



Order F25-73

PEACE ARCH HOSPITAL

Jay Fedorak
Adjudicator

September 11, 2025

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Summary: An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to Peace Arch Hospital (PAH), for access to all medical records relating to a patient, his wife, for whom he held a power of attorney. The public body refused to disclose the records on the grounds that the applicant was not authorized to make an access request on behalf of the patient in accordance with s. 4(1)(b) of the *Freedom of Information and Protection of Privacy Regulation* (Regulation). PAH also refused him access to most of the information under s. 22(1) of FIPPA (unreasonable invasion of privacy). The adjudicator found that the applicant did not have the authority to act for the patient to access her medical records under s. 4(1)(b) of the Regulation. The adjudicator also found that disclosure of most of the patient's information would be an unreasonable invasion of her privacy and ordered PAH to withhold it under s. 22(1). The adjudicator found that s. 22(1) did not apply to information about the applicant that it had withheld and ordered PAH to disclose it.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165, ss. 22(1), 22(2)(i), 22(3)(a), and 22(4); *Freedom of Information and Protection of Privacy Regulation*, s. 4(1)(b); *Power of Attorney Act*, BCSC 2016 BCSC 590, ss. 13 and 32.

INTRODUCTION

[1] An individual (applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to Peace Arch Hospital (PAH) for the emergency room admission records relating to his wife (patient), for whom he held power of attorney. PAH denied him access on the basis that he was not authorized to make an access request on behalf of the patient under s. 4(1)(b) of the *Freedom of Information and Protection of Privacy Regulation* (Regulation). PAH also withheld all of the information in the records under s. 22(1) of FIPPA (unreasonable invasion of privacy).

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the decision of PAH to deny him access to the information in dispute. At some point during the OIPC's investigation and review process, Fraser Health Authority became involved and sent the applicant a letter indicating that it was reconsidering the decision of PAH. However, its decision letter subsequently made the same finding as the letter of PAH: that s. 4(1) of the Regulation does not apply and that s. 22(1) of FIPPA does apply.¹ Mediation did not resolve the matter, and the applicant requested that it proceed to an inquiry.

[3] As part of the inquiry process, PAH disclosed some of the applicant's own information contained in the responsive records that it had previously withheld.

Preliminary Matter – Who is the public body?

[4] Requests for records held in hospitals governed by health authorities can create uncertainty as to which public body should be responsible for purposes of FIPPA. This is because health authorities and hospitals both fall separately under the definition of a public body in Schedule 1.

[5] The applicant's request was for PAH records, and PAH Records Department responded to his access request.² As mentioned above, after the applicant asked the OIPC to review PAH's decision, Fraser Health Authority told the applicant that it was reconsidering PAH's decision. It did not explain what authority it had to reconsider the decision of another public body designated under FIPPA.

[6] I can see that the OIPC Investigator's Fact Report, the OIPC's Notice of Inquiry and the parties' initial submissions all treat PAH as the public body. It was only in its reply submission that legal counsel for the public body requested that the OIPC change the style of cause in this inquiry and designate Fraser Health Authority as the public body. I note that legal counsel for the public body did not provide any indication in her submissions that she was representing Fraser Health Authority.

[7] I have decided to continue to treat PAH as the public body of record in this case. Although PAH forms part of Fraser Health Authority, FIPPA treats PAH as an independent public body. Consistent with the rules of statutory interpretation, I conclude that the Legislature deliberately granted to hospitals the authority and responsibility for responding to FIPPA requests for records in their custody or under their control, independently of the health authorities of which they form

¹ Letter from Manager, Information Access, PAH to the applicant October 30, 2024.

² Peace Arch Hospital Health Records Department letter dated April 19, 2024.

part. I also note that PAH has created a Records Department for the purpose of responding to requests for records, including requests under FIPPA.

[8] There is a provision in FIPPA under s. 11 for one public body to transfer a request to another public body. There is no evidence before me that PAH transferred this request to Fraser Health Authority. Therefore, in accordance with ss. 5 and 6 of FIPPA, as the public body that received the request, PAH must respond to the request. PAH has done so, and it is that response that is the subject of request for review that led to this inquiry. Therefore, it is reasonable and appropriate to treat PAH as the public body for the purposes of this inquiry.

