



Order F25-79

FRASER HEALTH AUTHORITY

Carol Pakkala
Adjudicator

October 10, 2025

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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 adult child's (the deceased) medical records. Fraser Health decided 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 FIPPA *Regulation* (Regulation). Fraser Health refused access to the records under s. 22 (unreasonable invasion of a third party's personal privacy) of FIPPA. The adjudicator found that the applicant was not acting on behalf of the deceased. The adjudicator further found that disclosing the medical records would be an unreasonable invasion of the deceased's personal privacy.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, ss. 5(1)(b), 22(1), 22(2), 22(2)(a), 22(2)(f), 22(2)(i), 22(3), 22(3)(a) and 22(4); *Freedom of Information and Protection of Privacy Regulation*, BC Reg 155/2012, ss. 5, 5(1)(a), 5(2)(a); and *Interpretation Act*, RSBC 1996, c. 238.

Introduction

[1] This inquiry is about access to the medical records of the applicant's deceased adult child (the deceased). The Fraser Health Authority (Fraser Health) decided the applicant was not acting on behalf of the deceased under s. 5(1)(b) of the *Freedom of Information and Protection of Privacy Act* (FIPPA)¹ and s. 5 of the *Freedom of Information and Protection of Privacy Act Regulation* (Regulation). Fraser Health denied the applicant access to the records under s. 22(1) (unreasonable invasion of a third party's personal privacy).

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review Fraser Health's decision. Mediation conducted

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

by the OIPC did not resolve the matter and it proceeded to this inquiry. Both parties provided written submissions in this inquiry.

Preliminary Matter

Late raising of ss. 6 (adequate search) and 25 (public interest disclosure)

[3] In her submission, the applicant requests an assessment of whether Fraser Health conducted an adequate search for records in compliance with s. 6 of FIPPA.² She also says that disclosure of the deceased's medical records is clearly in the public interest under s. 25(1)(b) of FIPPA.³

[4] Sections 6 and 25 are not identified in the applicant's request for review and are not listed in the Notice of Inquiry or Fact Report. The OIPC's *Instructions for Written Inquiries*,⁴ provided to the applicant at the outset of the inquiry, clearly explain the process for adding new issues. The applicant did not seek prior approval to add ss. 6 or 25. Past OIPC orders have consistently said that parties may only add new issues into an inquiry if permitted to do so by the OIPC.⁵

[5] I am not persuaded by the record before me that it would be fair to add these new issues or that there are any exceptional circumstances to warrant their addition. Therefore, I decline to add, or consider, ss. 6 or 25.

Systemic reforms

[6] The applicant seeks to advocate for systemic accountability and "real transparency for people affected by mental illness."⁶ I sympathize with the applicant for the loss of her child. I wish to be clear, however, that a comprehensive review of the health care system's response to mental illness is outside the scope of this inquiry. My jurisdiction is to review Fraser Health's decision under FIPPA to refuse the applicant's request for access to the deceased's medical records.

ISSUES AND BURDEN OF PROOF

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

1. Is the applicant acting on behalf of the deceased in accordance with s. 5(1)(b) of FIPPA and s. 5 of the Regulation?

² Applicant's submission at para 22.

³ Applicant's submission at paras 23-26.

⁴ Available online at <https://www.oipc.bc.ca/documents/guidance-documents/1658>.

⁵ For example, see Order F12-07, 2012 BCIPC 10 at para 6; Order F10-37, 2010 BCIPC 55 at para 10; Decision F07-03, 2007 CanLII 30393 (BC IPC) at paras 6-11; and Decision F08-02, 2008 CanLII 1647 (BC IPC).

⁶ Applicant's submission at para 27.

2. If the answer to the first question is no, is Fraser Health required to refuse to disclose the information under s. 22?

[8] Section 57 does not state who has the burden of establishing that an applicant is authorized to act on behalf of another person. In such a case, both parties are responsible for providing argument and evidence to support their positions.⁷

[9] Section 57(2) places the burden on the applicant to establish that disclosure of the information at issue in the records would not be an unreasonable invasion of a third party's personal privacy. However, Fraser Health, which is the public body in this case,⁸ has the initial burden of proving the information is personal information.⁹

DISCUSSION

Background

[10] On multiple occasions, the deceased was admitted to a hospital operated by Fraser Health. The deceased also underwent ongoing outpatient medical treatment over a period of many years. The deceased was not in the hospital at the time of his death.

