⁷

[79] The Health Authority argues that the information that has not been disclosed to the Applicant is no less confidential as a result of the Health Authority disclosing parts of one of the records to the Applicant.⁶⁸ The Health Authority's Records Access Advisor explains that the Health Authority provided the Applicant with portions of the psychological evaluation due to the Applicant's prior knowledge of this information.

[80] Based on the evidence before me, I accept that the records were created in the context of a health care provider-patient relationship. I find that each party who supplied information in these records did so with an expectation of confidentiality and that this expectation was objectively reasonable given the nature of the information supplied.

[81] The fact that the Health Authority gave the Applicant access to some information in the psychological evaluation, after considering all relevant circumstances, does not negate the fact that the third parties supplied the information in the records in confidence. The Health Authority's decision to later disclose portions of the records does not change the third parties' expectations at the time they supplied the information.

[82] Based on the above, I find that s. 22(2)(f) weighs against disclosure.

Likely to be inaccurate or unreliable – s. 22(2)(g)

[83] Section 22(2)(g) requires a public body to consider whether personal information is likely to be inaccurate or unreliable. Past orders make clear that this factor weighs against disclosure if the personal information in dispute is likely to be inaccurate or unreliable, or if its disclosure could result in third parties being misrepresented in a public way.⁶⁹

⁶⁷ Health Authority's initial submission at para 83, citing Order F24-85, 2024 BCIPC 97 (CanLII) at para. 65, citing *R. v. Spencer*, 2014 SCC 43 at para 39; Order F22-62, 2022 BCIPC 70 (CanLII) at para 51; and Order F22-42, 2022 BCIPC 47 (CanLII) at para 49.

⁶⁸ Health Authority's reply submission at paras 71-72.

⁶⁹ See for example Order F24-100, 2024 BCIPC 114 (CanLII) at para 112; Order F23-102, 2023 BCIPC 118 (CanLII), at para 33; and Order F24-09, 2024 BCIPC 12 (CanLII), at para 64.

[84] The Health Authority submits that the Applicant, in her request for review, asserted that this factor favours disclosure,⁷⁰ but that it views this factor neutrally.⁷¹

[85] The Applicant submits that s. 22(2)(g) weighs in favour of disclosure of the records in dispute because the records will reveal if, and how, the Health Authority used information provided by the Applicant and other family members when determining the Deceased's eligibility for MAID. She also says disclosure will ensure that inaccurate information, from any source, was not used in the Deceased's MAID assessments.⁷²

[86] The Applicant is arguing that the possibility of incomplete or inaccurate information in the records favours disclosure. However, as noted above, the purpose of s. 22(2)(g) is to ensure that third parties are not misrepresented in a public way by *preventing* disclosure of inaccurate or unreliable information about them. The Applicant has not pointed to anything to persuade me that I should deviate from this approach to s. 22(2)(g); therefore, I find that s. 22(2)(g) does not weigh in favour of disclosure as argued by the Applicant.

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

[87] 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.⁷³

[88] FIPPA does not specify the length of time after which disclosing a deceased individual's personal information will not be an unreasonable invasion of their personal 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.⁷⁴

[89] In this case, the Deceased received MAID four years ago. There are no circumstances here that persuade me that the Deceased's personal privacy rights are extinguished or reduced 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.

⁷⁰ Health Authority's initial submission at para 86.

⁷¹ *Ibid* at para 94.

⁷² Applicant's submission at paras 153-156.

⁷³ Order F23-66, 2023 BCIPC 77 (CanLII) at para 69, citing Order F11-05, 2011 BCIPC 5 (CanLII) at para 41, which cites Order 01-36, 2001 CanLII 21590 (BCIPC) at paras 23-26.

⁷⁴ 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.

Relationship between the Applicant and the Deceased

[90] While not listed in s. 22(2), past orders have considered whether the relationship between an applicant and the deceased weighs for or against disclosure.⁷⁵

[91] The Health Authority and Applicant agree that the Deceased and the Applicant had a close relationship and that the Applicant served as an advocate and support person for the Deceased.⁷⁶ The Applicant submits this factor favours disclosure of the records.⁷⁷

[92] The Health Authority submits that, despite the close relationship, there is no evidence the Deceased ever wanted the Applicant to have access to his health records, and, therefore, the relationship between the Applicant and the Deceased is a neutral factor or weighs against disclosure.

[93] The Applicant was involved in the Deceased's medical care and was the executor of his will. Therefore, I find that the close relationship between the Applicant and the Deceased weighs in favour of disclosure of the records.

