



Order F21- 69

## MINISTRY OF FINANCE

Erika Syrotuck  
Adjudicator

December 22, 2021

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**Summary:** The applicant made a request under the *Freedom of Information and Protection of Privacy Act* to the Ministry of Finance for cabinet briefing notes and candidate profile and declaration forms for a named individual within a specified date range. In response, the Ministry of Finance disclosed some information in the responsive records, but withheld other information under ss. 12(1) (Cabinet confidences) and 22(1) (unreasonable invasion of a third party's personal privacy). The adjudicator found that the Ministry of Finance was required to withhold the information in dispute under s. 12(1) and that s. 22(1) applied to some but not all of the information in dispute.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 12(1), 12(2)(c), 22(1), 22(2)(a), 22(2)(f), 22(2)(h), 22(3)(a), 22(3)(d), 22(3)(f), 22(3)(g), 22(4)(e), Schedule 1.

## INTRODUCTION

[1] An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Ministry of Finance (Ministry) for the Board Resourcing Development Office cabinet briefing note and candidate profile and declaration for a named individual within a specified date range. The applicant indicates that the request is for records about the named individual's appointment to two different public sector organizations.

[2] The Ministry provided two candidate profile and declaration forms and one Cabinet briefing note in response to the applicant's access request, but withheld some information under s. 12(1) (Cabinet confidences) and s. 22(1) (unreasonable invasion of a third party's personal privacy). The Ministry says it could not locate a Cabinet briefing note related to the second appointment within the specified date range.<sup>1</sup>

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<sup>1</sup> Ministry's initial submissions at para. 15.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision with regards to the information withheld under ss. 12(1) and 22(1). Mediation did not resolve the parties' dispute and the matter proceeded to inquiry.

[4] The named individual requested to participate in the inquiry.<sup>2</sup> The registrar of inquiries invited the named individual to participate but they did not provide a submission.

[5] During the inquiry, the Ministry reconsidered its application of s. 22(1) to the records in dispute. As a result, it disclosed additional information to the applicant.

[6] This inquiry is part of a set of five about similar requests made by the applicant. The facts of each case are different. Where it makes sense to do so, I have referred to my reasons in F21-67. The companion orders are F21-66, F21-67, F21-68, and F21-70.

## ISSUE

[7] At this inquiry, I must decide whether the Ministry is required to withhold the information in dispute under ss. 12(1) and 22(1) of FIPPA. Under s. 57, the Ministry has the burden of proving that s. 12(1) applies; however, the applicant has the burden to show that disclosure of the personal information would not be an unreasonable invasion of a third party's personal privacy. The public body has the initial burden of proving that the information is personal information.<sup>3</sup>

## DISCUSSION

### ***Background***<sup>4</sup>

[8] The Board Resourcing and Development Office was created in 2001. At the time, it was housed in the Office of the Premier.

[9] After moving through various ministries and program areas,<sup>5</sup> the Board Resourcing and Development Office was moved to the Ministry of Finance and renamed the Crown Agencies and Board Resourcing Office in 2017 (I will refer to both iterations as the Office). The Office remains in the Ministry of Finance, but is now under the Crown Agency Secretariat.

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<sup>2</sup> *Ibid* at para. 6. See also Investigator's Fact Report at para. 5.

<sup>3</sup> Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9-11.

<sup>4</sup> This background is drawn from the Ministry's initial submissions at paras. 18-27.

<sup>5</sup> The Office was part of Government Communications and Public Engagement in the Ministry of Advanced Education, for example. See Ministry's initial submissions at paras. 20 and 21.

[10] The Office oversees recruitment and recommendation of candidates for appointments to public sector organizations such as public post secondary institutions, health authorities, advisory boards, tribunals and certain types of Crown Corporations. In a similar vein, the Office assists public sector organizations in identifying the size, composition and key areas of skill and experience required for board and tribunal membership.

[11] Applicants for appointment to a public sector organization must complete a candidate profile and declaration form and submit it to the Office for consideration. The general practice is that all appointees to public sector boards and tribunals are individuals who are independent of management and have no material interest in the organization.<sup>6</sup> Board and tribunal members must have the appropriate combination of skills, experience and personal attributes to support a public sector organization's mission.

