Order F07-25

PUBLIC GUARDIAN AND TRUSTEE

Justine Austin-Olsen, Adjudicator

December 17, 2007

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Summary: The applicant requested records relating to a sale of real property conducted by the Public Guardian and Trustee over 30 years ago on behalf of a client who is now deceased. Most of the records in dispute do not contain personal information. In particular, information about the value of a piece of real property is not personal information. The relatively small amount of personal information that is contained in the records relates to persons who are members of the applicant's family and are now deceased. The records are quite old, and the personal information is not of a particularly sensitive nature. In the circumstances, s. 22(1) does not require the PGT to refuse the applicant access.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(a), (c), 22(3)(f).

Authorities Considered: B.C.: Order 01-07, [2001] B.C.I.P.C.D. No. 7; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 02-26, [2002] B.C.I.P.C.D. No. 26; Order 02-44, [2002] B.C.I.P.C.D. No. 44; Order 02-56, [2002] B.C.I.P.C.D. No. 58; Order 04-12, [2004] B.C.I.P.C.D. No. 12; Order F07-21, [2007] B.C.I.P.C.D. No. 35.

Other Material Considered: Investigation Report P98-011, http://www.oipc.bc.ca/investigations/reports/invrpt11.html.

1.0 INTRODUCTION

[1] This inquiry arises from a decision by the Public Guardian and Trustee (the "PGT") to refuse the applicant access to records it holds that relate to a sale of real property it conducted on behalf of a client, who is now deceased ("G.B."). The applicant is G.B.'s nephew, and one of two executors for the estate of G.B.'s deceased sister ("P.S.").

[2] The background facts to this matter are set out by the PGT and are not disputed by the applicant:[1]

> On June 29, 1960, [G.B.] was deemed incapable of managing his affairs under the *Lunacy Act* and notification was given to the Official Committee at the Office of the Attorney-General in Victoria, British Columbia.
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> In August 1961, the Official Committee received funds from [G.B.'s] sister [P.S.], as the purchase price for a piece of property on Shuswap Lake ("Parcel A") co-owned by [G.B.] and his brother [C.B.]. The Official Committee issued a quit claim conveying [G.B.'s] share of ownership in Parcel A to [P.S.].
>
> [G.B.] subsequently became a client of the PGT. In 1975, the PGT sold to an arm's length third party a second piece of property co-owned by [G.B.] and [C.B.] located adjacent to Parcel A on Shuswap Lake ("Parcel B").
>
> On September 28, 1976, the PGT ceased managing the affairs of [G.B.] upon the appointment of his sister [M.N.] as Committee of Estate and Person on September 28, 1976**.**
>
> [G.B.] died on January 19, 1994. The PGT administered his estate in its capacity as Official Administrator and distributed [G.B.'s] estate in accordance with the intestacy provisions of the *Estate Administration Act*.
>
> The administration of [G.B.'s] estate was completed on April 24, 2004, and the PGT closed [G.B.'s] file on May 19, 2004.

[3] On May 9, 2006, the applicant, through his solicitors, wrote to the PGT and requested access to records "…relating to the commitment of G.B. under the *Lunacy Act* and the disposition of his property located at Shuswap Lake by the Official Committee." On September 6, 2006, the PGT responded to the applicant's request and acknowledged that the applicant, acting as executor, had authority to make a request on behalf of P.S. in accordance with s. 3(c) of the *Freedom of Information and Protection of Privacy Regulation* ("Regulation"). The PGT provided the applicant with the requested records relating to G.B.'s commitment but, with respect to the disposition of the property, the PGT advised:

> Most of our records on the Shuswap Lake property pertain to the sale of land which was adjacent to the property description in the indenture you provided us with your Freedom of Information request. As [P.S.] does not appear to have an interest in this land we have severed these records under Section 22(1) of the Act. We have released to you all our records pertaining to the parcel of land you identified.

[4] That is, the PGT says that it released to the applicant those records related to Parcel A, but not those related to Parcel B.

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[1] PGT's initial submission at paras. 7-12.

[5] Mediation was of only marginal assistance in settling this matter, resulting in the release of 6 additional pages to the applicant. As such, an inquiry under Part 5 was convened to deal with the remaining records that were withheld by the PGT.

