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Order F18-44

## MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

Erika Syrotuck  
Adjudicator

November 1, 2018

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**Summary:** The applicant requested records of any daycare subsidy paid to his ex-spouse for their son. The Ministry of Children and Family Development (MCFD) refused access to the information on the basis that the applicant was not acting “for” or “on behalf of” his son and that disclosure would be an unreasonable invasion of the applicant’s ex-spouse’s personal privacy under s. 22. The adjudicator found that the applicant was not acting “for” or “on behalf of” his son and that MCFD was required to refuse access to some, but not all, of the information in dispute under s.22(1).

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 5, 22; *Freedom of Information and Protection of Privacy Regulation*, BC Reg 155/2012 s. 3; *Child, Family and Community Service Act*, RSBC 1996 c. 46, ss. 73, 76; *Child Care Subsidy Act* RSBC 1996 c. 26; *Child Care Subsidy Regulation*, BC Reg 74/97.<sup>1</sup>

### INTRODUCTION

[1] The applicant made an access request to the Ministry of Children and Family Development (MCFD) for records of any daycare subsidy paid to his ex-spouse for their son. In particular, the applicant requested the amounts paid, the dates of the payments and to whom the payments were made. MCFD refused access to the information in dispute on the basis that the applicant was not acting on behalf of his son under s. 76 of the *Child, Family and Community Service Act*

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<sup>1</sup> The portions of the Child Care Subsidy Regulation setting out how subsidies are calculated changed on September 25, 2018. I considered the previous version of these portions in this order.

(CFCSA) and/or s. 3 of the *Freedom of Information and Protection of Privacy Regulation* (Regulation) and that the MCFD was required to refuse access under s. 22 (unreasonable invasion of third party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review MCFD's decision. Mediation failed to resolve the issues and the matter proceeded to inquiry.

### ***Preliminary Issues***

#### *Responsive Records*

[2] There was a discrepancy between the number of pages that MCFD provided to the OIPC Investigator for review and the number of pages of records MCFD provided to the Registrar for the inquiry. I requested that MCFD provide the additional pages. MCFD responded that the records provided to the Investigator did not contain information responsive to the applicant's request but were instead provided to illustrate the context of the information requested.<sup>2</sup> MCFD's explanation satisfied me that the records submitted in this inquiry are the records that respond to the applicant's request and that I did not need to see the pages provided to the Investigator.

#### *Disclosure of Entitlement to Subsidy*

[3] MCFD submits that whether the ex-spouse received the Child Care Subsidy (Subsidy) is her personal information and that disclosing that fact is presumed to be an unreasonable invasion of her personal privacy.<sup>3</sup> In particular, MCFD says that disclosure of whether the ex-spouse received the subsidy would involve personal information that describes the third party's financial history because an individual is only eligible to receive the subsidy if they are below the income thresholds set out in the legislation.<sup>4</sup>

[4] Whether the ex-spouse received the Subsidy is not the information in dispute in this inquiry. The applicant requested "[r]ecords of any daycare subsidy paid to [his ex-spouse]..." MCFD has already disclosed that the ex-spouse received a subsidy when it confirmed it had records related to her subsidy.<sup>5</sup>

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<sup>2</sup> Letter from MCFD, September 7, 2018.

<sup>3</sup> MCFD's submissions, paras. 13 and 19.

<sup>4</sup> MCFD's submissions, para 19.

<sup>5</sup> MCFD could have chosen to refuse to confirm or deny the existence of the records in dispute under s. 8(2) if the existence of the information was an unreasonable invasion of a third party's personal privacy. Instead, it provided responsive records which it refused to disclose. The fact that MCFD provided responsive records means that the applicant can easily deduce that his ex-spouse applied for and received some form of daycare subsidy.

### *Section 76 of the CFCSA*

[5] During the inquiry, MCFD submitted that s. 76 of the CFCSA does not apply. The applicant made no submissions on whether the CFCSA applies. Therefore, it is no longer at issue in this inquiry and I will not consider it.

