OFFICE OF THE
INFORMATION & PRIVACY
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Order F15-57

MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

Elizabeth Denham
Information and Privacy Commissioner

October 13, 2015

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Summary: An individual filed a complaint under the *Freedom of Information and Protection of Privacy Act* alleging that the Ministry of Children and Family Development had disclosed her personal information and that of her family without her consent. The Commissioner found that the Ministry had disclosed two records that contained the personal information of the complainant and of her family in the course of its review of its handling of the Complainant's case with the Ministry. The Commissioner also found that this disclosure was authorized by s. 33.2(c) of the Act, as being to employees of the Ministry and being necessary for the duties of those employees. Where disclosure is authorized by s. 33.2(c) the consent of the individual the information is about is not required. Finally, the Commissioner found that the security arrangements made by the Ministry for the conduct of its review met its obligation, pursuant to s. 30 of the Act, to make reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.

Statutes Considered: *Freedom of Information and Protection of Privacy Act* ss. 30 and 33.2(c)*; Child, Family and Community Service Act* ss. 74 and 75.

Authorities Considered: B.C.: F07-10, 2007 CanLII 30395 (BC IPC), F07-18, 2007 CanLII 42407 (BC IPC); Order F13-04, 2013 BCIPC 4 (CanLII); Investigation Report F10-02, 2010 BCIPC 13 (CanLII); Investigation Report F12-03, 2012 BCIPC 16 (CanLII).

Cases Considered: *J.P. v. British Columbia (Children and Family Development)*, 2015 BCSC 1216, *Harrison v. British Columbia* (*Information and Privacy Commissioner*) [2009] B.C.J. No. 917.

INTRODUCTION

[1] The Ministry of Children and Family Development (the "Ministry" or "MCFD") initiated a child protection policy and practice review under s. 93.2 of the *Child, Family and Community Services Act* ("CFCSA") in relation to its handling of its case file involving the Complainant's children and family (the "Review"). The Review contemplated disclosure of the personal information of the Complainant and of her family members to individuals hired by the Ministry to conduct the Review. The Complainant filed a complaint with my Office objecting to the disclosure of this personal information stating that it was being undertaken without her consent.

ISSUES

[2] The issues before me are:

1. Has the Ministry disclosed personal information of the Complainant and/or of the Complainant's children with respect to the Review?
2. If so, was the disclosure authorized by the *Freedom of Information and Protection of Privacy Act* ("FIPPA")? and
3. If the disclosure was authorized, what security arrangements must the Ministry undertake to mitigate such risks as unauthorized access, collection, use, disclosure or disposal?

DISCUSSION

[3] The Ministry initiated the Review following a recent Supreme Court of British Columbia decision ("J.P. Court Decision") in which the Province of British Columbia was found liable for misfeasance, negligence, and breach of fiduciary duty on the part of the Director and her agents in relation to their conduct of the Complainant's file (the "J.P. case") with the Ministry.[1] A six-person "Review Team" was established in order to conduct the Review. The objectives of the Review are:

- to assess whether the child protection practice and actions taken by Ministry staff, supervisors and legal counsel contracted to represent the Director in relation to the J.P. case were consistent with legislation, policies and standards during the Ministry's contact with the family over a three year period;
- to examine the Ministry's legislation, policies, standards and practice to provide guidance with respect to child protection practice in cases involving custody and access disputes; and

[1] *J.P. v. British Columbia (Children and Family Development)*, 2015 BCSC 1216 (hereinafter the "J.P. Case").

- to provide recommendations that may assist in improving the Ministry's practice, policies and standards.

[4] Sometime between July 21 and 23, 2015, the Ministry retained Bob Plecas to lead the Review. On or about July 27, 2015, the Ministry retained Thea Vakil to assist Mr. Plecas in the conduct of the Review.

[5] On August 6, 2015, the Complainant filed a complaint with my Office which stated:

> MCFD has / or intends to release my private information to Bob Plecas and his associates.
>
> MCFD is also planning (or has done so already) on releasing highly private information about my children.
>
> There is a Sealing Order issued by Mr. Justice Walker in regards to court proceedings and I do not consent to the release of any information.

[6] On August 11, 2015, my Office notified Mark Sieben, the Deputy Minister for the Ministry, that a complaint had been received and that I had initiated an investigation pursuant to s. 42 of FIPPA. A copy of the complaint and a schedule for submissions was included in the letter to the Deputy Minister. The Ministry filed its initial submission on August 19, 2015. The Complainant requested and was granted an extension to provide her reply submission, which was received on September 1, 2015. The Ministry's reply was received on September 8, 2015.

