



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
— for —  
British Columbia

Order 04-35

**MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT**

James Burrows, Adjudicator  
November 18, 2004

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**Summary:** The applicant requested her adoption file from the Ministry. The Ministry responded with records, severing information about third parties including the name of the applicant's birth father under s. 22. The Ministry found to have applied s. 22 properly to the severed records.

**Key Words:** personal information – unreasonable invasion of personal privacy – harm or damage to reputation.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(e) and 22(3)(a); *Adoption Act*, s. 63.

**Authorities Considered: B.C.:** Order No. 132-1996, [1996] B.C.I.P.C.D. No. 60; Order No. 307-1999, [1999] B.C.I.P.C.D. No. 20; Order 01-37, [2001] B.C.I.P.C.D. No. 38.

## 1.0 INTRODUCTION

[1] On July 21, 2003, the applicant submitted a request to the Ministry of Children and Family Development (“Ministry”) for a copy of the Ministry’s file regarding her adoption.

[2] On October 16, 2003, the Ministry responded by providing the applicant with a severed copy of the requested records. The Ministry withheld the severed information under s. 22 of the *Freedom of Information and Protection of Privacy Act* (“the Act”).

[3] On November 13, 2003, the applicant requested that this office conduct a review “of the production, in particular the redacted portion of the documents as they relate to my biological father’s name and occupation.”

[4] I have dealt with this inquiry, by making all findings of fact and law and the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

## 2.0 ISSUE

[5] The issue to be decided in this inquiry is whether the Ministry was required under s. 22 to withhold third-party personal information from some of the records.

[6] Under s. 57(2) of the Act, the applicant has the burden of establishing that disclosure of the severed information would not be an unreasonable invasion of a third party's personal privacy.

## 3.0 DISCUSSION

[7] **3.1 Records at Issue** – The Ministry released all 123 pages of the records in her adoption file to the applicant. Of those pages, 19 pages had some information severed from them. The 19 pages consist of eight original pages and the remainder are duplicates of those eight pages. Only four of the 19 pages (numbered 73, 74, 93 and 94) contain information related to the applicant's birth father. Pages 93 and 94 are duplicates of pages 73 and 74 so only two pages contain unique information about the birth father. The remainder of the severed records relate to the applicant's adoptive parents and an additional third party.

[8] **3.2 Procedural Issue** – In her initial submission, the applicant seems to suggest that she is entitled to the requested information by referencing ss. 7, 15 and 24 of the *Canadian Charter of Rights and Freedoms*, but without providing any detailed argument to support this contention. This was not listed as an issue in the notice of inquiry issued to the parties. Nor has the applicant shown that she has provided notice of her reliance on these *Charter* sections as required under the *Constitutional Question Act*. In its reply submission, the Ministry has, understandably, objected to the applicant's use of a *Charter* argument without proper notice. For these reasons alone, I will not consider the *Charter* provisions mentioned by the applicant.

[9] **3.3 Unreasonable Invasion of Third-Party Privacy** – Section 22 of the Act is mandatory. Third-party personal information must be withheld if it is determined that the disclosure would be an unreasonable invasion of third-party privacy. The relevant parts of s. 22 are provided below.

### **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
  - ...
  - (e) the third party will be exposed unfairly to financial or other harm,
  - ...
- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
  - (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,
  - ...

### ***Submission of the applicant***

[10] In her submissions, the applicant has argued that there are personal considerations which should overcome any presumption of unreasonable invasion of third-party privacy. She speculates that her birth mother provided her with some of the mother's personal information as a means to locate her birth father. She also argues that her birth father may not have known about her birth and so was not able to make a decision about whether or not he would want her to contact him. The applicant also states that the Ministry provided her with third-party information about other relatives and therefore that the alleged inconsistent application of the Act should entitle her to her birth father's information. The applicant does not provide any argument as to why she should be entitled to the remaining third-party information which was withheld by the Ministry.

### ***Submission of the Ministry***

[11] The Ministry's submission states that it has appropriately applied s. 22 of the Act as well as the *Adoption Act*. It states that s. 63 of the *Adoption Act* requires that the applicant be provided with her birth registration and her adoption order, which the Ministry did. It argues that, since no identifying information about the birth father is in the applicant's birth registration or adoption order, "the disclosure requirements in section 63 do not apply to information concerning the Applicant's birth father." The Ministry also raised the issue of disclosure vetoes, which are available to adopted persons or their birth parents under s. 65 of the *Adoption Act*. (I do not see the relevance of s. 65 to this matter.) The Ministry also states that s. 71 of the *Adoption Act* allows an applicant to request assistance from the director of adoption in locating a birth parent. The Ministry is not aware of any attempt by the applicant to locate her birth father through the Adoption Reunion Registry.

[12] The Ministry then argues that s. 22(2)(e) is a relevant circumstance which must be considered in this matter, which it says supports the withholding of the requested information under s. 22(1) of the Act. The Ministry also refers to several orders of the Commissioner which have dealt specifically with requests of this type and it argues that

“previous orders of the Commissioner have consistently held that section 22 of the Act applies to the names of birth parents of adopted persons.” It also refers to the Commissioner’s interpretation of the definition of harm as contemplated under s. 22(2)(e). Lastly, the Ministry contends that the severed information related to the other third parties was appropriately withheld under s. 22(3)(a).