## **ISSUES**

[6] The issues in this inquiry are:

1. Is the applicant acting for or on behalf of his son under s. 5 of FIPPA and s. 3 of the Regulation?
2. Is MCFD required to refuse access under s. 22 of FIPPA?

[7] Under s. 57(2) the applicant has burden of establishing that disclosing the information in dispute is not an unreasonable invasion of a third party's personal privacy. FIPPA does not address who has the burden under s. 5 of FIPPA and s. 3 of the Regulation.

## **DISCUSSION**

### ***Background***

[8] The applicant and his ex-spouse were never married but have one child together. After the breakdown of the relationship, the parties entered into two consent orders and a "minutes of settlement" setting out terms for care of and access to their child and regarding financial payments, including payments for daycare expenses.<sup>6</sup>

### ***Records in Dispute***

[9] The records in dispute are eight pages of information about daycare subsidies paid regarding the applicant's son. The records include:

- the ex-spouse's name, address and case number;
- the issue date(s);
- the child's name and birth date;
- information about the care provider(s);
- the type of care;<sup>7</sup>
- maximum number of days per month;
- the start and end dates of the benefit period (Benefit Period);

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<sup>6</sup> Exhibits A, B, and C to the applicant's submissions.

<sup>7</sup> As set out in the Child Care Subsidy Regulation, Schedule A, before the September 25, 2018 amendment.

- two separate dollar amounts. The first is amount of the Subsidy. The second is the “parent portion” which is the amount the parent must pay to the daycare provider (i.e. the amount not covered by the subsidy) (Parent Portion);
- explanatory information; and
- a header and footer.

[10] MCFD has refused access to the records in their entirety.

***Acting on behalf of son***

[11] Section 5 of FIPPA and s. 3 of the Regulation set out who can exercise another individual’s access to information rights.

[12] Section 5(1)(b) of FIPPA states:

**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, and

...

[13] Section 3 of the Regulation states that:

**3** (1) A guardian of a minor may act for the minor in relation to any of the following sections of the Act if the minor is incapable of acting under that section:

(a) section 5;

...

(2) A guardian of a minor may exercise a power granted to the guardian under subsection (1) of this section only if the power is within the scope of the guardian's duties or powers.

[14] Section 5 of FIPPA and s. 3 of the Regulation use the terms “for” or “on behalf of” to limit the circumstances where a guardian can exercise a child’s rights. In Order F17-04, the adjudicator found that the terms “for” and “on behalf of” have a similar meaning and should be interpreted consistently. In that order, the adjudicator said:

“Dictionary definitions of “for” and “on behalf of” are somewhat circular. For example, definitions of “for” include: “in the interest of”; “to the benefit of”; “on behalf of”; “in place of”; and “representing”. Definitions of “on behalf of” include: “in the interests of”; “as representative of”; “in the best interests”; “for”; “in aid of”; and “in support of”.

I take from this that the two terms mean similar things.”<sup>8</sup>

[15] In Order F17-04, the adjudicator concluded that acting “for” or “on behalf of” a minor child in exercising the child’s access rights means acting to benefit the child, to further the child’s own goals or objectives and in the child’s best interests.<sup>9</sup> Past orders have also said that if an applicant is seeking the information in dispute to further their own interests, the applicant is not acting on behalf of another individual under s. 5 of FIPPA.<sup>10</sup> If an applicant is not acting “for” or “on behalf of” another individual, their request is treated like any other arm’s length request.<sup>11</sup>

[16] The applicant says that he is acting on behalf of his son. The applicant explains that his son lives half of the time with him and half the time with his ex-spouse. He says that it is in the best interests of his son to ensure that the appropriate amount of child support and expenses are being paid in order to maintain a balance between his son’s two residences.<sup>12</sup>

[17] MCFD submits that the applicant is not acting “for” or “on behalf of” his son. MCFD says that the information at issue relates to the finances of the mother of the child.<sup>13</sup> MCFD says that the applicant is acting on his own behalf because the child has no responsibility for the cost of child care.<sup>14</sup>

[18] In my view, the applicant is not acting “for” or “on behalf of” his son. The records in dispute relate to past Subsidies for past daycare costs. In my view, the applicant’s son has no direct interest in how daycare costs are split between his parents. There is no evidence before me that suggests that disclosing the information in dispute would impact the child’s access to daycare. However, it is clear that the applicant has an interest in the amount of the Subsidy because it relates to the amount that he owes to his ex-spouse for daycare costs. For these reasons, I find the applicant is acting to further his own interests rather than the child’s own goals or objectives. Therefore, the applicant is not authorized to exercise his son’s access rights under FIPPA.