[12] All board and tribunal appointments are officially approved, via an Order in Council, Minister's Order or Premier's letter, for example.

[13] Once appointed, the name, appointment term and biographical information of each director is published on the organization's website.

[14] Based on the applicant's submissions and access request, and the Ministry's submissions,<sup>7</sup> I understand that the named individual was appointed to two different public sector organizations (Organizations).

### ***Records in dispute***

[15] There are three records containing information in dispute.

[16] Two of the records are completed candidate profile and declaration forms (Profiles), submitted to the Office by the individual named in the applicant's access request (Candidate).

[17] The Profiles include the following sections:

- contact information;
- background;
- conflict of interest – disclosure statement;
- integrity and public accountability; and
- references.

[18] The Ministry has disclosed the headings, questions, and most of the template language on the Profiles. The information in dispute is some of the

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<sup>6</sup> Unless the governing legislation specifies otherwise.

<sup>7</sup> Ministry's initial submissions at para. 57.

information provided by the Candidate, which I have described in further detail below.

[19] The third record is a Cabinet briefing note (briefing note). The Ministry withheld the Candidate's home address from the briefing note under s. 22(1). It also withheld a small amount of information under s. 12(1).

[20] I will determine whether s. 12(1) applies to the information in the briefing note before turning to s. 22(1).

### **Section 12 – cabinet confidences**

[21] Section 12(1) of FIPPA requires a public body to refuse to disclose information that would reveal the substance of deliberations of the Executive Council (commonly known as Cabinet) or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees.

[22] Section 12(2) states that subsection (1) does not apply to:

(a) information in a record that has been in existence for 15 or more years,

(b) information in a record of a decision made by the Executive Council or any of its committees on an appeal under an Act, or

(c) information in a record the purpose of which is to present background explanations or analysis to the Executive Council or any of its committees for its consideration in making a decision if

(i) the decision has been made public,

ii) the decision has been implemented, or

(iii) 5 or more years have passed since the decision was made or considered.

[23] The purpose of s. 12(1) is to widely protect the confidence of Cabinet communications.<sup>8</sup> Explaining the rationale for protecting cabinet confidences, the Supreme Court of Canada has said that “[t]hose charged with the heavy responsibility of making government decisions must be free to discuss all aspects of the problems that come before them and to express all manner of views, without fear that what they read, say or act on will later be subject to public scrutiny”.<sup>9</sup>

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<sup>8</sup> *Aquasource Ltd. v. British Columbia (Freedom of Information and Protection of Privacy Commissioner)* 1998 CanLII 6444 (BC CA) [*Aquasource*] at para 41.

<sup>9</sup> *Babcock v Canada (Attorney General)*, 2002 SCC 57 at para. 18.

[24] I will first decide if the requirements of 12(1) are met before turning to whether any circumstances in s. 12(2) apply.

*Section 12(1) – substance of deliberations*

[25] In the context of s. 12(1), the phrase “substance of deliberations” refers to the body of information that the Cabinet or any of its committees considered (or would consider in the case of submissions not yet presented) in making a decision.<sup>10</sup>

[26] The Ministry says that the information at issue in the briefing note contains recommended speaking points for the Deputy Minister, which she relied on to provide oral advice to members of Cabinet regarding appointments to the Organization.<sup>11</sup>

[27] The Ministry submits that Cabinet deliberated upon the appointment of the Candidate at a Cabinet meeting. The Ministry provided supporting documents *in camera* such as an “Orders in Council BRDO Summary” and Cabinet minutes, which the Ministry says record Cabinet approving orders in council for appointments, including the Candidate’s.<sup>12</sup>

[28] Based on the evidence and submissions provided by the Ministry, I am satisfied that the information at issue in the briefing note would reveal the body of information that Cabinet considered regarding the appointment of the Candidate to one of the Organizations. Therefore, I find that the information at issue would reveal the substance of deliberations within the meaning of s. 12(1).

*Section 12(2) – background analysis or explanations*

[29] Section 12(2) sets out circumstances where s. 12(1) does not apply.