[7] On September 14, 2015, I requested clarification from the Ministry concerning several points in its initial and reply submissions. The Ministry provided the requested clarification on September 18, 2015 and also significantly revised its position on its statutory authority for the disclosure of the Complainant's personal information.

[8] The Complainant was given the opportunity to make a further reply, and did so on September 25, 2015.

[9] On September 30, 2015, the Ministry responded to the Complainant's further reply and raised new matters that it had not addressed in its previous submissions. As a consequence, the Complainant was afforded an opportunity to respond to the new matters raised, which she did on October 2, 2015.

Adequacy of Notice and Fairness Concerns Raised by Ministry

[10] At the outset, I wish to address a concern raised by the Ministry regarding the notice and the timelines for this inquiry. I characterize this as a concern as the Ministry did not make a formal objection.

[11] The Ministry indicated in its initial submission that it was unsure whether a complaint had been filed with my Office and that it was not advised of the complaint until one day before its submissions were due:

> 1.01 A complaint (the "Complaint") was apparently made to the Information and Privacy Commissioner (the "Commissioner") about certain personal information issues related to a certain child protection policy and practice review (the "Review") to be done for the Ministry.[2]
>
> (…)
>
> On August 14, 2015 we wrote to the Commissioner's Office requesting, in order to understand the issues stated in the Notice, the Complaint materials. On August 18, 2015,[Ministry's footnote 2] the Commissioner's office responded, attaching various materials.
>
> [Ministry's footnote 2]: (i.e. one day before submissions were due)

The Ministry referred again in its Reply Submission to the "extraordinarily short time frame" that it was given to prepare its submissions.

[12] As my Office had issued notice of the complaint to the Deputy Minister on August 11, 2015, I invited the Ministry to further explain its position. The Ministry then clarified that it did understand that a complaint had been made to my Office. While the Ministry acknowledged that the notice of the investigation and a copy of the complaint were provided to the Deputy Minister on August 11, 2015, it was concerned that these documents were not forwarded by the Deputy Minister to the Ministry's legal counsel.[2] As the Attorney General is counsel for Her Majesty the Queen in Right of the Province of British Columbia, the Ministry maintained that my Office should have provided the complaint directly to the Attorney General as well.

[13] This position is not consistent with FIPPA. I recognize that the Attorney General is responsible for the conduct of all litigation on behalf of the Provincial Government pursuant to the *Attorney General Act*; however, this inquiry is being conducted pursuant to FIPPA, which provides that each ministry is a distinct public body[3] and places responsibility for compliance with the duties under that Act on the public body, not on the Attorney General. There are no statutory obligations imposed on Her Majesty the Queen in Right of the Province of British Columbia under FIPPA.

[14] The well-established practice of my Office is to correspond directly with the public body that is the subject of a complaint until we receive notification that

[2] Ministry's further submissions, dated September 22, 2015.
[3] As that term is defined in Schedule 1 of FIPPA.

legal counsel has been retained, at which point all further communications are directed to their legal counsel. I reject the Ministry's submission that my Office should not have assumed that the Ministry would provide the complaint to its legal counsel. In my view, it is reasonable to expect that a Ministry named as a public body in a complaint will forward notice of the complaint, and any other documents received from my Office, to its legal counsel.

[15] I also reject the Ministry's suggestion that it was not provided adequate time to prepare its submissions having regard to the following considerations:

- the fact that the Ministry's own submissions implicitly referenced the need to expedite this inquiry as the Review was being held up; [4]
- the absence of any request from the Ministry for an extension to file its submissions; and
- the extensive opportunities afforded to the Ministry to make submissions on the issues to be determined in this inquiry which spanned approximately six weeks and the multiple submissions that it filed.

[16] On the basis of these factors, and having regard to the fact that the Deputy Minister received proper notice of the complaint and investigation, I am satisfied that the Ministry has been afforded an adequate opportunity to make submissions.

Discussion

1. Has the Ministry disclosed personal information of the Complainant and/or of the Complainant's children with respect to the Review?

[17] The first question is whether the Ministry has disclosed personal information of the Complainant and/or her family in its conduct of the Review.

[18] The Ministry acknowledges that it disclosed the following records containing the personal information of the Complainant and her family to Mr. Plecas:

1. a report prepared for the Ministry by a child welfare expert for the purpose of the litigation ("Expert Report"); and
2. a chronology of the interactions between the complainant's family and the Ministry which was also prepared for the purpose of the litigation ("Chronology").