ISSUE

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

1. Is the applicant acting on behalf of the patient in accordance with s. 5(1)(b) of FIPPA and s. 4 of the Regulation?
2. Is the PAH required to refuse to disclose the information at issue under s. 22(1) of FIPPA?

[10] Section 57 does not state who has the onus for establishing that an applicant is authorized to act for another person under s. 5(1)(b) of FIPPA and s. 4 of the Regulation. In such a case, both parties are responsible for providing argument and evidence to support their positions.³

[11] Section 57(2) places the burden on the applicant to establish that disclosure of any information in the records would not be an unreasonable invasion of a third party's personal privacy. However, the PAH has the initial burden of proving that the information is personal information.

DISCUSSION

[12] **Background** – The patient entered PAH for treatment and was living there for four months at the time that the applicant made the request. The patient died two months later.

[13] **Record at issue** – The applicant made a request to PAH for the emergency room admission records of the patient. He indicated that he sought the patient's visit summary, emergency visit information and diagnostic reports. PAH identified 1071 pages of records as responsive.

³ Order F24-05, 2024 BCIPC 7 (CanLII), para. 9; Order F23-92, 2023 BCIPC 108 (CanLII), para 10; Order F21-44, 2021 BCIPC 52 (CanLII), paras 13-17; Order F18-08, 2018 BCIPC 10 (CanLII), para 7; Order F17-04, 2017 BCIPC 4 (CanLII), para 4; Order F15-36, 2015 BCIPC 39 (CanLII), para 5.

Acting on behalf of another person

[14] Section 5(1)(b) of FIPPA specifies how an applicant may make a request on behalf of another person:

How to make a request

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, ...

[15] In this case, the relevant part of the Regulation is s. 4, which reads as follows:

Who may act for an adult

4 (1) In this section, "**representative**" means any of the following persons:

...

(b) a person acting under a power of attorney;

(2) A representative of an adult may act for the adult in relation to any of the following sections of the Act:

(a) section 5;

(3) A representative of an adult may exercise a power granted to the representative under subsection (2) of this section only if the power is within the scope of the representative's duties or powers.

[16] Therefore, in this case, the applicant must demonstrate: (1) he was the patient's representative under s. 4(1)(b); (2) that requesting access to the patient's medical records was within the scope of his duties or powers as her representative; and (3) that he was acting on behalf of the patient.

[17] I will first consider whether the applicant qualifies as a "representative" of the patient for the purposes of s. 4(1) of the Regulation.

[18] Neither of the parties makes submissions specifically as to whether the applicant is a representative of the patient under s. 4(1). Nevertheless, the applicant has clearly established that the patient assigned him an authority to act

on her behalf through an executed power of attorney. PAH does not dispute his authority under this power of attorney. Both parties have provided copies of this power of attorney that clearly name him. As s. 4(1)(b) provides that a “representative” includes a person acting under a power of attorney, I find that, at the time of the request, the applicant was the patient’s representative for the purposes of s. 4(1)(b) of the Regulation.

[19] Now I will turn to whether applicant has demonstrated that his power to access these records fell within the scope of his duties or powers under the power of attorney, in accordance with s. 4(3) of the Regulation.

[20] The *Power of Attorney Act* (PAA)⁴ governs the duties and powers of individuals who hold a power of attorney. The relevant provisions read as follows:

What enduring power of attorney may do

13 (1) An adult may, in an enduring power of attorney, authorize an attorney to

- (a) make decisions on behalf of the adult, or
- (b) do anything that the adult may lawfully do by an agent

in relation to the adult's financial affairs.

(2) An adult may grant general or specific powers to an attorney.

Access to information

32 (1) An attorney may request information and records respecting the adult for whom the attorney is acting, if the information or records relate to

- (a) the incapability of the adult, or
- (b) an area of authority granted to the attorney.

(2) An attorney has the same right to information and records described under subsection (1) as does the adult for whom the attorney is acting.

(3) A qualified health care provider or other person who is responsible for assessing the adult's incapability has the right to all the information necessary to enable the performance of the qualified health care provider's or other person's duties under this Act or an enduring power of attorney.