[11] The applicant made an access request under FIPPA for the deceased's hospital records for a period covering more than 12 years.

Records at issue

[12] The records at issue total 1,199 pages consisting of documents related to the deceased's medical care. These documents include charts, forms, tests, notes, orders, reports, and directives (medical records). Except for certain pages, Fraser Health is withholding the entirety of these pages from the applicant.¹⁰

Acting on behalf of a deceased person, s. 5(1)(b)

[13] At issue in this inquiry is whether the applicant is authorized to make an access request on behalf of the deceased. FIPPA contains provisions regarding who can exercise another individual's access to information rights in these

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

⁸ Schedule 1 (Definition of "public body").

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

¹⁰ Fraser Health initially withheld 1,199 pages in their entirety but subsequently released the portions of 33 of those pages containing the applicant's information.

circumstances. The relevant sections are s. 5(1)(b) of FIPPA and s. 5 of the Regulation.

[14] Section 5(1)(b) 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] Section 5 of the Regulation says that if an individual is deceased, an “appropriate person” may act for the deceased in relation to s. 5 of FIPPA. The Regulation defines “appropriate person” as follows:

Who may act for a deceased individual

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...

"nearest relative" means the first person referred to in the following list who is willing and able to act under subsection (2) of this section for a deceased individual:

- (a) spouse of the deceased at the time of death;
- (b) adult child of the deceased;
- (c) parent of the deceased;

...

[16] Previous OIPC orders establish a two-part test for an applicant to exercise a deceased person's access rights under FIPPA. First, the applicant must be an appropriate person under s. 5(1)(a) of the Regulation. Second, they must make the request "on behalf of" the deceased.¹¹

[17] If the two-part test under s. 5(1)(a) of the Regulation is not met, then the request is considered on the basis the request is made on the applicant's own behalf.¹² I turn now to the application of this two-part test to this access request.

1. Appropriate person

Parties' submissions

[18] The applicant says she is an "appropriate person" because she is the deceased's nearest relative. She also says she is an appropriate person because the deceased designated her as his emergency contact and nominated her as his nearest relative for the purposes of notifications under the *Mental Health Act*.

[19] The applicant also says she has standing under the Regulation because of her close relationship with the deceased and her active involvement throughout his history of involuntary admission and community-based care.¹³

[20] Fraser Health does not dispute that the applicant is an "appropriate person" for the purposes of the Regulation. Fraser Health does not question whether the deceased had a committee or personal representative. Fraser Health accepts that the applicant is the deceased's nearest relative.¹⁴

Analysis

[21] Section 5 of the Regulation sets out who may act for a deceased person in accessing records under FIPPA. If there is no committee or personal representative, then the nearest relative may act for the deceased.

[22] Neither party argued there is a committee or a personal representative acting for the deceased, and there is no evidence before me of such a committee or representative. As a result, an appropriate person to act for the deceased is the nearest relative of the deceased.

[23] The Regulation defines the "nearest relative" as the first person referred to in the specified list who is willing and able to act for the deceased individual. As

¹¹ Order F18-08, 2018 BCIPC 10 (CanLII) at para 7 and Order F22-42, 2022 BCIPC 47 (CanLII) at para 16.

¹² Order F23-92, 2023 BCIPC 108 (CanLII) at para 27.

¹³ Applicant's submission at paras 5-9.

¹⁴ Fraser Health's initial submissions at para 16.

noted above, the first person in that list is a spouse of the deceased at the time of death and the second is an adult child of the deceased. Neither party pointed to, nor is there any indication in the records of, a spouse or adult child of the deceased.

[24] The applicant says that she is the deceased's mother. Fraser Health does not dispute this fact. The applicant made the request for access to the deceased's medical records and made submissions in this inquiry, so it is evident to me she is willing and able to act.

[25] Having considered all the information provided by both parties, I am satisfied that the applicant is the deceased's parent and is willing and able to act for the deceased in exercising the deceased's access rights under FIPPA. Therefore, I find the applicant qualifies as the deceased's "nearest relative" under s. 5 of the Regulation.

[26] I find the applicant is an "appropriate person" for the purposes of the Regulation. Section 5(1)(b) requires that the appropriate person is "acting on behalf of" the deceased.