[30] The only factor under s. 12(2) that is potentially relevant is s. 12(2)(c). Section 12(2)(c) says that 12(1) does not apply where the purpose of the information is to provide background explanations or analysis to the Executive Council or its committees, and one of the criteria (i) through (iii) are met.

[31] “Background explanations” include everything factual that Cabinet used to make a decision, and “analysis” includes discussion about the background explanations but not analysis of policy options presented to Cabinet.<sup>13</sup>

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<sup>10</sup> *Aquasource*, *supra* note 8 at para. 39.

<sup>11</sup> Ministry’s initial submissions at paras 52, and 55.

<sup>12</sup> *Ibid* at para. 57. See also Exhibits A and B of the Affidavit of the Records Management Officer of Cabinet Operations, Office of the Premier, submitted *in camera*.

<sup>13</sup> Order 48-1995, BCIPD No. 21 at para. 13. This approach was confirmed by the BC Court of Appeal in *Aquasource* *supra* note 8.

Section 12(2)(c) does not apply to background explanations or analysis interwoven with the substance of deliberations.<sup>14</sup>

[32] The Ministry says that the information in dispute is not background explanations or analysis as the information in dispute relates to advice about the suitability of the recommended appointees.<sup>15</sup>

[33] In my view, s. 12(2)(c) plainly does not apply. The information in dispute is about the qualifications of the Candidate. It is squarely the substance of deliberations and is not background explanations or analysis.

[34] As a result, I find s. 12(1) applies to the information in dispute.

### **Section 22 – unreasonable invasion of a third party's personal privacy**

[35] Section 22 requires a public body to refuse to disclose information to an applicant if disclosure would be an unreasonable invasion of a third party's personal privacy.

[36] The Ministry withheld the following information from each Profile:

- The Candidate's home and cellular telephone numbers, home address, email address and birth date<sup>16</sup>;
- The Candidate's response to a question asking the Candidate to indicate their ability to read and understand financial statements (self-assessed score);
- All responses, but one, to the questions under the conflict of interest section;
- All responses to the questions in the integrity and public accountability section; and
- The names, positions, street addresses, email addresses, home telephone numbers and business telephone numbers of the Candidate's references.

[37] As previously mentioned, the Ministry withheld the Candidate's home address from the briefing note under s. 22(1).

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<sup>14</sup> *Aquasource supra* note 8 at para. 50.

<sup>15</sup> Ministry's initial submissions, para. 59.

<sup>16</sup> The Candidate did not provide their birth date on one Profile and the Ministry has disclosed the blank space.

### *Personal Information*

[38] Since s. 22(1) only applies to personal information, the first step in the s. 22 analysis is to determine whether the information in dispute is personal information.

[39] Schedule 1 of FIPPA provides the following definitions of “personal information” and “contact information”:

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

"contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;

[40] Under the definitions in FIPPA, if information is contact information, it is not personal information. Whether information is contact information depends on the context in which it appears.<sup>17</sup>

[41] The Ministry submits that the information in dispute is clearly not contact information as it is not information to enable individuals to be contacted in any sort of business context.<sup>18</sup>

[42] I have considered whether the reference information is contact information and I conclude that it is not. While the business phone numbers would allow the references to be contacted at their places of business, past orders, including recent orders, have found that information is only “contact information” for the purpose of FIPPA if, in the context of the record, it was used in the ordinary course of conducting the third party’s business affairs.<sup>19</sup>

[43] I find that the Candidate provided the reference information so that the Office could contact the references for the purpose assessing the Candidate’s suitability for a position with the Organization. In my view, providing such a reference is not part of the ordinary course of conducting the references’ business affairs and therefore the information is not “contact information.”

[44] I find that the reference information is personal information because it is identifiable information about the references and it is the Candidate’s personal

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<sup>17</sup> Order F20-13, 2020 BCIPC 15 at para. 42.

<sup>18</sup> Ministry’s initial submissions at para. 70.