⁴ RSBC 1996 c. 370.

- (4) Any person who has custody or control of information that a qualified health care provider or other person is entitled to under subsection (3) must disclose that information to the qualified health care provider or other person.
- (5) Subsection (4) overrides
 - (a) any claim of confidentiality or privilege, except a claim based on solicitor-client privilege, and
 - (b) any restriction in an enactment or the common law about the disclosure or confidentiality of information, except a restriction in section 51 of the *Evidence Act*.

"financial affairs" includes an adult's business and property, and the conduct of the adult's legal affairs;

[21] PAH submits that the applicant did not qualify as a representative of the patient because the power of attorney did not provide him with the requisite authority to request her medical records. PAH submitted a copy of the power of attorney at issue in this case. It notes that Articles 8 and 10 of the power of attorney describe the specific powers granted to the applicant. These relate to financial and legal affairs, such as banking, borrowing, lending, investing, managing insurance, and managing real and personal property.⁵

[22] PAH also submits that the access to information provisions in the PAA are restricted to financial affairs, which include only business, property and legal affairs.⁶

[23] PAH asserts that the powers granted to the applicant under the PAA and the patient's power of attorney did not extend to access to the medical records of the patient. In support of its position, PAH cites the BC Supreme Court case *Paterson v. Vancouver General Hospital* ("*Paterson*")⁷, where the court found that an applicant holding a power of attorney for a patient did not have the authority to access the latter's medical records, except as necessary to handle the financial affairs of the patient. The court ruled that, as the applicant had sought the medical records instead for a health care purpose, access to those records was outside the scope of his authority as attorney.⁸

[24] In this case, PAH submits that the applicant gave his reasons for seeking the patient's medical records as "Medical file & copy of scope of treatment". PAH does not say where the applicant said this. However, I can see that on his

⁵ PAH's initial submission, paras 19-22.

⁶ PAH's initial submission, paras 23-26.

⁷ BCSC 2016 BCSC 590.

⁸ *Paterson*, paras 40-41.

Authorization for the Release of Health Records form, the applicant wrote that phrase next to the heading “Reason for Request”.

[25] PAH also submits the applicant justified his access solely on the power of attorney. It adds that he later elaborated as follows:

April 23 at 2pm, a team meeting was scheduled with all of [patient’s] medical staff to discuss her progress.

I wanted as much information regarding her medical file prior to that meeting so I was fully informed and able to attend with knowledge of her care since being admitted.⁹

[26] PAH submits:

The enduring power of attorney did not authorize him to make healthcare decisions on behalf of [the patient] or to access her healthcare records for this purpose. By the Applicant’s own account, he did not seek access to the records for the purposes of managing [the patient’s] legal or financial affairs but rather to ensure he was fully informed to discuss [the patient’s] medical progress. For these reasons, the Public Body maintains that the Applicant failed to establish that he was a representative with the requisite authority to request access to the records under section 4(3) of the Regulation and the Public Body was accordingly required to refuse access.¹⁰

[27] The applicant does not dispute what PAH says in the quote above about his purpose for requesting access to the patient’s medical file. The applicant only states that the patient assigned him power of attorney and that he has nothing further to submit. He asserts that he is the rightful guardian of the patient’s affairs and that this order will set a precedent for the rights of individuals holding powers of attorney and their right of access to the information on behalf of their loved ones.¹¹

[28] PAH has persuaded me that the applicant’s request for access to the patient’s records is not authorized under s. 4 of the Regulation. It is clear that his authority to request records under s. 5(1)(b) of FIPPA was restricted to the powers and duties he holds under the power of attorney. I am satisfied that these powers are restricted to financial affairs, including business, property and legal matters. Consistent with the decision in *Paterson* quoted above, the applicant’s power of attorney would only have provided him the power to access her medical information, if it was necessary for him to manage her financial or legal affairs.

⁹ PAH’s initial submission, para 36

¹⁰ PAH’s initial submission, para 33.

¹¹ Applicant’s response submission, p 1.