2. Acting on behalf of the deceased

Parties' submissions

[27] Fraser Health says there is no evidence to establish that the applicant was "acting on behalf of" the deceased when making her access request.¹⁵ Fraser Health says the applicant indicates in the access request that her reason for seeking the records is to prepare "action on behalf of estate."

[28] Fraser Health, says past orders have made clear that seeking records to pursue litigation is not sufficient to meet the test as the litigation will not be for the benefit of the deceased.¹⁶

[29] The applicant's access request indicates the reason for the request as "preparing action on behalf of [the deceased's] estate." The applicant's submission addresses a number of additional reasons for her access request including:

- To address systemic concerns around mental health. She says she is seeking these records for the legitimate and compassionate purpose of understanding the decisions made during her child's care, including treatment, premature discharge, and the events leading to death. She

¹⁵ Fraser Health's initial submissions at para 23.

¹⁶ Fraser Health's initial submission at para 23 relying on Order F24-05, 2024 BCIPC 7 (CanLII) and Order 02-44, 2002 CanLII 42478 (BC IPC).

- says the request is grounded in a desire for advocacy and accountability—not personal gain or curiosity.¹⁷
- To fulfill the deceased’s advocacy goals. She says the deceased spoke openly about the challenges created by the mental health system. She also says he discussed his own experiences and was committed to helping others feel seen, supported, and better understood. She says the access request is directly aligned with the deceased’s deeply held advocacy values expressed during his lifetime.¹⁸
 - To reveal that Fraser Health did not meet its statutory obligations for the treatment of mental health issues under the applicable legislation.¹⁹

[30] At the end of her submission, the applicant says:

Clarification of Purpose

To avoid any misunderstanding, I state unequivocally that I am not seeking these records to pursue legal action or for any adversarial or personal gain. My sole intent is to understand the circumstances surrounding my son’s care and discharge, honour his dignity, and advocate for systemic accountability. This request is rooted in his own clearly expressed wish for *dignity, reform, and real transparency for people affected by mental illness*.²⁰

[31] In response to the applicant’s submission, Fraser Health highlights the intent quoted above. Fraser Health also says the fact that the applicant had a close and active relationship with the deceased and was his emergency contact only speaks to her right to access information during his lifetime, not after his death.²¹

Analysis

[32] The phrase “acting on behalf of” is not defined in FIPPA or in the *Interpretation Act*.²² Previous OIPC orders say access requests motivated by the desire to understand or make sense of a deceased’s medical history or treatments prior to death is insufficient to show an applicant is “acting on behalf of” the deceased.²³ In my view, the applicant’s request falls squarely within that line of reasoning.

¹⁷ Applicant’s submission at para 11.

¹⁸ Applicant’s submission at para 12.

¹⁹ Applicant’s submission at para 15. The applicant specifically identified the following statutes: *Health Care (Consent) and Care Facility (Admission) Act*; *BC Human Rights Code*; *Health Authorities Act*; *Hospital Act*; and *Mental Health Act*.

²⁰ Applicant’s submission at para 27.

²¹ Fraser Health’s reply submission at p.1.

²² *Interpretation Act*, RSBC 1996, c 238.

²³ Order F24-05, 2024 BCIPC 7 (CanLII) at para 35; Order F23-80, 2023 BCIPC 96 (CanLII) at paras 13-16; and Order F22-42, 2022 BCIPC 47 (CanLII) at paras 27-29.

[33] I accept that the applicant had a close relationship with the deceased and that she was deeply involved in his interactions with the mental health care system. I also accept that the deceased named the applicant as his emergency contact and designated person for mental health notifications. These facts support a finding that the deceased wanted the applicant to be involved in his care while he was alive. I am not persuaded, however, that the deceased ever turned his mind to how he wanted his medical information treated after his death.

[34] On the intentions of the deceased, the applicant says he had deeply held advocacy values and an expressed wish for dignity, reform, and real transparency for people affected by mental illness.²⁴ While I appreciate that the applicant may have had conversations with the deceased about such wishes, there is insufficient evidence before me of his intent.

[35] My review of the records does not reveal an intention on the part of the deceased to advocate for change on behalf of people affected by mental illness. Further, even if they did contain evidence of such an intent, that intent does not directly translate to a desire for others to use his own medical records to advocate for change.

[36] I find that what the applicant has said about why she is making the access request is not sufficient to establish that her request is to further the deceased's goals or objectives as required by s. 5(1)(b).