<sup>19</sup> Order F15-32, 2015 BCIPC 35 at para. 15; Order F20-52, 2020 BCIPC 61 at paras. 25-26; Order F20-08, 2020 BCIPC 9 at para. 52. See also Order F14-07, 2014 BCIPC 8 at para. 48 and F18-42, 2018 BCIPC 45 at para 10; these orders do not use language similar to “ordinary course of conducting the third party’s business affairs” but I find the reasoning to be consistent.

information because it shows who they chose to be their reference. The rest of the information provided by the Candidate is clearly identifiable information about them. The information about the Candidate and their references is personal information about a third party.<sup>20</sup>

[45] However, I find that additional template language that the Ministry has withheld under s. 22(1) is not personal information because it is not about an identifiable individual. For example, the template language specifying the pieces of information that the Candidate was required to provide about their references is not about an identifiable individual. Since this information is not personal information, s. 22(1) does not apply.

[46] I now turn to whether disclosure of the personal information in dispute is an unreasonable invasion of a third party's personal privacy.

*Section 22(4)*

[47] Section 22(4) sets out circumstances where disclosure is not an unreasonable invasion of a third party's personal privacy. If any of the circumstances in s. 22(4) apply to the personal information in dispute, the public body is required to give the applicant access to that information.

Section 22(4)(e) – positions, functions and remuneration of an officer, employee or member of a public body

[48] The applicant submits that s. 22(4)(e) applies. Section 22(4)(e) states that disclosure is not an unreasonable invasion of a third party's personal privacy if the information is about the third party's position, function or remuneration as an officer, employee or member of a public body or as a member of the minister's staff.

[49] The applicant submits that it is self-evident that the Profiles are about the Candidate's position, functions or remuneration as a member of public bodies.<sup>21</sup>

[50] The Ministry submits that it was careful to disclose any information about a third party's position, function or remuneration as an officer, employee or member of the public body or as a member of a minister's staff.<sup>22</sup> The Ministry says that the withheld information does not include information about the functions or responsibilities of the positions with the Organizations.<sup>23</sup>

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<sup>20</sup> Schedule 1 of FIPPA says that a third party, in relation to a request for access to a record means any person, group of persons or organization other than (a) the person who made the request, or (b) a public body.

<sup>21</sup> Applicant's response submissions at para. 30.

<sup>22</sup> Ministry's initial submissions at para. 74.

<sup>23</sup> Ministry's reply submissions at para. 10.

[51] The applicant's argument appears to be about the nature of the Profiles as a whole. However, s. 22(1) is about information, not records. While the Profiles as a whole are related to the Candidate's suitability for positions with public bodies, the specific information dispute is not about the Candidate's position, functions or remuneration as an officer, employee or member of a public body. The Ministry has disclosed all of the Candidate's employment background. I am satisfied that any information to which s. 22(4)(e) may apply has already been disclosed.

[52] I find that s. 22(4)(e) does not apply to the personal information in dispute.

*Section 22(3)*

[53] Section 22(3) lists circumstances where disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. The next step in the analysis is to consider whether any of the circumstances apply. The Ministry submits that ss. 22(3)(a), (d), (f) and (g) apply and I will consider each in turn.

Section 22(3)(a) – medical, psychiatric or psychological history

[54] Section 22(3)(a) creates a presumption that disclosure of personal information relating to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation is an unreasonable invasion of a third party's personal privacy.

[55] The Ministry submits that s. 22(3)(a) applies to the response to a question that asks whether a candidate has a disability that may affect the candidate's ability to serve as a board member and if so, whether the candidate requires an accommodation.<sup>24</sup>

[56] In my view, s. 22(3)(a) plainly applies to information revealing whether or not a candidate has a disability. Therefore, this information is presumed to be an unreasonable invasion of the Candidate's personal privacy.

Section 22(3)(d) – employment, occupational or educational history

[57] Under s. 22(3)(d), disclosure of a third party's employment, occupational or educational history is presumed to be an unreasonable invasion of that third party's personal privacy.

[58] The Ministry submits that s. 22(3)(d) applies to the Candidate's responses to a question asking them to rate their ability to read and understand financial statements.<sup>25</sup> This question appears on both Profiles.

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<sup>24</sup> Ministry's initial submissions at para. 78.

<sup>25</sup> *Ibid* at para. 82.

