



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for British Columbia

Protecting privacy. Promoting transparency.

Order F17-24

CITY OF VANCOUVER

Chelsea Lott
Adjudicator

May 9, 2017

CanLII Cite: 2017 BCIPC 25
Quicklaw Cite: [2017] B.C.I.P.C.D. No. 25

Summary: A third party objected to the City's decision to disclose the third party's name and the amount of severance he received from the City on the basis that s. 22 (harm to personal privacy) applied. The adjudicator held that the information came within s. 22(4)(e), and therefore could not be withheld under s. 22.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22, 22(4)(e).

Authorities Considered: B.C.: Investigation Report F16-02, 2016 BCIPC 36; Order 01-53, 2001 CanLII 21607 (BC IPC); Order F09-15, 2009 CanLII 58553 (BC IPC); Order F11-33, 2011 BCIPC 41 (CanLII); Order No. 46-1995, [1995] BCIPCD No 19 (BC IPC).

INTRODUCTION

[1] An applicant requested that the City of Vancouver (the City) provide a list of former employees who received severance pay in a certain year, as well as the amounts of their severance pay. The City notified the third parties whose personal information was contained in the responsive record pursuant to s. 23 of the *Freedom of Information and Protection of Privacy Act* (FIPPA). One of the notified third parties objected to the disclosure on the basis that it would be an unreasonable invasion of his personal privacy to disclose his information (s. 22). However, the City determined that s. 22 did not apply to the information and decided to give the applicant access to the information.

[2] The third party disagreed with the City's decision and requested a review by the Office of the Information and Privacy Commissioner (OIPC). Mediation failed to resolve the matter and the third party requested an inquiry. The applicant was provided notice and invited to participate in the inquiry pursuant to s. 54(b). The applicant and the third party provided submissions, the City did not.

[3] This Order is issued concurrently with Orders F17-25 and F17-26. All three Orders arise from requests for review of the City's decision to disclose severance information, but the requests were made by different third parties. The Orders relate to the same record, and involve the same applicant. Section 22 is the only exception at issue in the Orders. Given the overlap in issues, arguments and evidence in the three inquiries, much of what has been written in this order is repetitive of the other two Orders.

ISSUE

[4] The issue to be decided in this inquiry is whether the City is required under s. 22 of FIPPA to refuse to disclose the third party's personal information. Section 57 of FIPPA places the burden on the applicant to prove that disclosure of personal information contained in the record would not unreasonably invade third party personal privacy under s. 22.

DISCUSSION

Information in Dispute

[5] The information in dispute is contained in a table which lists the names of several former employees and the amount of severance they received. The table has been disclosed to the applicant except for information about three individuals. The information about one of those individuals is at issue in this inquiry.

Preliminary Matter

Section 25(1)(b) – Clearly in the public interest

[6] In his initial submissions, the applicant argues that s. 25(1)(b) of FIPPA applies to the information. This appears to be the first time that the applicant has raised s. 25(1)(b) as an issue because it is not listed in the fact report or the notice of inquiry as being in issue. Although s. 25 was raised late and without the OIPC's prior consent, I will consider it because it is a simple matter to address as it plainly does not apply. Further, I do not require submissions from the other parties in order to dispose of it.

[7] Section 25(1)(b) requires a public body to disclose information without delay if it is "clearly in the public interest." As former Commissioner Denham said in Investigation Report F16-02:

There must be an issue of objectively material, even significant, public importance, and in many cases it will have been the subject of public discussion. It is useful here to recall that, as I said in the Mount Polley Report, disclosure must be plainly and obviously required based on a disinterested, reasonable, assessment of the circumstances.¹

[8] The applicant submits that City employees are well compensated through taxpayer money. He states that by entering into employment with a public body, public servants make a choice to be “subject to FOI legislation.”² He asserts that, “[i]n return for the benefits of a taxpayer-funded job, I believe that it is more than a reasonable expectation that remuneration and severance information be released for government workers....”³ He further argues that disclosure of this type of information is important for supporting the accountability of public bodies.