### *Application of Section 22*

[13] I will first deal with the severed personal information of the third parties other than the birth father. I have reviewed the withheld information and, strictly on its face, it is medical information about third parties. Disclosure of this third-party personal information is presumed, under s. 22(3)(a) of the Act, to be an unreasonable invasion of personal privacy. As the applicant has made no arguments to the contrary, I can see no reason why this information should be released. The Ministry’s decision to withhold this information is correct. Therefore I find that the Ministry has appropriately withheld this information under s. 22(3)(a).

[14] The severed information relating to the birth father is clearly third-party personal information as defined by the Act, and so the question is whether or not its release would be an unreasonable invasion of the birth father’s privacy. The issue of adopted children requesting access to identifying information about their birth parents has come before the Commissioner in a number of inquiries. Most recently, in Order 01-37, [2001] B.C.I.P.C.D. No. 38, the Commissioner discussed the steps to be taken in applying s. 22 and I have followed that approach here without repeating it.

[15] The applicant’s argument is that her father must be allowed an opportunity to decide if he wishes to know about his daughter. It is not clear how disclosing the birth father’s personal information to the applicant would give him an opportunity to decide if he wishes to know his daughter. Presumably, the applicant means to say she would then try to contact her birth father, at which point he would have the opportunity to make this decision. I note here, in passing only, that this appears to be the function of the Ministry’s Adoption Reunion Registry.

[16] As regards her wish for her birth father’s personal information, the applicant acknowledges that she cannot “purport to know what impact this would have on [her] father.” However, she believes that he would want to know her. I agree that neither the applicant nor I can presume to know what her father would want in these circumstances. However, as the Commissioner stated in para. 42 of Order 01-37, a reunion between an adopted child and his or her birth parent could be negative as well positive. I do not consider the applicant’s argument that the release of this information would benefit her father is a relevant circumstance that favours disclosure to her.

[17] The applicant has also alleged that the Ministry inappropriately released personal information about other relatives of hers. She argues that this supposed release should entitle her to a similar release of her biological father’s information. The Ministry denies this allegation, and I note that the allegation of an inappropriate release of other individuals’ personal information is in any case not before me. Even if one assumes for

argument's sake that the applicant's contention is correct and such a release had occurred, it would in no way entitle the applicant to the personal information of another third party.

[18] I agree that the Ministry provided the applicant with the information that it is required to under s. 63 of the *Adoption Act*. However, with the exception of ss. 72(2) and 73, which are not relevant to this matter, the *Freedom of Information and Protection of Privacy Act* takes precedence over the *Adoption Act*. As such, it is necessary to review the application of s. 22 to see if the release of the personal information would be an unreasonable invasion of the third party's privacy.

[19] To release the personal information of the biological father to the applicant, the Act requires that relevant circumstances must favour disclosure. The Ministry has argued that s. 22(2)(e) is the main factor which must be considered in determining whether disclosure would be an unreasonable invasion of third-party privacy. In Order 01-37, the Commissioner reviewed the application of s. 22(2)(e) in a matter similar to this one. He discussed the definition of "harm" as it applied to personal information of a birth father.

[42] It is important to remember that s. 22(2)(e) speaks to unfair exposure to financial or other harm. I have, in other cases, expressed the view that "harm" for the purpose of s. 22(2)(e) consists of serious mental distress or anguish or harassment. See, for example, Order 01-19, [2001] B.C.I.P.C.D. No. 20. Although I have no evidence before me as to the father's current personal situation – we do not even know if he is alive – it is appropriate to approach this situation on the basis that disclosure of this kind of information could expose the father or any family he may have to "harm" in the sense of sufficiently grave mental stress or anguish. Although a reunion between an adopted child and his biological parents can be a positive event, it is equally broadly known and accepted that such reunions can instead cause dissension, strife and anguish. It is not necessary for me to find or assume, for the purposes of this case, that a reunion or contact between the applicant and his father (or any family his father may have) would be positive or negative. It is sufficient that disclosure of the father's information would at least expose the father and any family to harm of a kind contemplated by s. 22(2)(e). It is the exposure to harm, not the likelihood of harm that matters. For this reason, I consider that s. 22(2)(e) is a relevant circumstance in this case and that it favours the view that disclosure would unreasonably invade the father's personal privacy.

[20] The matter before me is similar to the circumstances in Order 01-37. I agree with the Commissioner that there is sufficient reason to believe that the biological father could be exposed unfairly to harm and, therefore, I believe that s. 22(2)(e) supports the contention that the release of the biological father's information would be an unreasonable invasion of third party personal privacy. I have also reviewed the other circumstances listed under s. 22(2) and I find that they are not relevant to this matter.

[21] Given the above circumstances, I find that the applicant has not overcome the burden of proof in this matter and that the Ministry must withhold the severed information under s. 22(1) of the Act.

#### **4.0 CONCLUSION**

[22] For the reasons given above, under s. 58(2)(c) of the Act, I require the Ministry to refuse to disclose all of the disputed personal information to the applicant.

November 18, 2004

#### **ORIGINAL SIGNED BY**

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James Burrows  
Adjudicator