[4] Ministry's Reply Submissions, at para. 2.06

[19] The Ministry advises that it disclosed the Expert Report "on or about July 24, 2015"[5] and that it disclosed the Chronology on August 4, 2015. Mr. Plecas subsequently disclosed the Chronology to Ms. Vakil on that same day. As a consequence, there were three distinct disclosures of personal information which occurred:

- disclosure of the Expert Report by the Ministry to Mr. Plecas on July 24, 2015;
- disclosure of the Chronology by the Ministry to Mr. Plecas on August 4, 2015; and
- disclosure of the Chronology by Mr. Plecas to Ms. Vakil on August 4, 2015.

[20] The Ministry provided evidence that it subsequently retrieved the Expert Report and the Chronology from Mr. Plecas and Ms. Vakil, who no longer have copies and who did not disclose those records to any other person.

[21] I find that the Ministry disclosed personal information of the Complainant and her family when it disclosed the Expert Report and the Chronology to Mr. Plecas, and there was a subsequent disclosure to Ms. Vakil, for the purpose of conducting the Review.

2. Was the disclosure authorized by the *Freedom of Information and Protection of Privacy Act*?

(i) Jurisdiction

[22] Before turning to the question of whether the disclosure was authorized under FIPPA, it is necessary to address the interrelationship between FIPPA and the CFCSA as it relates to my jurisdiction in this inquiry.

[23] The disclosure of information collected in the administration of the CFCSA is governed by FIPPA and by the CFCSA. Section 74 of the CFCSA contains a provision that expressly overrides FIPPA in relation to certain sections of the CFCSA as follows:

> ***Freedom of Information and Protection of Privacy Act***
> **74**(1) Sections 74 to 79 apply despite the *Freedom of Information and Protection of Privacy Act*.
>
> (2) For the purpose of its application to this Act, the *Freedom of Information and Protection of Privacy Act* is deemed to be modified as follows:

[5] September 8, 2015 Kemper affidavit, at p. 1.

(…)

(e) the only provisions of sections 33.1 and 33.2 that apply to a **director** are the following:

(i) section 33.1 (1) (a) *[in accordance with Part 2 of the Act]*;

(ii) section 33.1 (1) (b) *[individual consent]*;

(iii) section 33.1 (1) (i.1) *[payment to government or public body]*;

(iv) section 33.1 (1) (m.1) *[domestic violence]*;

(v) section 33.1 (1) (o) *[archival and historical purposes]*;

(vi) section 33.1 (1) (s) *[research]*;

(vii) section 33.1 (6) *[identity management services]*, except that the reference to "any other provision of this section or section 33.2" is to be read as a reference to any provision referred to in paragraph (e) (i) to (vi) and (viii) to (xi) of this subsection;

(viii) section 33.1 (7) *[responding to an individual]*;

(ix) section 33.2 (d) *[common or integrated program or activity]*;

(x) section 33.2 (j) *[in Canada — archives]*;

(xi) section 33.2 (l) *[evaluating program or activity]*;

(…)

(f) the powers of the commissioner apply to

(i) a request from a person under the Freedom of Information and Protection of Privacy Act that the commissioner review any decision, act or omission of a director in respect of section 76 or 77 of this Act,

(ii) a complaint by a person that information has been disclosed in contravention of section 75 of this Act, and

(iii) the exercise of a director's powers, duties and functions under the *Freedom of Information and Protection of Privacy Act*. (Emphasis added)

[24] Where there is a conflict between FIPPA and ss. 74 to 79 of the CFCSA, the CFCSA prevails.

[25] Subsection 74(2)(e) modifies FIPPA by removing the ability of “directors” to use any authority for disclosure of personal information in FIPPA other than those listed in s. 74(2)(e). It is important to note that this subsection only modifies the application of FIPPA with respect to disclosure of personal information by “directors”. “Director” is defined in s. 1 of the CFCSA as “a person designated by the minister under section 91”. A designation must be in writing under s. 91(2) of

the CFCSA. Section 74(2)(e) does not modify the application of FIPPA in relation to other employees of the Ministry who are not designated as directors.

[26] The interplay between FIPPA and the CFCSA is further affected by s. 75 of the CFCSA which states:

> **Disclosure of information restricted**
> 75 A person must not disclose information obtained under this Act, except in accordance with
>
> (a) section 24 or 79 of this Act, or
>
> (b) the *Freedom of Information and Protection of Privacy Act*, subject to section 74 of this Act.

[27] Section 75(b) prohibits the disclosure of information obtained under the CFCSA except in accordance with ss. 24 and 79 of that Act or in accordance with FIPPA, subject to s. 74. Where the person making the disclosure is a director, disclosure provisions in FIPPA are modified by s. 74(2)(e). Where the person is not a director, its disclosure provisions are not modified, and disclosure occurs in accordance with FIPPA.