[29] The applicant has not demonstrated that he required access to the patient's medical records for the purpose of managing her financial affairs. Based on the information before me, it is reasonable to conclude that he requested access to the records for the purposes of being informed about her medical condition and medical care in advance of a meeting with medical professionals to discuss her care. This is not a purpose for which the power of attorney granted him authority to access the patient's medical records pursuant to s. 5(1)(b) of FIPPA and s. 4 of the Regulation.

[30] As I have found that the applicant did not have the authority to access the patient's records under the power of attorney, I do not need to consider the third question which is whether he was acting on her behalf in making his request and decline to do so.

[31] As PAH was correct to treat him as a third party in reference the patient's records, I will now turn to the application of s. 22(1) to the requested records.

Section 22(1) – unreasonable invasion of privacy

[32] Previous Orders have outlined the proper approach in applying s. 22(1) of FIPPA. Order F15-03 is one example where the adjudicator provided a clear and succinct explanation of this approach, as follows:

This section only applies to "personal information" as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy.¹²

[33] I take the same approach in my analysis of the application of s. 22(1) in the present case.

Step 1 – Is the information "personal information"?

[34] FIPPA defines "personal information" as recorded information about an identifiable individual, excluding "contact information". It defines "contact information" as "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone

¹² Order F13-03, 2013 BCIPC 3 (CanLII), para 58.

number, business address, business email or business fax number of the individual.”¹³

[35] Based on my review, I conclude the information at issue is medical information about the patient. It also includes information about the applicant in the context of his relationship and interactions with the patient. This constitutes information about identifiable individuals that is not contact information. Therefore, I find that most of the information to be the personal information of the patient and some of the information to be the personal information of the applicant.

Step 2 – *Does s. 22(4) apply?*

[36] Neither party raised the application of s. 22(4). I do not see how any of the provisions apply. Therefore, I find that s. 22(4) does not apply.

Step 3 – *Does s. 22(3) apply?*

[37] The relevant provision reads 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,

[38] PAH submits that the information at issue clearly relates to the third party's medical history, diagnoses, conditions, or treatment.¹⁴ The applicant does not make any submissions about the application of s. 22(3)(a). I have reviewed the records at issue and can confirm that they concern the medical treatment that the patient received at PAH. I find that s. 22(3)(a) applies to this information and that disclosure is presumed to be an unreasonable invasion of the patient's privacy.

[39] Neither party raised the application of any other provisions of s. 22(3) in their submissions. I do not see how any of the provisions apply. Therefore, I find that only s. 22(3)(a) applies.

Step 4 – *Are there any relevant circumstances, including those in s. 22(2), that rebut the s. 22(3)(a) presumption of unreasonable invasion of privacy?*

[40] The relevant provision of s 22(2) is as follows:

¹³ FIPPA provides definitions of key terms in Schedule 1.

¹⁴ PAH initial submission, para 44.

- (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all of the relevant circumstances, including whether

...

- (i) the information is about a deceased person and, if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person's personal privacy.

[50] **Section 22(2)(i)** – PAH submits that now the information at issue relates to a deceased person and that s. 22(2)(i) applies. It argues, however, that “insufficient time has elapsed since the third party passed away for section 22(2)(i) to weigh in favour of disclosing the information at issue.” It cites previous orders that have held that the privacy rights of the deceased continue until at least 20 years after death. PAH notes that in this case, the patient has been dead for only one year, and her privacy rights have not diminished. In summary, it submits that s. 22(2)(i) does not weigh in favour of disclosing the patient's personal information.¹⁵

[51] The applicant does not make any submissions about the application of s. 22(2)(i).

[52] I find that s. 22(2)(i) is a relevant circumstance in this case. This inquiry resulted from a request for review of the decision of PAH to deny the applicant access to the records at the time of the request, when the patient was alive, but circumstances have changed. PAH is correct to note that privacy rights continue after death but diminish over time. I agree that, in this case, one year having passed since the death of the patient is an insufficient amount of time to diminish her privacy rights to the extent that it would weigh in favour of disclosure of her medical information.

[53] Therefore, I find that s. 22(2)(i) is a relevant circumstance in this case, but I do not give it much weight.