[59] I do not see, and the Ministry has not explained, how the Candidate's responses about their ability to read a financial statement relates to their employment, occupational or educational history under s. 22(3)(d). For example, this information in the context of the Profiles does not relate to a particular past employment or educational endeavour. The question simply asks the Candidate to rank their ability on a scale of one to ten.

[60] As a result, I find that s. 22(3)(d) does not apply to the information in dispute.

#### Section 22(3)(f) – third party's finances

[61] The Ministry submits that s. 22(3)(f) applies to information on several pages of the Profiles. Section 22(3)(f) presumes that disclosure of personal information describing the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or creditworthiness is an unreasonable invasion of a third party's personal privacy.

[62] The Ministry says that s. 22(3)(f) applies to the Candidate's responses to questions under the conflict of interest section of the Profiles.<sup>26</sup> These questions ask a candidate to identify interests that may conflict with their duty as an appointee to a public sector organization. Some of the questions are financial in nature. For example, candidates are asked to identify any of their interests (i.e. shares, businesses or properties) and sources of financial remuneration they receive that may conflict with their duties. The Ministry says that since the answers are interrelated, disclosure of one response could indirectly lead to disclosure of another.<sup>27</sup>

[63] I accept that information identifying a Candidate's interests and sources of remuneration would describe their assets and income, respectively. However, I cannot say anything that would confirm or deny whether the Candidate did provide this kind of information as it would disclose the personal information in dispute. For this reason, all I can say is that I have determined whether the presumption under s. 22(3)(f) applies and weighed it accordingly.

[64] The Ministry also submits that some of the Candidate's responses to questions under the integrity and public accountability section may describe the Candidate's finances.<sup>28</sup> For example, one question asks whether the candidate has been charged with or convicted of an offence under a "federal statute including the *Income Tax Act*, the *Controlled Drugs and Substances Act*, or others." While the question mentions the *Income Tax Act* as an example, the

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<sup>26</sup> *Ibid* at paras. 84-85.

<sup>27</sup> *Ibid* at para. 86.

<sup>28</sup> *Ibid* at para. 87.

question is about a charge or conviction under any federal statute. Therefore, I am not satisfied that the response would reveal anything about the Candidate's financial history or activities.

[65] The Ministry also withheld the space below the set of questions on both Profiles. Without confirming or denying whether the Candidate provided details, I conclude that there is no personal information in this space that describes the Candidate's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or creditworthiness within the meaning of s. 22(3)(f).

#### Section 22(3)(g) – personal recommendations

[66] Section 22(3)(g) creates a presumption regarding personal information that consists of personal recommendations or evaluations, character references or personnel evaluations of a third party.

[67] The Ministry argued that s. 22(3)(g) applies to the reference information.<sup>29</sup>

[68] The Ministry references Order 00-48 to support its position that reference check information falls under s. 22(3)(g).<sup>30</sup> However, I find Order 00-48 distinguishable from the present case because the information at issue in that case was the names of the references *and* their opinions about a third party.

[69] The information at issue in the present case does not include the references' opinions about the Candidate or any other information that is a personal recommendation or evaluation, character reference or personnel evaluation of a third party. Therefore, I conclude that s. 22(3)(g) does not apply.

#### *Section 22(2)*

[70] Section 22(2) says that when a public body decides whether disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, it must consider all relevant circumstances, including those listed in s. 22(2). Some circumstances weigh in favour of disclosure and some against. Relevant circumstances that weigh in favour of disclosure may rebut any applicable presumptions under s. 22(3).

#### Section 22(2)(a) – public scrutiny of a public body

[71] In Order F21-67 I extensively discussed whether the candidate's responses to the conflict of interest and integrity and public accountability questions were desirable for public scrutiny of the Office and of the public sector organization.

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<sup>29</sup> *Ibid* at para. 89.

<sup>30</sup> *Ibid* at para. 90 citing Order 00-48, 2000 CanLII 14413 (BCIPC), at 3.2.

[72] My analysis in Order F21-67 applies equally here.

[73] As a result, I make the same finding that disclosure of the Candidate's responses to the conflict of interest questions are desirable for public scrutiny of the Organizations. Therefore, I find that s. 22(2)(a) is a circumstance weighing in favour of disclosure of this information.