[9] I accept that there is a general public interest in how tax dollars are spent. However, the reasons for invoking s. 25(1)(b) must be of sufficient gravity to warrant overriding all other provisions of FIPPA, including the exceptions found in Part 2 of FIPPA. In addition, the information must be disclosed “without delay” by the public body. A general interest in how a public body spends money, without more, does not meet the high threshold for disclosure under s. 25(1)(b). There is no evidence that the City’s severance payments to former employees is the subject of public discussion or that it is of public importance, beyond general interest. This is not to say that s. 25(1)(b) could never apply to a particular severance payment, however the applicant’s suggestion that there is a blanket requirement for disclosure without delay of severance payments to public employees is untenable. The public’s general right to information about public expenditures is provided for by s. 4 of FIPPA,⁴ rather than by s. 25(1)(b).

Disclosure Harmful to Personal Privacy – s. 22

[10] Numerous orders have considered the application of s. 22 and I will apply those same principles here.⁵

Personal information

[11] The first step in applying s. 22 is to determine whether the requested information is “personal information” as that term is defined in FIPPA. FIPPA defines personal information as, “recorded information about an identifiable individual other than contact information.” Contact information is defined as, “information to enable an individual at a place of business to be

¹ Investigation Report F16-02, 2016 BCIPC 36 at p. 36.

² Applicant submissions at p. 1.

³ Applicant submissions at p. 1.

⁴ S. 4(1) states in part: A person who makes a request under section 5 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant...

⁵ For example, Order 01-53, 2001 CanLII 21607 (BC IPC) at p. 7.

contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”⁶ The information at issue in this case is about the third party, an identifiable individual, and is plainly not contact information. No one disputes that it is personal information. Therefore, I find it to be personal information within FIPPA.

Section 22(4)

[12] The next step in the s. 22 analysis is to determine if the personal information falls into any of the types of information listed in s. 22(4). If it does, then disclosure would not be an unreasonable invasion of personal privacy. The applicant and City argue that s. 22(4)(e) applies to the personal information at issue. That subsection states:

22(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if ... (e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff

[13] Several past orders have held that severance pay is encompassed within the meaning of “remuneration” in s. 22(4)(e).⁷ There is no dispute between the parties that the dollar figure in issue was a severance payment to the third party. Accordingly, I find the third party’s name and severance amount are subject to s. 22(4)(e) and that it would not be an unreasonable invasion of privacy to release the information.

[14] The third party argues that “[a]ny correlation of me and my name to that severance amount could seriously impact my chances of future employment and/or promotions...”⁸ This amounts to an argument that ss. 22(2)(e) (unfair financial or other harm), and 22(2)(h) (unfairly damage reputation), are circumstances which weigh against disclosure of his personal information. However, it is not necessary to consider their application. That is because, when s. 22(4) applies, the information cannot be withheld under s. 22, despite the application of any considerations contained in ss. 22(3) and/or 22(2).⁹ Therefore, the City must not refuse to disclose the information to the applicant under s. 22(1).

⁶ See Schedule 1 of FIPPA for these definitions.

⁷ See: Order F09-15, 2009 CanLII 58553 (BC IPC), Order F11-33, 2011 BCIPC 41 (CanLII), Order No. 46-1995, [1995] BCIPCD No 19 (BC IPC).

⁸ Third Party submissions.

⁹ Order F11-33, 2011 BCIPC 41 (CanLII) at para. 12.

CONCLUSION

[15] For the reasons provided above, and pursuant to s. 58(2) of FIPPA, I confirm the City's decision to disclose the third party's personal information. As the City has not yet disclosed the third party's information, I require the City to give the applicant access to this information by June 21, 2017 concurrently with the information in Orders F17-25 and F-1726. The City must copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the record.

May 9, 2017

ORIGINAL SIGNED BY

Chelsea Lott, Adjudicator

OIPC File No.: F15-62883