[19] I will now consider whether MCFD is required to refuse access to the applicant’s request on the basis that it was made on his own behalf.

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<sup>8</sup> Order F17-04, 2017 BCIPC 4, at paras. 16 and 17.

<sup>9</sup> *Ibid*, at para. 17.

<sup>10</sup> Order F18-08, 2018 BCIPC 10 at para. 13; F17-04, 2017 BCIPC 4 at para. 20.

<sup>11</sup> Order 00-40, 2000 CanLII 14405 (BC IPC); Order F18-08, 2018 BCIPC 10 at para. 13.

<sup>12</sup> Applicant’s submissions, para. 10.

<sup>13</sup> MCFD’s submissions, para. 38.

<sup>14</sup> MCFD’s submissions, para. 40.

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## Section 22

[20] Section 22 requires that a public body withhold personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy.<sup>15</sup> MCFD refused to disclose all eight pages in their entirety on the basis of s. 22. The portions of s.22 pertaining to this inquiry state:

**22** (1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

(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 the relevant circumstances, including whether

...

(c) the personal information is relevant to a fair determination of the applicant's rights,

...

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

(c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels,

...

(f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,

...

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

(a) the third party has, in writing, consented to or requested the disclosure,

...

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<sup>15</sup> Schedule 1 of FIPPA says: "third party" in relation to a request for access to a record or for correction of personal information, means any person, group of persons or organization other than (a) the person who made the request, or (b) a public body.

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*Personal Information*

[21] The first step in any s. 22 analysis is to determine whether the information in dispute is personal information.

[22] FIPPA defines personal information as “recorded information about an identifiable individual other than contact information.” FIPPA defines contact information as “information to enable an individual at a place of business to be contacted and includes the name, position or title, business telephone number, business address, business email or business fax number of the individual.”<sup>16</sup> Previous orders have held that information is about an identifiable individual when it is reasonably capable of identifying an individual alone or when combined with information from other available sources.<sup>17</sup>

[23] Some of the information is not personal information, for example, the header and footer of the letters and the headings within the letter. In addition, there is some standard form explanatory language about the Subsidy. This is not personal information and MCFD cannot refuse to disclose it under s. 22.

[24] The son’s name and birthdate are identifiable information about the son and are therefore his personal information.

[25] The ex-spouse’s name, address and case number with MCFD are clearly her personal information. In my view, the Benefit Period, type of care, maximum number of days per month, Parent Portion and Subsidy are also her personal information because they are about the Subsidy she received. In these circumstances, the issue date is also personal information because it corresponds to the Benefit Period. In addition, some of the explanatory information relates to the specific benefits received by the ex-spouse. This is her personal information.

[26] Neither the applicant nor MCFD made any submissions on whether the information about the care provider(s)<sup>18</sup> is personal information. This information is the son’s personal information because it is about the care he receives. In my view, it is also the ex-spouse’s personal information because it is about the choices she made regarding her son’s care.

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<sup>16</sup> *Freedom of Information and Protection of Privacy Act*, Schedule 1.

<sup>17</sup> See for example, Order F16-38, 2016 BCIPC 42 (CanLII) at para. 112; Order F13-04, 2013 BCIPC 4 (CanLII) at para. 23.; Order P12-01, 2012 BCIPC 25 (CanLII) at para. 85.

<sup>18</sup> Given its form and context, the information in dispute does not reveal personal information about the care provider(s).

*Section 22(4)*

[27] The next step is to determine whether any of the circumstances in s. 22(4) apply. Section 22(4) describes circumstances where disclosure of personal information is not an unreasonable invasion of personal privacy.