[28] In *Harrison v. British Columbia* (*Information and Privacy Commissioner*)[6], the Court of Appeal described the interrelationship as follows:

> 53 The Commissioner has the authority to conduct investigations to ensure compliance with any provision of *FIPPA,* and to investigate complaints that a duty imposed under *FIPPA* has not been performed. In this case, the disclosure of Mr. Harrison's personal information by the Ministry was purported to have been made under s. 79(a) of the *CFCSA…*
>
> Thus the questions this case raises are whether s. 79(a) of the *CFCSA* is subject to any provision of *FIPPA,* of whether a disclosure under s. 79(a) of the *CFCSA* amounts to a duty imposed under *FIPPA.* If the answer to either of these questions is yes, then the Commissioner has the authority to investigate a complaint about disclosure made under s. 79(a) of the *CFCSA.* However, as outlined above, s. 74(1)(f) provides that the powers of the Commissioner apply to the exercise of a director's powers under *FIPPA,* subject to what is said in s. 74. Section 74(1) provides that s. 79 applies despite *FIPPA,* and by virtue of s. 74(2)(e), a director is not subject to s. 33.1(1)(c) of *FIPPA* (which, if it applied, would incorporate s. 79(a) of the *CFCSA* by reference into *FIPPA).*
>
> 54 When one traverses this statutory labyrinth, the result is that the Commissioner's complaint investigation jurisdiction is limited to the director's powers, duties and investigations under *FIPPA,* but does not include investigation of a director's powers under s. 79 of the *CFCSA.* This

[6] [2009] B.C.J. No. 917

> is because s. 79 of the *CFCSA* is not a provision of *FIPPA* and is not incorporated into *FIPPA* by operation of s. 33.1 of *FIPPA.* (Emphasis in original)

[29] Critically, for the purposes of this inquiry, ss. 74 and 79 of the CFCSA only apply to disclosure of personal information by a director within the meaning of the CFCSA. Neither Mr. Plecas nor Ms. Vakil were directors at the time of the disclosure of the Expert Report and Chronology. It was not until August 7, 2015 that Mr. Plecas was designated as a director under s. 91 of the CFCSA for the purposes of leading the Review. In addition, the Ministry confirmed that none of the individuals who disclosed the Expert Report or Chronology were directors within the meaning of the CFCSA. Specifically, the Ministry confirmed that the Expert Report was disclosed:

- by the Ministry's litigation counsel to staff in the Ministry's litigation management unit;
- by the Ministry's litigation management staff to the Deputy Minister;
- by the Deputy Minister to the Executive Director, Strategic Coordination, Corporation Communications and Executive Operations (the "Executive Director"); and
- by the Executive Director to Mr. Plecas.

[30] The Ministry confirmed that the Chronology was disclosed:

- by the Ministry's litigation counsel to staff in the Ministry's litigation management unit;
- by the Ministry's litigation management staff to the Executive Director; and
- by the Executive Director to Mr. Plecas.

[31] The Ministry confirmed that the "FIPPA provisions, unmodified by the CFCSA" apply to the disclosure of the Expert Report and Chronology.[7] I agree that the provisions of the CFCSA that modify or override FIPPA are not engaged in this investigation.

[32] By virtue of s. 74(2)(f)(ii), my powers as Commissioner apply to a complaint by a person that information has been disclosed in contravention of s. 75 of the CFCSA. The matter before me in this complaint is the disclosure of personal information in accordance with FIPPA, as contemplated by s. 75(b) of the CFCSA.

[7] Further Submissions for the Ministry dated September 18, 2015, para. 2.02(2)

(ii) Was the disclosure of personal information authorized by FIPPA?

[33] The Ministry took the position in its initial submission that the disclosure of personal information was authorized by ss. 74 and 79 of the CFCSA. As those sections only apply to disclosure by a director, and there was no evidence that the Expert Report and Chronology were disclosed by a director, I requested clarification on how those sections applied to the disclosure of information to Mr. Plecas and Ms. Vakil.

[34] The Ministry then revised its position to say that the disclosure of the Expert Report and the Chronology to Mr. Plecas was authorized by ss. 33.2(a), 33.2(c), 33.2(l), and/or s. 33.1(1)(e) of FIPPA. Those provisions are reproduced for convenient reference:

> 33.1(1) A public body may disclose personal information referred to in section 33 inside or outside Canada as follows:
>
> …
>
> (e) to an individual who is a minister, an officer of the public body or an employee of the public body other than a service provider, if
>
> (i) the information is necessary for the performance of the duties of the minister, officer or employee, and
>
> (ii) in relation to disclosure outside Canada, the outside disclosure is necessary because the individual is temporarily travelling outside Canada;
>
> 33.2 A public body may disclose personal information referred to in section 33 inside Canada as follows:
>
> (a) for the purpose for which it was obtained or compiled or for a use consistent with that purpose (see section 34);
>
> …
>
> (c) to an officer or employee of the public body or to a minister, if the information is necessary for the performance of the duties of the officer, employee or minister;
>
> …
>
> (l) to an officer or employee of a public body or to a minister, if the information is necessary for the purposes of planning or evaluating a program or activity of a public body.