[6] For the purposes of this inquiry the PGT provided a copy of the records it withheld from the applicant under s. 22(1). The records consist of the following:

- 444 pages of numbered records described by the PGT as "[r]ecords severed under Section 22(1) of the *Freedom of Information and Protection of Privacy Act*."[2]

- 22 pages of unnumbered records and three sets of numbered records (42 pages, 47 pages, and 52 pages respectively) which the PGT described as "the remaining records in dispute in this Inquiry, which were withheld in their entirety…pursuant to Section 22(1) of the *Freedom of Information and Protection of Privacy Act*."[3]

[7] Although the 444 pages of numbered records are identified by the PGT as "severed", it appears that, in fact, all of the records described above were entirely withheld by the PGT. Taken together, these 607 pages constitute the records in dispute in this inquiry.

2.0 ISSUE

[8] The sole issue in this inquiry is whether the PGT was required by s. 22(1) of FIPPA to refuse the applicant access to the records in dispute on the basis that they contain personal information, the disclosure of which would unreasonably invade the personal privacy of a third party.

[9] While from a review of the records it appears that other sections of FIPPA might arguably have been raised by the PGT, none of them were at any point in the proceedings. I note that these other sections are all discretionary, and so I must assume that the PGT would have considered them in due course, and determined that it would not exercise its discretion to refuse the applicant access to any of the records on that basis.

[10] Under s. 57(2) of FIPPA, the applicant has the burden of proving that s. 22(1) does not require the PGT to refuse access to the records.

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[2] Table of Contents – Tab 2 – Records of the Public Guardian and Trustee.
[3] Letter from PGT to Registrar of Inquiries, February 6, 2007.

3.0 DISCUSSION

[11] **3.1 Section 22 of FIPPA**—The portions of s. 22 that are relevant in this case read as follows:

> **Disclosure harmful to personal privacy**
>
> 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
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,
>
> …
>
> (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
>
> ...
>
> (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,
>
> …

[12] Previous orders have dealt with the application and interpretation of s. 22, including Order 01-53[4] and Order 02-56.[5] There have also been several orders which have specifically considered s. 22 with respect to deceased individuals and their privacy rights.[6] In reaching my decision, I have applied the principles they set out. Normally, I would not repeat in detail what those orders say, however, in the circumstances of this particular case and considering the nature of the records in dispute, it is worth repeating exactly what Commissioner Loukidelis

[4] Order 01-53, [2001] B.C.I.P.C.D. No. 56.
[5] Order 02-56, [2002] B.C.I.P.C.D. No. 58.
[6] Order 02-44, [2002] B.C.I.P.C.D. No. 44; Order 04-12, [2004] B.C.I.P.C.D. No. 12; Order 02-26, [2002] B.C.I.P.C.D. No. 26; and Order F07-21, [2007] B.C.I.P.C.D. No. 35.

said in Order 01-53 with respect to how a public body is to expected to apply s. 22 of FIPPA:[7]

> …When a public body is considering the application of s. 22, it must first determine whether the information in question is personal information within the Act's definition of "personal information." …
>
> The next step in the s. 22 analysis is to determine whether disclosure of the personal information would be an unreasonable invasion of a third party's personal privacy. The public body must consider whether disclosure of the disputed information is considered, under s. 22(4) of the Act, not to result in an unreasonable invasion of third-party privacy. …
>
> Next, the public body must decide whether disclosure of the disputed information is, under s. 22(3), presumed to cause an unreasonable invasion of privacy. According to s. 22(2), the public body then must consider all relevant circumstances in determining whether disclosure would unreasonably invade personal privacy, including the circumstances set out in s. 22(2). The relevant circumstances may or may not rebut any presumed unreasonable invasion of privacy under s. 22(3) or lead to the conclusion that disclosure would not otherwise cause an unreasonable invasion of personal privacy.

Personal Information

[13] As noted in the excerpt from Order 01-53 above, the first step is to determine whether or not the records contain personal information, which is defined in Schedule 1 of FIPPA:

> "personal information" means recorded information about an identifiable individual other than contact information.

[14] In its submission the PGT describes the records in dispute in this inquiry as follows:[8]

> The records relating to Parcel B contain financial information relating to the value of Parcel B and the circumstances of its disposition. These records consist primarily of the following:
>
> - Correspondence between the PGT and its external legal counsel retained to convey Parcel B to the purchaser;
> - Correspondence between the PGT's external legal counsel and appraisers hired to ascertain the value of Parcel B;
> - Correspondence between the PGT's external legal counsel and [C.B.] or his counsel regarding the disposition of Parcel B;

[7] Order 01-53, [2001] B.C.I.P.C.D. No. 56, at paras. 22-24.
[8] Initial submission of the PGT at para. 19.

- Correspondence between the purchaser's counsel and the PGT or the PGT's external legal counsel;
- Internal office memos and notes of PGT staff regarding the sale of the property.