[28] MCFD submits that none of the circumstances in s. 22(4) apply.<sup>19</sup>

*22(4)(a) – consent in writing*

[29] Section 22(4)(a) states that disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the third party has, in writing, consented to or requested the disclosure. While the applicant did not explicitly reference this section, I will consider it because the applicant states that he and his ex-spouse already have an agreement, by consent, to exchange financial information annually.<sup>20</sup> I understand the applicant to be saying that his ex-spouse has consented to disclosure of the information in dispute through the court orders and minutes of settlement.

[30] I do not think that an agreement to exchange financial information in the context of a relationship breakdown qualifies as consent, in writing, for the purpose of s. 22(4)(a) of FIPPA. There is nothing in the orders or minutes of settlement indicating that the parties turned their minds to disclosure for the purpose of FIPPA or that the agreement to exchange financial information allows either party to get disclosure of the other's information from an external source (in this case, MCFD). I find that s. 22(4)(a) does not apply.

*Section 22(3)*

[31] The next step in the analysis is to determine whether s. 22(3) applies to any of the personal information. Section 22(3) describes circumstances where disclosure of personal information is presumed to be an unreasonable invasion of a third party's privacy.

*22(3)(c) – eligibility for a social service benefit*

[32] MCFD submits that disclosure of the ex-spouse's personal information is presumed to be an unreasonable invasion of the ex-spouse's privacy under s. 22(3)(c) because the Subsidy is related to eligibility for a social service benefit.<sup>21</sup> MCFD says that eligibility for the Subsidy is based on income tests and the benefit is meant to assist low income individuals with child care costs.<sup>22</sup>

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<sup>19</sup> MCFD's submissions, para. 15.

<sup>20</sup> Applicant's submissions, para. 15.

<sup>21</sup> MCFD's submissions, para. 17.

<sup>22</sup> MCFD's submissions, para. 18.

Further, MCFD says that for single parent families, eligibility for the Subsidy is determined separately for each parent; the other parent can also apply for a Subsidy for the time that the child is residing with them.<sup>23</sup>

[33] I accept that the Subsidy is a social service benefit within the meaning of s. 22(3)(c). In my view, the amount of the Subsidy, type of care, the maximum number of days per month and the Benefit Period are related to eligibility for the Subsidy. In addition, some of the explanatory information relates to the type of Subsidy that the applicant's ex-spouse received, and therefore this information relates to eligibility for a social service benefit. Therefore disclosure of this information is presumed to be an unreasonable invasion of the ex-spouse's personal privacy.

[34] However, I find that s. 22(3)(c) does not apply to the Parent Portion. The Parent Portion is the amount the ex-spouse is expected to contribute to the cost of child care. This amount does not relate in any way that I can see to the eligibility for, or the determination of, the social benefit.

#### *22(3)(f) – financial history*

[35] MCFD submits that disclosure of the third party's personal information is presumed to be an unreasonable invasion of the ex-spouse's personal privacy under s. 22(3)(f) because it involves the third party's finances, income and financial history.<sup>24</sup>

[36] I find that the amount of the Subsidy, the issue date, the Parent Portion and the Benefit Period relate to the ex-spouse's financial history. These are the amounts that she received from the government and owed to the daycare for her son's care. This type of information is her financial history and I find that this information is presumed to be an unreasonable invasion of her personal privacy under s. 22(3)(f).

#### *Section 22(2)*

[37] The next step is to consider all relevant circumstances, including the circumstances listed under s. 22(2) to determine if the disclosure of the personal information is an unreasonable invasion of third party personal privacy. It is at this stage that any presumptions under s. 22(3) can be rebutted.

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<sup>23</sup> Affidavit of the Director of Child Care Programs and Services, para. 9.

<sup>24</sup> MCFD's submissions, paras. 17 and 19.

*22(2)(c) – fair determination of the applicant's rights*

[38] One of the relevant circumstances that I must consider is whether personal information is relevant to a fair determination of the applicant's rights under s. 22(2)(c) .