[35] Before turning to those subsections, I will address the Complainant's concern that she did not provide consent for the disclosure of her or her family's personal information. There are certain provisions in FIPPA which require the consent of the individual in order to authorize disclosure of his or her personal

information; however, the sections of FIPPA that the Ministry relies on as authority for disclosure do not require consent from the individuals that the information is about in order to authorize disclosure; though they do contain other requirements as described below.

Section 33.2(a)

[36] Section 33.2(a) authorizes a public body to disclose personal information, inside Canada, if the purpose of the disclosure is the same or consistent with the purpose for which it was obtained or compiled.

[37] The Ministry did not explain or provide evidence to show how s. 33.2(a) applied to the personal information disclosed to Mr. Plecas or Ms. Vakil for the Review, or how the purpose for which the information was obtained or compiled was either the same as or consistent with the purpose of the disclosure.

[38] I therefore find that the Ministry has failed to establish that s. 33.2(a) authorized the disclosure of the Expert Report and Chronology to Mr. Plecas and Ms. Vakil.

Section 33.2(c)

[39] Section 33.2(c) authorizes a public body to disclose personal information to, among others, an employee of the public body where that information is necessary for the performance of the duties of the employee.

[40] The first part of s. 33.2(c) requires consideration of whether the personal information was disclosed to an "employee". Schedule 1 of FIPPA contains the following definitions:

> **"employee"**, in relation to a public body, includes
>
> (a) a volunteer, and
>
> (b) a **service provider**;
>
> "service provider" **means a person retained under a contract to perform services for a public body** (Emphasis added)

[41] The Ministry submits that the Expert Report and Chronology were disclosed to Mr. Plecas as an employee. In support of that claim, the Ministry provided a copy of the service contract which it entered into with Mr. Plecas on August 11, 2015 (which also corresponds to the date that the Ministry received notice of the complaint). Schedule A of the service contract provides that the term of the agreement commences on July 27, 2015. The Ministry disclosed the Expert Report to Mr. Plecas on July 24, 2015. The Chronology was disclosed to Mr. Plecas on August 4, 2015.

[42] As the service contract post-dated the disclosure of the Expert Report, I asked the Ministry to provide evidence that Mr. Plecas was an employee of the Ministry as of July 24, 2015. The Ministry responded that there was an oral agreement in place with Mr. Plecas prior to the disclosure of the Expert Report:

> Mr. Plecas became an "employee" for the purposes of the Review prior to the initiation of the Review. While the written contract's term is July 27, 2015 through October 21, 2015, an oral contract was entered into through discussions which occurred between July 21 and July 23, 2015, subsequently formalized in the written contract.[8]

[43] The Ministry provided an affidavit from the Executive Director who attests that she was informed by Deputy Minister Sieben that the essential terms of the contract with Mr. Plecas were offered and accepted during the period on or about July 21, to July 23, 2015.[9] The Executive Director further states that the Terms of Reference for the Review were released publicly on July 24, 2015, when Minister of Children and Family Development Stephanie Cadieux made a public statement that Mr. Plecas would lead the Review.

[44] The Complainant submits that Mr. Plecas was not an employee at the time as "the service contract is clear in that the terms [sic] of the service contract is defined as being between July 27, 2015 and October 21, 2015."[10] She states that the Ministry failed to provide evidence that Mr. Plecas was an employee at the time of the disclosure of personal information and only later asserted that an oral contract existed.

[45] On the basis of the evidence, I accept that Mr. Plecas was a "service provider" and therefore an "employee" of the Ministry within the meaning of Schedule 1 of FIPPA on July 24, 2015 on the basis that he accepted an offer from Deputy Minister Sieben which created an oral contract. I accept that the terms of the oral contract were subsequently formalized in the service agreement. This is supported by the evidence of the Executive Director, and consistent with the public announcement on July 24, 2015 by Minister Cadieux that Mr. Plecas would lead that review. I accept that it is unlikely that the Provincial Government would have made this announcement without first confirming that it had an agreement in place with Mr. Plecas.