[15] For the most part, I agree with the PGT that this accurately describes the types of records comprising the 607 pages in dispute. I would add to the above that included in the records are "official" records such as court records, tax records, and Land Title Office records, and reports on the market value of Parcel B as of various dates prepared by external assessors.

[16] That being said, my review of the records in dispute reveals that a significant portion of these records do not contain much personal information other than the identity of the PGT's patient, G.B., and the names of other third parties, most of whom are also family members. There are a few pieces of correspondence which contain somewhat more detailed personal information about G.B. and C.B. However, the content of most of the records, as might be expected, is about the property, and not the personal information of G.B., except to the extent that it identifies G.B. and C.B. as the then joint owners of Parcel B.

Presumed Unreasonable Invasion of Privacy

[17] The PGT's argument on this point is simply put:[9]

> The records pertaining to Parcel B contain personal information about [G.B.'s] finances and assets and are, therefore, subject to the presumption of an unreasonable invasion of personal privacy set out in Section 22(3)(f) of the Act.

[18] However, it should be clear from what I have just said above that the presumption in s. 22(3)(f) does not apply to most of the records. The value of a piece of real property cannot realistically be described as personal information—it is simply not information "about" an individual.[10] Even if it could be described as personal information, the reality is that this type of information is for the most part readily accessible, as it should be in order for the real estate market to function effectively.

[19] The only personal information connected to a piece of real property is the identity of a registered owner who is an individual or the registered holder of a mortgage or other charge against the property who is an individual. In any case, disclosure of this type of information—which is readily accessible through the publicly available records of the Land Title Office maintained under the *Land Title Act*—will not generally result in an unreasonable invasion of third party

[9] Initial submission of the PGT at para. 23.
[10] On this issue, see generally, Investigation Report P98-011, available on the OIPC website at http://www.oipc.bc.ca/investigations/reports/invrpt11.html.

personal privacy. Moreover, in this case the applicant knows full well the identities of the owners of the property at the time in question. The presumption in s. 22(3)(f) is meant to apply to information that would allow accurate inferences to be drawn about an individual's financial state. Simply disclosing records that contain information about the value of a property which was sold over 30 years ago, was owned by an individual who is now deceased, and with there being no estate left to be distributed, does not fit into this presumption.

Sections 22(2)(a) and (c) of FIPPA

[20] The applicant's submission on the relevance of these circumstances is that under the *Estate Administration Act*, P.S. was entitled to a share of G.B.'s estate. As such, she had a right to question how the PGT handled G.B.'s assets, in particular, how the PGT handled the sale of G.B.'s interest in Parcel B to the purchaser. According to the applicant, the solicitors who handled the transfer previously acted for C.B., the joint owner of the property, in litigation between G.B. and C.B. regarding Parcel B. In addition, the applicant says that these same solicitors were also connected with the corporate purchaser of the land.[11]

[21] The PGT in its reply takes the position that ss. 22(2)(a) and (c) do not apply in the circumstances of this inquiry.[12] With respect to s. 22(2)(a) the PGT says that the solicitors identified in the applicant's submission as handling the land transfer acted as counsel for C.B. with regard to the sale of Parcel B, and not on behalf of the PGT, who was then committee for G.B.[13] The PGT goes on to say:[14]

> The PGT acted in the best interests of its client, [G.B.], when it arranged the transfer of Parcel B to [the corporate purchaser]. The PGT acted under a Court Order to sell the property, obtained appraisals of its fair market value and retained outside legal counsel to act on behalf of [G.B.]. The PGT duly conveyed half of the proceeds to [C.B.] and retained the remaining half for its client [G.B.].

[22] The PGT says that it appears that the applicant wishes to subject the actions of the solicitors and the corporate purchaser to scrutiny, and not the PGT, and so s. 22(2)(a) has no application.[15]

[23] As for s. 22(2)(c), the PGT submits that this section does not apply because at the time the PGT administered G.B.'s estate in accordance with the intestacy provisions of the *Estate Administration Act*:[16]

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[11] Applicant's initial submission, pp. 1-2
[12] PGT's reply submission, para. 1.
[13] PGT's reply submission, at para. 5.
[14] PGT's reply submission, at para. 7.
[15] PGT's reply submission, at para. 4.
[16] PGT's reply submission, at para. 10; PGT's initial submission, Appendix O.

> …[P.S.] signed a Release and Indemnity…indicating that she received a satisfactory accounting of all money and benefits accrued to her from [G.B.'s] estate. Consequently, the PGT reiterates the contention…that [P.S.] 'would have had adequate opportunity to raise concerns about any legal interest she believed she had in property owned by [G.B.], or its proceeds.'