[39] In Order 01-07 former Commissioner Loukidelis adopted a four part test to determine whether s. 22(2)(c) applies:

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.<sup>25</sup>

[40] All of the criteria must be met in order for s. 22(2)(c) to apply.

[41] The applicant states that there is a court order requiring him to pay a portion of his child's daycare costs and that the amount of the Subsidy is required to calculate his portion.<sup>26</sup> He points to the orders and minutes of settlement as support for why he needs the information in dispute.

[42] The orders and minutes of settlement provided by the applicant arose out of proceedings that have already been completed, rather than ones that are contemplated or underway. I am satisfied that these are completed proceedings because they resulted in the orders and minutes of settlement, all of which set out terms related to the breakdown of the relationship. Therefore I find that the second part of the test is not met with regards to these proceedings.

[43] MCFD, however, has pointed to a legal proceeding that may still be underway, specifically a Notice of Application that the applicant filed in the BC Supreme Court.<sup>27</sup> He is seeking a court order requiring, among other things, that the ex-spouse disclose how much money she received in subsidies. MCFD says

<sup>25</sup> Order 01-07, 2001 CanLII 21561 (BC IPC) at para. 31.

<sup>26</sup> Applicant's submissions, paras. 11 and 15.

<sup>27</sup> MCFD's submissions, paras. 25-30; Freedom of Information Analyst, Information Access Operations, para. 17 and Exhibit J.

the information in dispute here is not necessary for the applicant to prepare for a court hearing into whether the ex-spouse must disclose some of the very same information. MCFD says that whether the applicant is entitled to access to the amount of subsidies is the actual subject and substance of the court proceedings.<sup>28</sup>

[44] I agree with MCFD that the information in dispute is the same information that the applicant is seeking to access through the court. As a result, I am not satisfied that the information in dispute is necessary to prepare for a proceeding or ensure a fair hearing or that the information is *related* to a proceeding. Therefore, I find that the second and fourth parts of the test are not met.

[45] In conclusion, I find that the personal information is not relevant to a fair determination of the applicant's rights for the purpose of s. 22(2)(c).

*Applicant's knowledge*

[46] The applicant already knows some of the personal information in dispute, namely his son's name and birthdate and the ex-spouse's name. However, there is nothing to indicate that the applicant knows the balance of the personal information in dispute.

*Conclusion on s. 22*

[47] It is not an unreasonable invasion of the applicant son's personal privacy to disclose his name and birth date since the applicant already knows this information. Similarly, the applicant already knows his ex-spouse's name. For this reason, I do not think it is an unreasonable invasion of her privacy to disclose it. However, I have concluded that the balance of personal information must be withheld under s. 22.

[48] The amount of the Subsidy, Parent Portion, the Benefit Period, type of care, maximum number of days per month, the issue date and some of the explanatory information all relate to either the ex-spouse's financial history or her eligibility for a social service benefit, and therefore disclosing this information is presumed to be an unreasonable invasion of the ex-spouse's personal privacy. There are no circumstances that rebut this presumption.

[49] There is some personal information for which there are no circumstances weighing for or against disclosure. For instance, the information about the care provider(s) is both the son's and the ex-spouse's personal information and the applicant has not met his burden of proving that disclosure of this information is not an unreasonable invasion of their personal privacy. Similarly, the ex-spouse's address is her personal information alone and in my view, the applicant has not

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<sup>28</sup> MCFD's submissions, para. 30.

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met his burden of proving that disclosure of this information is not an unreasonable invasion of a third party's personal privacy. MCFD is required to refuse to disclose this information.

## **CONCLUSION**

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

1. I confirm MCFD's decision that the applicant is not acting for or on behalf of his son under s. 5(1) of FIPPA and s. 3 of the Regulation.
2. I confirm, in part, MCFD's decision to refuse access to the information in dispute under s. 22. MCFD is only required to refuse access the part of the record I have highlighted in the copy of the records sent to MCFD along with this order.
3. I require MCFD to give the applicant access to the non-highlighted information by December 14, 2018. MCFD must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

November 1, 2018

## **ORIGINAL SIGNED BY**

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Erika Syrotuck, Adjudicator

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