[46] I find that Mr. Plecas reached an agreement with the Ministry sometime between July 21 and July 23, 2015 to lead the Review. As such, he was a service provider and employee of the Ministry when the Expert Report and Chronology were disclosed to him.

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[8] Ministry's Further Submissions, at p. 5.
[9] Kamper Affidavit #2, at p. 1.
[10] Complainant's Reply Submissions, para. 3.04.

[47] The second part of the test under s. 33.2(c) requires that the disclosure of personal information be necessary for the performance of the duties of the employee.

[48] The Ministry submits that the duties of Mr. Plecas are those described in the Terms of Reference for the Review:

> The expert report (the "Expert Report") was expressly referred to in the Terms of Reference, as follows:
>
> > "Review all records pertaining to J.P. up to 2012 that are necessary to achieve the objectives of the this review, including a report of a child welfare expert retained by the Ministry for litigation, …".
>
> Therefore, it was and is the Ministry's understanding that disclosure of the Expert Report was required.

[49] The Ministry submits that disclosure of the Chronology was similarly necessary for the purpose of the Review.

[50] The Complainant submits that the disclosure of this personal information is not necessary for the Review as the personal information in question has already been the subject of a comprehensive judgment by Mr. Justice Walker which addresses the same issues. The Complainant notes that:

> [t]hese were the very same issues at the heart of Mr. Justice Walker's decision, and he has made (…) critical findings on these. As such findings of fact have already been made in respect of these issues, and to conduct another investigation into those matters is in essence re-litigation.[11]

[51] The Ministry submits that I have no jurisdiction to question its decision to embark upon the Review.

[52] The Ministry did not provide submissions on the meaning of the term "necessary" in relation to s.33.2(c). However, this term has been addressed in other contexts by numerous Orders of this Office.

[53] The definition most often referred to is set out in Order F07-10, in the context of s. 26(c) of FIPPA, in relation to the collection of personal information:

> It is certainly not enough that personal information would be nice to have or because it could perhaps be of use some time in the future. Nor is it enough that it would be merely convenient to have the information (...)

[11] Complainant's Final Reply Submissions (October 1, 2015), at p. 2.

> At the same time, I am not prepared to accept (…) that in all cases personal information should be found to be "necessary" only where it would be impossible to operate a program or carry on an activity without the personal information. There may be cases where personal information is "necessary" even where it is not indispensable in this sense. The assessment of whether personal information is "necessary" will be conducted in a searching and rigorous way. In assessing whether personal information is "necessary", one considers the sensitivity of the personal information, the particular purpose for the collection and the amount of personal information collected, assessed in light of the purpose for collection. (…)[12]

[54] This approach also guides my interpretation of the term "necessary" in the context of s. 33.2(c).

[55] The necessity of the disclosure must be considered in the context of the duties of the employee. The Terms of Reference for the Review, referenced in Schedule A of the service contract, require Mr. Plecas to conduct the Review "[w]ith a focus primarily on the J.P. case", and:

> In the context of the J.P. case, particular focus will be given to when a child protection matter also involves private custody and access issues between parents, particularly when there are applications, proceedings, or orders involving the provincial court and Supreme Court of British Columbia.[13]

[56] In addition, Mr. Plecas is specifically directed to:

> Review all records pertaining to J.P. up to 2012 that are necessary to achieve the objectives of this review including a report of a child welfare expert retained by the ministry for the litigation, to determine whether the actions taken by the Director under the CFCSA were consistent with legislation, policy and standards.[14]

[57] The Terms of Reference explicitly require Mr. Plecas to review the Ministry's conduct which was the subject of the J.P. Court Decision. I am satisfied that this review required the disclosure of the Expert Review and Chronology.

[58] I do not accept the complainant's submission that the disclosure of personal information was not necessary because the J.P. Court Decision has

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[12] F07-10, 2007 CanLII 30395 (BC IPC), at paras. 48-49. This was also the approach in Order F07-18, 2007 CanLII 42407 (BC IPC); Order F13-04, 2013 BCIPC No. 4; Investigation Report F10-02, 2010 BCIPC 13; and Investigation Report F12-03, 2012 BCIPC No. 16.
[13] Ministry Initial Submissions, Appendix A, at p. 1.
[14] Ministry Initial Submissions, Appendix A, at p. 2

already made findings of fact on the same issues that are to be addressed in the Review. Essentially, the complainant submits that the Review is not necessary and is redundant in light of the Court decision. The redundancy or usefulness of a program or activity is not a matter that is relevant to the determination of whether disclosure of personal information is necessary for the duties of an employee of a public body.

[59] I find that the Ministry's disclosure of the Expert Report and Chronology to Mr. Plecas was necessary for the performance of his duties as an employee of the Ministry and authorized by s. 33.2(c) of FIPPA.