Section 22(2)(f) – supplied in confidence

[74] Under s. 22(2)(f), the public body must consider whether the personal information in dispute has been supplied in confidence. If it applies, this circumstance weighs in favour of withholding the information.

[75] The Ministry says that the information in dispute was supplied in confidence. In support of its argument, the Ministry points to template language on the Profiles that “all information provided to us will be considered as supplied in confidence.”<sup>31</sup> In addition, the Ministry points to several statements that indicate that the purpose of any disclosure of the Candidate's personal information is to assess their suitability for a position. For example, the Profiles state that the Office may disclose information to references or “such persons or organizations when such disclosure is necessary to evaluate my suitability for appointment”.<sup>32</sup>

[76] I do not think that the template language, on its own, is a strong indicator of the Candidate's subjective expectations of confidentiality. However, combined with the types of information the Candidate was required to provide on the Profiles, I agree that the Candidate would have had some expectation that the information would not be shared other than for the specified purpose of assessing the Candidate's suitability for a position.

[77] Therefore, I find that the information in dispute was supplied in confidence in accordance with s. 22(2)(f) and that it is a relevant circumstance weighing in favour of withholding the information.

Section 22(2)(h) – unfair damage to reputation

[78] Under s. 22(2)(h) the public body is required to consider whether disclosure of the personal information would unfairly damage the reputation of any person referred to in the record requested by the applicant. Where s. 22(2)(h) applies, it weighs in favour of withholding that information.

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<sup>31</sup> *Ibid* at para. 101.

<sup>32</sup> *Ibid* at para. 99.

[79] The Ministry argues that the Candidate's responses to some of the integrity and public accountability questions could, depending on the answers, unfairly damage the Candidate's reputation.<sup>33</sup> These questions ask whether a candidate has been charged or convicted of a crime, disciplined by a professional association, had any improper dealings with government or promoted hate, for example.

[80] I accept that, depending on the information in dispute, the Candidate's answers to these questions may damage their reputation, given the serious nature of the matters. However, for s. 22(2)(h) to apply, any damage to reputation must also be unfair. Whether any damage is unfair depends on the specific information in dispute and any relevant factual circumstances.

[81] Based on the information before me, I conclude that there is no information in dispute that would, if disclosed, unfairly damage the reputation of any person referred to in the records requested by the applicant. Therefore, I conclude that s. 22(2)(h) does not apply. I cannot provide further details without revealing the information in dispute.

### Sensitivity

[82] Sensitivity is not an enumerated factor under s. 22(2), however, many past orders have considered it as a relevant circumstance. Where information is sensitive, it is a circumstance weighing in favour of withholding the information.<sup>34</sup> Conversely, where information is not sensitive, past orders have found that this weighs in favour of disclosure.<sup>35</sup>

[83] The Ministry submits that some of the information is highly sensitive. For example, the Ministry says that personal information about potential conflicts of interest, whether an individual has been charged or convicted of an offence, or exercised unethical behaviour is highly sensitive personal information.<sup>36</sup>

[84] I understand the Ministry to be arguing that the information in dispute under the conflict of interest and the integrity and public accountability sections of the Profiles is sensitive, and therefore that this should weigh in favour of withholding the information.

[85] In my view, the questions in the integrity and public accountability section of the Profiles clearly ask about sensitive matters, such as whether a candidate

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<sup>33</sup> *Ibid* at para. 103.

<sup>34</sup> Order F19-15, 2019 BCIPC 17 at para. 99, for example.

<sup>35</sup> Order F16-52, 2016 BCIPC 58 at para. 91, for example.

<sup>36</sup> Ministry's reply submissions at para. 14.

has been charged or convicted of an offence under the *Criminal Code*, promoted hate or has had any improper dealings with government.<sup>37</sup>

[86] While I think that the degree of sensitivity depends on the specific information provided, I find that the information is at least somewhat sensitive regardless of the response provided. For example, an affirmative answer along with extensive details would almost certainly be more sensitive than a negative answer with no details. However, a negative answer is still somewhat sensitive because of the nature of the questions.

[87] Therefore, I find this is a factor weighing in favour of withholding the information in the integrity and public accountability sections of the Profiles, but explaining the exact degree to which I find the information to be sensitive could disclose the information in dispute, so I decline to do so.