Conclusion, s. 5(1)(b)

[37] I have found that while the applicant is an appropriate person pursuant to the Regulation, she has not established that she is acting on behalf of the deceased.

[38] Previous orders have said that where an applicant is not acting "on behalf" of an individual, the FIPPA access request is to be treated as an ordinary, arm's-length request by one individual (here, the applicant) for another's (here, the deceased's) personal information.²⁵

[39] A deceased person's right to privacy is recognized in various provisions of FIPPA and in orders of the OIPC dating back at least thirty years.²⁶ For these reasons, I will consider below whether giving the applicant access to the deceased's medical records would be an unreasonable invasion of the deceased's personal privacy under s. 22(1).

²⁴ Applicant's submission at para 12.

²⁵ Order 00-40, 2000 CanLII 14405 (BC IPC) at p. 8.

²⁶ Order No. 96-1996, 1996 CanLII 21109 (BC IPC) referencing previous orders Order No. 27-1994, October 24, 1994; Order No. 31-1995, January 24, 1995; and Order No. 53-1995, September 18, 1995.

Disclosure harmful to personal privacy, s. 22

[40] Section 22(1) requires a public body to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. A "third party" is defined in Schedule 1 of FIPPA as any person, group of persons or organization other than the person who made the access request or a public body.

[41] Section 22 is a mandatory provision of FIPPA. Mandatory means a public body has no discretion and is required by law to refuse to disclose this information. Previous orders have considered the proper approach to the application of s. 22 and I apply those same principles here.²⁷

Personal information

[42] Section 22(1) only applies to personal information, so the first step in a s. 22 analysis is to decide if the information in dispute is personal information.

[43] 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."²⁸ Whether information is "contact information" depends upon the context in which it appears.²⁹

[44] Fraser Health says that the information contained in the medical records is the deceased's personal information. Specifically, Fraser Health submits that disclosure of the information would reveal information about his medical history, health status, and medical treatment.³⁰

[45] The applicant's submission does not directly address whether the information in dispute is personal information. From the totality of her submission, including her numerous references acknowledging the need to sever third party information,³¹ I conclude she does not dispute that there is some third party personal information in the records.

[46] From my review of the records, I can see that all the withheld information is, on its face, about the deceased who is identified by name in the records. It is,

²⁷ Order F15-03, 2015 BCIPC 3 (CanLII) at para 58 sets out a summary of the steps in a s. 22 analysis which I follow here.

²⁸ FIPPA, Schedule 1.

²⁹ Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

³⁰ Fraser Health's initial submissions at para 28.

³¹ See for example applicant's submission at paras 15, 22, and 30.

therefore, his personal information. For example, the medical records include charts and forms that contain information that is only about the deceased.

[47] I can also see in the records the names and miscellaneous details about identifiable individuals who interacted with the deceased.³² This information is found in their notes and records about the deceased's medical care. In this context, I find that the names and miscellaneous details were provided to identify the professional who provided the care or opinion, not for contact purposes.³³ As a result, I find this information was not provided to enable these individuals to be contacted at their place of business, so it is not contact information.³⁴ I find it is their personal information.

[48] I find the personal information of the other individuals in the medical records is intertwined with the personal information of the deceased. For example, reports of the treatment provided by identifiable individuals to the deceased reveal what type of treatment he received. I find that this information is simultaneously the personal information of the deceased and of other third parties.³⁵

[49] The records also include information about the applicant which has been released to her. The applicant says, throughout her submission, that she was already privy to much of the information in the deceased's medical records. I will consider her existing knowledge below in my s. 22(2) analysis.

[50] If I find that s. 22(1) does not prohibit disclosure of the deceased's personal information in the medical records, then I will decide if s. 22(1) prohibits disclosure of the third parties' personal information which is intertwined with, so is simultaneously, the deceased's personal information.³⁶

Not an unreasonable invasion of privacy, s. 22(4)

[51] The next step in a s. 22 analysis is to assess whether the personal information falls into any of the types of information listed in s. 22(4). If so, then its disclosure is not an unreasonable invasion of personal privacy.

[52] Fraser Health submits that none of the exceptions in s. 22(4) apply. The applicant makes no comment about s. 22(4).

³² Individuals identified by name include the deceased's medical care team. The examples are abundant throughout the records, a sample of which includes pp. 9, 11, 12, 16, 20, 24, 34, 575, 581, 1101, and 1108.