Disclosure of the Chronology to Ms. Vakil

[60] The Complainant believed that the Ministry was asserting that Ms. Vakil had an oral contract for service at the time of the disclosure of the Chronology and maintains that Ms. Vakil was not an employee until the execution of the service contract on August 13, 2015. I note, however, that the Ministry did not submit that Ms. Vakil had an oral contract for service; that submission was limited to Mr. Plecas. The Complainant's confusion is certainly understandable in light of the significant changes in the Ministry's position during the course of this investigation with respect to its authorization for disclosure of the Complainant's personal information.

[61] The Ministry provided a copy of the service contract for Ms. Vakil. The Deputy Minister and Ms. Vakil signed the service contract on August 13, 2015. Schedule A of that contract states that the term commenced on July 27, 2015. As indicated above, the Chronology was disclosed to Ms. Vakil on August 4, 2015, within the term of the service contract.

[62] I therefore find that Ms. Vakil was a service provider, and therefore an employee of the Ministry, within the meaning of FIPPA at the time that Mr. Plecas disclosed the Chronology to her.

[63] Schedule A of Ms. Vakil's service contract, which also refers to the Terms of Reference, explicitly requires her to review whether:

> the child protection practice and actions taken by the Ministry staff, supervisors, and legal counsel contracted to represent the Director (…) were consistent with legislation, policies and standards during the [Ministry's] contact with the family during 2009 to 2012;

[64] I accept that Ms. Vakil's duties as a service provider and employee of the Ministry could not reasonably be met without the disclosure of the Chronology.

[65] In summary, I find that the disclosure of the Chronology by Mr. Plecas to Ms. Vakil was necessary for the performance of her duties as a service provider

and employee of the Ministry and was therefore authorized by s. 33.2(c) of FIPPA.

Section 33.2(l)

[66] Section 33.2(l) authorizes disclosure to an employee of a public body if the information is necessary for the purposes of planning or evaluating a program or activity of a public body.

[67] Although the Ministry referred to this provision, it did not explain or provide evidence to demonstrate how s. 33.2(1) applied in relation to the disclosure of personal information to Mr. Plecas or Ms. Vakil for the Review. I therefore find that s. 33.2(1) did not authorize the disclosure of the Expert Report or the Chronology.

Section 33.1(1)(e)

[68] Section 33.1(1)(e) authorizes disclosure to an employee of the public body where the information is necessary for the performance of the duties of the employee. This section differs from s. 33.2(c) in that it also authorizes disclosure while the employee is temporarily traveling outside of Canada.

[69] As there is no evidence before me that the disclosure of personal information occurred outside of Canada, and I have already determined that the disclosure of the Expert Report and Chronology was authorized by s. 33.2(c), it is not necessary to consider this provision.

Conclusion on disclosure of personal information for the Review

[70] The only personal information of the Complainant and her family that has been disclosed to date is the information contained in the Expert Report and the Chronology which were provided to Mr. Plecas and Ms. Vakil, and then subsequently retrieved. I have found that the disclosure of this personal information was authorized under s. 33.2(c) of FIPPA.

[71] The Complainant expressed concern that additional personal information regarding her family will be disclosed by the Ministry during the course of the Review and reiterated that she has not provided her consent for such disclosure.

[72] The future disclosure of personal information by the Ministry is speculative and does not form part of this inquiry. However, I note that s. 33.2(c) of FIPPA, which authorized the disclosure of personal information to Mr. Plecas and Ms. Vakil, would likely authorize the disclosure of similar personal information to other Ministry employees engaged in the Review. If such disclosure is to occur, the

Ministry must first determine whether, in each instance, the disclosure is necessary for the conduct of the Review.

3. If the disclosure was authorized, what security arrangements must the Ministry undertake to mitigate such risks as unauthorized access, collection, use, disclosure or disposal?

[73] Section 30 of FIPPA requires that public bodies must protect personal information in their custody or under their control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal.

[74] The personal information disclosed by the Ministry to Mr. Plecas and Ms. Vakil for the Review is particularly sensitive. The Complainant is understandably concerned about its disclosure. This concern is underscored by the fact that some of the personal information may be the subject of a sealing order by the Court. I therefore requested submissions from the Ministry regarding the steps that it will take to comply with s. 30 while conducting the Review.