[88] I turn now to the conflict of interest section. I acknowledge that the Ministry says that information about conflicts of interests are sensitive but it has not provided adequate explanation about why these particular responses are sensitive. In my view, this information is not sensitive.

[89] With regards to the other information in dispute, I find that some of it is not sensitive. For example, I do not think that the Candidate's responses with regards to the self-assessed score is sensitive. This weighs in favour of disclosure.

[90] Finally, I find that an individual's date of birth is sensitive because it is often used to verify a person's identity.<sup>38</sup>

[91] As a result, I find that the sensitivity of the information is a relevant factor for some of the information in dispute, in some cases weighing for, and in some cases weighing against disclosure.

#### Effect on future candidates

[92] The Ministry argues that the potential for the information in the conflict of interest and integrity and public accountability sections of the Profiles to be publicized may deter potential qualified and deserving applicants from applying.<sup>39</sup> This kind of argument is often referred to as a "chilling effect."

[93] I do not think the effect on future candidates is a relevant circumstance in the present case. My task in this inquiry is to determine whether disclosure of the

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<sup>37</sup> The question does not specify which level or type of government.

<sup>38</sup> For similar findings see Order P09-01, 2009 CanLII 38705 (BCIPC) at para. 117 and Order F19-37, 2019 BCIPC 41 at para. 59.

<sup>39</sup> Ministry's reply submissions at para. 20.

specific information in dispute would be an unreasonable invasion of the Candidate's personal privacy. I do not think what a hypothetical future candidate may or may not do is relevant to this determination.

[94] In addition, the provisions of s. 22 itself should assuage this concern. This section only allows disclosure of information that is not an unreasonable invasion of a third party's personal privacy. My decision is based on the specific information in dispute in this case. Future cases about information on different profiles will be decided on their own merits.

[95] As a result, I find that the effect on future candidates is not a relevant circumstance.

#### *Conclusion on s. 22*

[96] With regards to the personal information, I find that s. 22(1) applies to some but not all of it. I will explain my findings with regard to the specific personal information below in light of any relevant circumstances and presumptions that apply.

[97] First, I find that s. 22(1) applies to the Candidate's home and cellular telephone numbers, email address, home address,<sup>40</sup> and birth date and the reference information. No presumptions apply. I find that this information was supplied in confidence and that the Candidate's birth date is sensitive. There are no presumptions that weigh in favour of disclosure.

[98] In addition, I find that disclosing the answers to the questions in the integrity and public accountability sections of the Profiles would unreasonably invade the Candidate's personal privacy. The information was supplied in confidence and is sensitive. In addition, s. 22(3)(a) applies to information about whether or not a candidate has a disability that may affect their ability to serve as a board member.

[99] Regarding the Candidate's responses to the conflict of interest questions, I find that disclosure would not be an unreasonable invasion of the Candidate's personal privacy. I found that, depending on the responses, s. 22(3)(f) may apply but that I cannot state my conclusion without revealing the information in dispute. I did conclude that this information was supplied in confidence in accordance with s. 22(2)(f). However, I found that this information is desirable for public scrutiny of the Organizations and that it is not sensitive, which in my view outweigh the other factor(s).

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<sup>40</sup> In the Profiles and in the briefing note.

[100] Finally, in my view, disclosing the responses regarding the self-assessed score is not an unreasonable invasion of the Candidate's personal privacy. In my view, the responses are not at all sensitive, which outweighs the fact that it was supplied in confidence.

## **CONCLUSION**

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

1. I require the Ministry of Finance to refuse to disclose the part of the records in dispute under s. 12(1).
2. Subject to item 3, I require the Ministry of Finance to refuse to disclose parts of the records in dispute under s. 22(1).
3. The Ministry of Finance is required to give the applicant access to the parts of the records in dispute that I have highlighted in a copy of the records provided to the Ministry along with this order.
4. The Ministry of Finance must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant when it provides the applicant access to the parts of the records described in item 3.

[102] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by February 2, 2022.

December 22, 2021

## **ORIGINAL SIGNED BY**

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Erika Syrotuck, Adjudicator

OIPC File No.: F17-69303