Applicant's knowledge of the information in dispute

[94] While not listed in s. 22(2), past orders have found that an applicant's pre-existing knowledge of the information in dispute may weigh in favour of disclosure.⁷⁸

[95] The Applicant submits that her comprehensive pre-existing knowledge of the Deceased's health information and her interactions with the Health Authority on the Deceased's behalf weigh very heavily in favour of disclosure.⁷⁹

[96] The Health Authority acknowledges that the Applicant was consulted by the Deceased's health care providers in connection to the Deceased's request for MAID and, therefore, supplied information to his care team.⁸⁰ It also says that she already had access to a partially redacted version of the psychological evaluation that one of her sons had received in response to an access request he made to the Health Authority.⁸¹

⁷⁵ Order F24-85, 2024 BCIPC 97 (CanLII) at para. 76-79, citing Order 96-1996, [1996] BCIPCD No. 22; Order 00-11, 2000 CanLII 10554.

⁷⁶ Health Authority's initial submission at paras 97-99; Applicant's submission at paras 162-164.

⁷⁷ Applicant's submission at para 166.

⁷⁸ Order F18-48, 2018 BCIPC 51 (CanLII) at para 27; Order F20-22, 2020 BCIPC 26 (CanLII) at para 51.

⁷⁹ Applicant's submission at paras 168-174.

⁸⁰ Health Authority's initial submission at para 103.

⁸¹ *Ibid* at para 23.

[97] I am satisfied, based on the submissions and evidence provided by the Applicant, that the Applicant 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.

Sensitivity of the information in dispute

[98] Past orders have considered the sensitivity of information as a relevant circumstance. Where information is sensitive, this is a circumstance that weighs in favour of withholding the information.⁸²

[99] The Applicant says that “if the information was in fact highly sensitive” then the doctor that administered the Deceased’s MAID should not have communicated with the Deceased’s family using a personal cellphone.⁸³ The Applicant says that the doctor doing so demonstrates that the Health Authority does not consistently view the Deceased’s medical information as sensitive.

[100] I find the records in dispute contain highly sensitive personal information about the Deceased’s medical history and his decisions during the MAID process.

[101] To avoid disclosing the information in dispute, I cannot confirm whether the information the doctor disclosed to the son is contained in the records in dispute. However, even if that were the case, I am not persuaded that the doctor using her personal cellphone or sharing information with the Deceased’s family makes the information in dispute any less sensitive. The Applicant has not cited, and I am not aware of, any OIPC orders that have found that the sensitivity of information is diminished as a result of it being shared (properly or improperly) or inadequately protected. In this specific case, I am not persuaded that the doctor using her personal cellphone or sharing information with the Deceased’s family makes the information in dispute any less sensitive.

[102] The sensitivity of all the personal information in dispute weighs against disclosure.

Section 22 – findings

[103] I found above that all of the information withheld by the Health Authority under s. 22 is personal information and that none of the categories listed in subsection 22(4) apply to the information in dispute.

⁸² Order F23-101, 2023 BCIPC 117 (CanLII) at para 199, citing Order F16-52, 2016 BCIPC 58 at paras 87-91 and 93.

⁸³ Applicant’s submission at para 176-183.

[104] I found that s. 22(3)(a) applies to all of the information in dispute because it is about the Deceased's medical history diagnosis, condition, treatment, or evaluation. For this reason, it is presumptively an unreasonable invasion of the Deceased's personal privacy to disclose this information.

[105] I found that the following circumstances weighed against disclosure: the fact that the information was supplied in confidence in the context of a health care provider-patient relationship; the length of time that has passed since the Deceased's death; and the sensitivity of the personal information in dispute.

[106] I found that s. 22(2)(g) (inaccurate or unreliable information) did not apply to the information in dispute and that s. 22(2)(a) (desirable for subjecting the public body to public scrutiny) weighed only slightly in favour of disclosure.

[107] In addition, I found that the Applicant's close relationship with the Deceased and the Applicant's knowledge of some of the information in dispute weighed in favour of disclosure.

[108] Overall, I find that the factors favouring disclosure are not sufficient to rebut the presumption, under s. 22(3)(a), that disclosure of the information in dispute would be an unreasonable invasion of the Deceased's personal privacy. Medical information attracts significant privacy interests. 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 to find that disclosure would not unreasonably invade the Deceased's personal privacy. Accordingly, I find disclosure would unreasonably invade a third party's personal privacy and, therefore, s. 22(1) applies to all of the information in dispute.

CONCLUSION

[109] For the reasons given above, I make the following order under s. 58:

1. I confirm the Health Authority's decision that the Applicant is not acting on behalf of the Deceased under s. 5(1)(b) of FIPPA.
2. I require the Health Authority to withhold the information in dispute under s. 22(1).

August 11, 2025

ORIGINAL SIGNED BY

Rene Kimmitt, Adjudicator

OIPC File No.: F23-93763