[75] The adequacy of a public body's security arrangements is measured on an objective basis against a standard of reasonableness. This does not mean that the security arrangements must be perfect but it does signify a rigorous standard. In previous investigation reports, I have stated that this objective measure of adequacy will vary depending on the sensitivity of the personal information, the medium and the format of the record(s), the value of the information, and the relationship between the public body and individuals the information is about.[15]

[76] The personal information to be disclosed to the Review Team by the Ministry consists primarily of the personal information of children, parents, and foster parents who are involved with child protection practice and Ministry actions. This will include private custody and access issues between parents, the background for and content of applications, proceedings, and orders from the Provincial Court and the Supreme Court.

[77] As this information may describe circumstances which led to the removal or supervision of children by the ministry, as well as the particular special or extraordinary needs of parents and/or children that have come into contact with the Ministry, I consider this personal information to be highly sensitive.

[78] I am reinforced in that view by the fiduciary nature of the relationship between the Ministry and children in its care or under its supervision. As the Court observed in the J.P. Case, "(i)t is well established that the Crown owes a fiduciary duty to children in government care. Charged with the care of a child,

[15] Investigation Report F12-02, at p. 9, Investigation Report F13-02, at p. 11.

the Crown occupies the position of a parent, and assumes the fiduciary duties of a parent."[16] Further, the CFCSA mandates that the director is required to act in the best interests of children in this province.[17]

[79] The heightened sensitivity of the personal information at issue and the fiduciary obligations of the Ministry support a high threshold for what will constitute reasonable security arrangements in relation to the personal information in its custody or under its control, including that which has been and will be disclosed during the course of the Review. The Ministry must ensure that it has appropriate administrative, physical, and technical controls in place to meet that standard.

[80] The Ministry submits that it has made "more than reasonable security arrangements" for all the personal information that it has disclosed, and for all personal information that it may disclose to the Review Team. In support of this claim, the Ministry provided a list of security arrangements that it "has or is in the process" of putting in place to which I now turn.

Administrative Controls

[81] The Ministry has required each member of the Review Team to contractually agree to treat all information obtained for the Review as confidential, and has explicitly described the provisions of FIPPA that apply to the personal information collected for the Review.

[82] In addition, Schedule F of the Review Team members' service contracts specify that the members are not authorized to make any other use of the personal information, nor are they to disclose any identifiable information. That schedule also requires that paper-based records may not be transported by external couriers or postal services. Any information that must be transported will be encrypted prior to transport.

[83] The Ministry has discussed all proposed or implemented security arrangements with the Office of the Chief Information Officer ("OCIO") to ensure that all practical measures are being undertaken to ensure the security of the personal information. The Ministry's Director, Security, Privacy and Compliance Management, as well as the OCIO's Manager of Security Awareness, are providing training to the Review Team on practices in relation to the handling and destruction of personal information used in the Review.

[16] J.P. Case, at para. 548.
[17] J.P. Case, at para. 48.

Technical Controls and Physical Controls

[84] The Ministry has undertaken to provide all Review Team members with government email addresses to eliminate the need to share information via non-government email servers. I endorse this as a more secure method of communication than the utilization of non-government email systems; however, I would recommend the following additional safeguards:

- all personal information transmitted via email should be encrypted; and
- Review Team members should disable auto-complete of email addresses on any email client that is used for the purpose of communication for the Review.

[85] The Ministry will place all case files that the Review Team will access for the Review on a secured Government Sharepoint site, and will provide limited access to those files to a subset of the Review Team consisting of those for whom access is necessary. Every member of that subset will be provided with encrypted government laptops.

[86] Each member of the Review Team has been provided with government "IDIR IDs" to enable access to the government network and eliminate any need for records to leave the government network.

[87] I find that these measures, taken together, meet the high objective standard necessary to constitute reasonable security arrangements on the part of the Ministry against such risks as unauthorized access, collection, use, disclosure or disposal of the personal information which may be disclosed to Review Team members for the Review.

Complainant's Personal Information

[88] The Complainant's submission on the adequacy of the Ministry's security measures primarily focussed on the use of her and her family's personal information in the publication of the Review Team's final report. This is understandable in light of the sensitivity of the personal information and the sealing order. To address the Complainant's concerns, the Ministry has committed in its submissions to not disclose any of the personal information of the Complainant or of her family in the Review Team's final report.

CONCLUSION

[89] By order pursuant to s. 58(3) of FIPPA:

1. I confirm that the decision of the Ministry of Children and Family Development to disclose the Expert Report and Chronology to Bob Plecas

and Thea Vakil was authorized by s. 33.2(c) of the *Freedom of Information and Protection of Privacy Act*; and

2. I confirm that the Ministry of Children and Family Development has met its duty to make reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal of the Complainant's and the Complainant's family's personal information in the conduct of the Review.

October 13, 2015

ORIGINAL SIGNED BY

Elizabeth Denham, Commissioner

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