[24] The PGT correctly refers to Order 01-07, where Commissioner Loukidelis confirmed the circumstances that must exist in order for s. 22(2)(c) to be triggered as a relevant circumstance weighing in favour of disclosure: [17]

> As the Ministry correctly points out, s. 22(2)(c) does not provide for release of personal information if it is relevant to a fair determination of an applicant's rights. Section 22(2)(c) merely constitutes one circumstance that may be relevant in determining whether or not personal information can be released without unreasonably invading a third party's personal privacy. Assuming, for the purposes of argument only, that the applicant's arguments accurately state the law, I am not persuaded they trigger s. 22(2)(c). The alleged deficiencies in the Ministry's investigations – about which I express no opinion – are not relevant. The reasons for this conclusion follow.
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> In Ontario Order P-651, [1994] O.I.P.C. No. 104, the equivalent of s. 22(2)(c) was held to apply only where *all* of the following circumstances exist:
>
> 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.
>
> I agree with this formulation. I also note that, in *Greater Vancouver Mental Health Service Society* v. *British Columbia (Information and Privacy Commissioner)*, [1999] B.C.J. No. 198 (S.C.), at paras. 85-89, Lynn Smith J. concluded that a complainant's "fairness" concerns, related to the conduct of a complaint investigation, did not activate s. 22(2)(c).

[17] Order 01-07, [2001] B.C.I.P.C.D. No. 7, at paras. 30-32.

[25] The applicant does not address the issue of the signed release and how it affects, if in fact it does, the "legal right" in issue, which itself is not really identified by the applicant with any precision. As noted recently in Order F07-21:[18]

> …the criteria set out in Order 01-07 make it clear that the applicant must demonstrate that disclosure of the personal information of the third party which is being sought relates to "a proceeding which is either under way or is contemplated" and is "necessary in order to prepare for the proceeding or to ensure a fair hearing."

[26] I find that the arguments of both parties in this case are misplaced. In its reply submission, the applicant says that the records in dispute "will likely demonstrate whether the PGT received fair value for the disposition of Parcel B."[19] I have already said above that information about the value of the property and what it sold for are not personal information. As such, any failure of the applicant to meet the relevant criteria for s. 22(2)(c) is immaterial, because s. 22(2)(c) has no application to the relevant information contained in the records. For the same reason, s. 22(2)(a) similarly does not apply. That is, it is not the personal information contained in the records in dispute which is being sought by the applicant, it is the information about the value of the property and what it was sold for.

Section 22(1) unreasonable invasion of third party privacy

[27] I have found that the circumstances in ss. 22(2)(a) and (c) do not apply, and so do not weigh either in favour of or against disclosure, because for the most part the information in the records in dispute which is identified and argued about by the parties is not in fact personal information. However, as I noted above, there is some personal information contained in the records, and so I must consider whether s. 22(1) requires the PGT to refuse the applicant access to those portions of the records in dispute.

[28] Some of the personal information contained in the records is clearly already known to the applicant. In particular, the fact that G.B. and C.B. were joint owners of Parcel B when it was sold, and the names of other family members who had some contact with the PGT in relation to G.B. There is also, of course, some personal information contained in correspondence between C.B. and the PGT relating to the PGT's efforts to list and sell Parcel B, its efforts to deal with C.B. as joint owner of the property, and discussions about how finances would be settled between C.B. and G.B. once the sale was complete. There are also a few records that contain somewhat more detailed personal information about G.B. However, I find that in this case, disclosure of the personal

[18] Order F07-21, [2007] B.C.I.P.C.D. No. 35, at para. 52.
[19] Applicant's reply submission, at p. 1.

information contained in the records to the applicant would not unreasonably invade the personal privacy of the third parties involved.

[29] In the circumstances of this case, and given the nature of the personal information contained in the records, the PGT is not required by s. 22(1) of FIPPA to refuse the applicant access to the records in dispute. Most, if not all, of the third parties are members of the applicant's family and are now deceased. In addition, the personal information contained in the records is quite old, and is not of a particularly sensitive nature. As such, s. 22(1) does not require the PGT to refuse the applicant access.

4.0 CONCLUSION

[30] For the reasons given above, I find that the PGT is not required by s. 22(1) of FIPPA to refuse the applicant access to the records in dispute. Under s. 58 of FIPPA, I order the PGT to give the applicant access to the records

December 17, 2007

ORIGINAL SIGNED BY

Justine Austin-Olsen
Adjudicator

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