[54] **Other relevant circumstances** – The parties did not identify any other relevant circumstances. Nevertheless, I find the sensitivity of the information to be a relevant circumstance. Generally, medical history is considered to be highly

¹⁵ PAH's initial submission, para 46; Order F18-08, 2018 BCIPC 10 (CanLII), paras 31-32; Order F14-09, 2014 BCIPC 11 (CanLII), para 30; Order F23-92, 2023 BCIPC 108 (CanLII), paras 60-62. In its submission, PAH indicates that the patient has been dead for four years. I conclude that this is a typo. It is clear from the face of the records that she has been dead for only one year.

sensitive. I have reviewed the records at issue and find that the medical information of the patient is highly sensitive. This weighs in favour of withholding the information.

[55] I also note that some of the information at issue is information about the applicant in the context of the care of the patient, and it is clear from the face of the record that it is information he, himself, provided to medical staff or that medical staff told to him. PAH had already disclosed several passages from the records that contained the applicant's personal information, and that information is not at issue here. PAH withheld other passages without providing an explanation as to how it determined which passages containing the applicant's information should be withheld and which should be disclosed.

[56] This information includes the applicant's statements about his interactions with the patient and how he feels about them. It also includes information about his role in the care of the patient. There are passages indicating what medical professionals told the applicant. There are others indicating what the applicant told medical professionals about the patient and questions that he had asked them about the patient.

[57] While this information is intermingled with information about the patient, he clearly already knows the information about the patient that he provided, or medical staff told to him. Disclosing this information to him would not invade the privacy of the patient because it would only reveal information of which he is already aware.

[58] I note that PAH has already disclosed most of information about the applicant to him, and this information was also intermingled with information about the patient. I do not see a substantive difference between the passages containing the applicant's own information that PAH disclosed and the passages it did not disclose. PAH has not provided an explanation that justifies treating these passages differently.

[59] I find that this is a relevant circumstance weighing in favour of disclosing this information, which appears on pages 59, 108, 182, 599, 608, 1038 and 1047.

[60] From my review of the records, I do not see any other relevant circumstances that apply.

Conclusion on s. 22(1)

[61] I have found that all of the information in dispute is the personal information of the patient. There are no provisions in s. 22(4) that apply that would have excluded the application of s. 22(1).

[62] I have found that all of the information in dispute concerns the patient's medical treatment, so s. 22(3)(a) applies and that disclosure is presumed to be an unreasonable invasion of the personal privacy of the patient.

[63] I have found that the personal information at issue is highly sensitive and this weighs in favour of withholding the information.

[64] I have found that the applicant is clearly already aware of information about him and the patient that he, himself, provided to medical staff or that medical staff told to him, which appears on pages 59, 108, 182, 599, 608, 1038 and 1047. I find that this is a relevant circumstance weighing heavily in favour of disclosing this information and it successfully rebuts the s. 22(3)(a) presumption that applies to that information.

[65] I have found that there are no other circumstances that weigh in favour of disclosing the rest of the personal information of the patient. Therefore, there is nothing else to rebut the presumption that disclosure would be an unreasonable invasion of the patient's privacy.

[66] I have also found that the applicant did not make a case that disclosure of the rest of the patient's personal information would not be an unreasonable invasion of her personal privacy.

[67] In conclusion, I find that, with the exception of the information noted above on pages 59, 108, 182, 599, 608, 1038 and 1047, s. 22(1) applies to the personal information of the patient at issue, and PAH must withhold it.

CONCLUSION

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

1. I confirm the decision of PAH that the applicant does not have the authority to request access to the patient's records as her representative under s. 4(1)(b) of the Regulation.
2. Subject to item 3 below, I require PAH to refuse access to the information at issue under s. 22(1).
3. I require PAH give the applicant access to the information that I found it is not required to refuse to disclose on pages 59, 108, 182, 599, 608, 1038 and 1047. I have highlighted that information in orange on a copy of those pages provided to PAH with the order.
4. PAH must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records/pages described at item 3 above.

[69] Pursuant to s. 59(1) of FIPPA, PAH is required to comply with this order by **October 24, 2025**.

September 11, 2025

ORIGINAL SIGNED BY

Jay Fedorak, Adjudicator

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