³³ For example: Records pp. 900 and 914.

³⁴ For a similar conclusion, see Order F24-85, 2024 BCIPC 97 (CanLII) at para 40.

³⁵ For a similar conclusion, see Order F22-42, 2022 BCIPC 47 (CanLII) at para 32; Order F24-05, 2024 BCIPC 7 (CanLII) at para 37; Order F23-80, 2023 BCIPC 96 (CanLII) at para. 24; and Order F23-92, 2023 BCIPC at para 40.

³⁶ Order F22-42, 2022 BCIPC 47 (CanLII) at para 33.

[53] I have reviewed the various provisions under s. 22(4) and find none apply in this case. Specifically, I considered whether any of the personal information of the medical staff in the records is the type of information to which s. 22(4)(e) might apply, namely information that is about their position or functions as an officer, employee or member of a public body.

[54] I am satisfied from the context and content of the medical records that the employees are public body employees. In my view, these records include notes and observations of employees recorded in the normal course of discharging their job duties. However, the information about their job duties is simultaneously about the deceased. For this reason, it is not solely about the employees' positions, functions or remuneration with Fraser Health; it is also about the deceased.³⁷

[55] In the context of these medical records, which context includes that the personal information of other third parties is simultaneously about the deceased and reveal that he was communicating with the other third parties, I find that s. 22(4)(e) does not apply.³⁸

Presumed invasion of privacy, s. 22(3)

[56] Section 22(3) sets out circumstances where disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy. Fraser Health says s. 22(3)(a) applies. The applicant does not say anything about whether s. 22(3)(a) applies. I have considered whether any of the other subsections in s. 22(3) apply and I find that only s. 22(3)(a) is relevant in this case.

Medical treatment, s. 22(3)(a)

[57] Section 22(3)(a) states that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if it is related to a medical, psychiatric or psychological history, diagnosis, condition, treatment, or evaluation.

[58] I find all of the deceased's personal information in the medical records relates to his medical history, diagnosis, condition, treatment, and evaluation. This information is found in charts, forms, tests, and notes that discuss or reveal that type of information. For that reason, I find that s. 22(3)(a) applies to his personal information in these medical records. Disclosure of this personal information is, therefore, presumed to be an unreasonable invasion of his personal privacy.

³⁷ Order F23-92, 2023 BCIPC 108 (CanLII) at para 46.

³⁸ Order F22-42, 2022 BCIPC 47 (CanLII) at para 35.

[59] I find that no other s. 22(3) presumptions apply, either to the personal information of the deceased or to the personal information of other third parties. I turn now to whether, in all the relevant circumstances, the s. 22(3)(a) presumption has been rebutted and whether disclosure of the medical records would be an unreasonable invasion of the deceased's personal privacy.

Relevant circumstances, s. 22(2)

[60] The final step in a s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those listed in s. 22(2). These circumstances can weigh either in favour of, or against, its disclosure. It is at this step, after considering all relevant circumstances, that any presumptions under s. 22(3) may be rebutted.

[61] Fraser Health submits that ss. 22(2)(f) and (i) are relevant to this inquiry. I considered all the circumstances listed under s. 22(2) and the only other one I found relevant is s. 22(a). I consider each of these three circumstances below plus several additional unlisted circumstances I find are relevant.

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

[62] Section 22(2)(a) states that a circumstance to consider is whether disclosure of the personal information is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny. One of the purposes of s. 22(2)(a) is to make public bodies more accountable.³⁹ Disclosure of the information at issue must be desirable for the purpose of subjecting the activities of the public body, not an individual third party, to public scrutiny.⁴⁰

[63] The applicant does not comment specifically on s. 22(2)(a). She does, however, express considerable concern about her son's care and discharges from the hospital. Throughout her submission, the applicant discusses the need for Fraser Health's accountability for her son's medical treatment.⁴¹

[64] From my review of the medical records, I cannot see how their disclosure would allow the public to scrutinize the activities of Fraser Health. In my view, the only thing the records reveal are details of the deceased's particular health challenges and treatment.⁴² These medical records might be used to subject an individual third party's activities to public scrutiny, but I do not see how their disclosure would subject Fraser Health's activities to public scrutiny.

³⁹ Order F18-47, 2018 BCIPC 50 (CanLII) at para 32.

⁴⁰ Order F16-14, 2016 BCIPC 16 (CanLII) at para 40.

⁴¹ See for example: applicant's submission at paras 11, 13, 14, 16, 25, 26, and 27.

⁴² Order F22-42, 2022 BCIPC 47 (CanLII) at para 45.

Supplied in confidence, s. 22(2)(f)

[65] Section 22(2)(f) says another relevant circumstance to consider is whether the personal information has been supplied in confidence. If so, this factor weighs in favour of withholding it. There must be evidence that a third party supplied the personal information, and at the time the information was provided, it was done so under an objectively reasonable expectation of confidentiality.⁴³

[66] I find that some of the information in dispute was not *supplied* to the hospital but was *generated* by hospital staff, so it was not supplied in confidence. This information includes data in medical reports generated and input into forms based on hospital staff's assessments of the deceased. This information also includes the records of hospital staff about the treatment provided.

[67] I am satisfied that the balance of the personal information in the medical records was supplied in confidence to the hospital. Fraser Health says that information supplied by a deceased for their medical care is generally understood to be provided with an expectation that it will be kept confidential by the recipient.⁴⁴

[68] While there are no express statements of confidentiality in the medical records, given their content and context, I find it reasonable to conclude that the deceased's personal information was supplied to his medical team in confidence. This personal information, which is about medical matters, is generally understood to be provided with an expectation that it will be kept confidential by its recipient.⁴⁵ I cannot see any information before me to suggest that, at the time the deceased supplied his personal information, it was intended to be shared beyond the provision of his treatment.

[69] I considered the applicant's comments about how she was involved in the deceased's medical treatment. I also considered that the deceased was aware that she had, in the past, requested access to his medical records.⁴⁶ I accept that the applicant knew about some of the information about his treatment. In my view, the applicant's knowledge of some of the information, does not alter this portion of the analysis.

⁴³ Order F11-05, 2011 BCIPC 5 (CanLII) at para 41.

⁴⁴ Fraser Health's initial submissions at para 35.

⁴⁵ *R. v. Spencer*, 2014 SCC 43 at para. 39 where the Supreme Court of Canada recognized that a patient has a reasonable expectation that their medical information will be held in trust and confidence by the patient's physician.

⁴⁶ The applicant attached as Appendix A to her submission, an email between her and the deceased dated a year before his death. In this email she says she requested a copy of his medical record in case something happened to him and suggested he also request a copy. He replied, "Will do".

[70] The reasonable expectation of confidentiality over health information supplied to a medical professional is well-established. I find that this expectation holds true whether the information was supplied in the presence of, or learned about afterwards, by a family member of the patient. Accordingly, I conclude that all of the information was supplied to the deceased's medical team with an objectively reasonable expectation of confidentiality. I find the confidential supply of information is a factor that weighs against disclosure of that information.

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

[71] Section 22(2)(i) requires a public body to consider whether the information is about a deceased person, and if so, whether the length of time the person has been deceased indicates that the disclosure is not an unreasonable invasion of the deceased person's personal privacy.

[72] Fraser Health says that insufficient time has elapsed since the deceased passed away for s. 22(2)(i) to weigh in favour of disclosing the information at issue.⁴⁷

[73] On the amount of time that has passed since death, the applicant says privacy interests must be balanced against the purpose of her request, which she says is public accountability. She further says privacy rights are not absolute, especially following death, and must be weighed in context.⁴⁸

[74] FIPPA does not specify the length of time after which disclosing a deceased individual's personal information will not be an unreasonable invasion of privacy. Previous orders have noted that in most Canadian jurisdictions, the law provides that disclosing information about someone who has been deceased for 20 to 30 years is not an unreasonable invasion of their privacy. Previous orders have also said that an individual's personal privacy rights are likely to continue for at least 20 years past their death.⁴⁹

[75] In this case, the deceased passed away only slightly more than two years ago. In my view, the deceased has ongoing privacy rights which have not been diminished by this relatively short passage of time, and this weighs against disclosing the deceased's personal information.

⁴⁷ Fraser Health's initial submissions at para 34.

⁴⁸ Applicant's submission at para 14.

⁴⁹ Order F18-08, 2018 BCIPC 10 (CanLII) at paras 31-32; Order F14-09, 2014 BCIPC 11 (CanLII) at para 30; Order F23-92, 2023 BCIPC 108 (CanLII) at paras 60-62; Order F24-05, 2024 BCIPC 7 (CanLII) at para 48.

Other relevant factors, s. 22(2)

[76] Section 22(2) says that all relevant circumstances must be considered in determining whether a disclosure of personal information is an unreasonable invasion of a third party's privacy. I find there are several relevant factors not listed under s. 22(2) that require consideration.

[77] Applicant's motive - An applicant's motive has been considered in the context of family members seeking information to deal with a death and its aftermath.⁵⁰ I find it appropriate to consider the applicant's motive here.

[78] The applicant says she requested her son's medical records to "understand the circumstances surrounding [his] care and discharge, honour his dignity, and advocate for systemic accountability."

[79] In my view, the applicant's motive is a legitimate and understandable reason to request medical information related to a deceased family member. I find that the applicant's motive weighs in favour of disclosing the deceased's personal information.

[80] Existing knowledge - Previous orders have considered whether the applicant's knowledge of the information in dispute weighs for or against disclosure.⁵¹

[81] Based on the applicant's relationship to the deceased and what is revealed by the medical records, I can see that the applicant already knows some of the personal information in dispute. For example, I am satisfied that the applicant knows the deceased's name, age, date of birth, gender, and some of the information related to his medical care and treatment.⁵² I find that this knowledge weighs in favour of disclosing some of the deceased's known personal information to the applicant.

[82] Sensitivity - Previous orders have considered the sensitivity of the information in dispute. For example, where information is sensitive, that is a circumstance weighing in favour of withholding the information.⁵³

⁵⁰ Order F15-36, 2015 BCIPC 39 (CanLII) at para 31; Order F23-92, 2023 BCIPC 108 at para 64; Order F24-05 BCIPC 7 (CanLII) at para 51.

⁵¹ Order F24-05, BCIPC 7 (CanLII) at para 52; Order F18-48, 2018 BCIPC 51 (CanLII) at para 27; Order F20-22, 2020 BCIPC 26 (CanLII) at para 51.

⁵² In particular, the applicant is likely aware of the information she previously requested referred to in her email attached as Appendix A to her submission. No further information about that request or any response to it is before me in this inquiry.

⁵³ Order F19-15, 2019 BCIPC 17 (CanLII) at para 99.

[83] Fraser Health says there is no question that the information is sensitive because it is about medical history, health status, and treatment.⁵⁴ The applicant acknowledges the sensitivity of the information when she says, “Fraser Health *disclosed sensitive information* to me throughout my son’s hospitalization at [the hospital], both verbally and in writing.”⁵⁵

[84] The records are entirely about the deceased’s health and medical care. I find that this information is highly sensitive. I find the sensitive nature of this personal information weighs strongly against disclosure.

Conclusion, s. 22(1)

[85] I found most of the information Fraser Health withheld under s. 22(1) is the personal information of the deceased. In addition, some of it is about other identifiable individuals’ interactions with him, so it is simultaneously his personal information and their personal information.

[86] I found none of the circumstances in s. 22(4) apply here.

[87] I found that the disclosure of all the information in dispute is presumed to be an unreasonable invasion of the deceased’s personal privacy under s. 22(3)(a).

[88] I found that several relevant circumstances under s. 22(2) strengthen and support the s. 22(3)(a) presumption and weigh against disclosing the personal information at issue.

[89] I found that the applicant’s motive and existing knowledge were factors that weigh in favour of disclosure. I also found that the sensitive nature of the information weighed heavily against its disclosure.

[90] Taking all of the above circumstances into account, in my view the balance weighs against disclosure. I find that disclosing all of the deceased’s personal information in the medical records would be an unreasonable invasion of his personal privacy under s. 22(1). Fraser Health must therefore refuse to give the applicant access to that information.⁵⁶

⁵⁴ Fraser Health’s initial submission at para 28.

⁵⁵ Applicant’s submission at para 13(b); emphasis in original.

⁵⁶ Since the personal information of the deceased must not be disclosed, it is not necessary to also decide if disclosure would be an unreasonable invasion of the other third parties’ personal privacy.

Conclusion

[91] For the reasons 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 for the purposes of s. 5(1)(b) of FIPPA and s. 5 of the Regulation.
2. I confirm Fraser Health’s decision that it is required to refuse to disclose the information in dispute under s. 22(1).

October 10, 2025

ORIGINAL SIGNED BY

Carol Pakkala, Adjudicator

OIPC File No. F23-95387