



Order F23-106

Thompson Rivers University

Alexander R. Lonergan
Adjudicator

December 15, 2023

CanLII Cite: 2023 BCIPC 122
Quicklaw Cite: [2023] B.C.I.P.C.D. No. 122

Summary: The applicant requested that Thompson Rivers University (TRU) provide him with access to its communications with an investigator that mention the applicant. TRU disclosed records but withheld some information under s. 22(1) of FIPPA (unreasonable invasion of third-party personal privacy). The adjudicator found that s. 22(1) applied to most of the information in dispute and required TRU to refuse to disclose that information. The adjudicator ordered TRU to disclose the rest of the information in dispute to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 22(1), 22(2)(a), 22(2)(c), 22(2)(e), 22(2)(f), 22(2)(g), 22(2)(h); *Labour Relations Code*, RSBC 1996, c 244; *Legal Profession Act*, SBC 1998, c 9; *Workers Compensation Act*, RSBC 2019, c 1.

INTRODUCTION

[1] The applicant, a former faculty member of Thompson Rivers University (TRU), requested that TRU provide him with copies of its communications with an investigator that mention the applicant. In response, TRU disclosed responsive records but withheld some information under ss. 14 (solicitor-client privilege) and 22(1) (unreasonable invasion of third-party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review TRU's decision. Mediation failed to resolve the outstanding issues and the applicant requested that the matter proceed to an inquiry.

Preliminary Matters

[3] At inquiry, TRU withdrew its reliance on s. 14 and disclosed additional records and information to the applicant. TRU now relies solely on s. 22(1) to withhold information from 82 pages of records.

ISSUE

[4] The issue I must decide in this inquiry is whether TRU is required to refuse to disclose the disputed information under s. 22(1) of FIPPA.

[5] Section 57(2) says that the applicant has the burden of proving that disclosure of personal information in the records would not be an unreasonable invasion of third-party personal privacy under s. 22(1). However, TRU has the initial burden of proving the information at issue is personal information about a third party.¹

DISCUSSION

Background²

[6] TRU is a public post-secondary institution located in Kamloops, British Columbia. TRU employs approximately 2,000 faculty and staff members and provides educational services to approximately 25,000 students.

[7] The applicant is a former faculty member of TRU. While working at TRU, the applicant had interpersonal conflicts with his colleagues. The applicant and others filed complaints to TRU. TRU hired an investigator to review documents, interview witnesses, and produce a report on whether the complaints were substantiated. The investigator found that some of the applicant's and a third party's actions constituted harassment, contravening their collective agreement.

[8] The subsequent end of the applicant's employment at TRU generated other proceedings which are still pending at the time of this inquiry. The applicant, his union, and TRU are presently awaiting a labour arbitration hearing. Additionally, the applicant filed a complaint about the investigator, who was a practicing lawyer during the investigation, to the Law Society of British Columbia (LSBC).

Records and Information in Dispute

[9] The records in dispute total 82 pages. These records include the following:

¹ Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 9-11.

² The information in this background section is based on the parties' submissions and evidence. It is not information that is in dispute.

- Correspondence between TRU and the investigator, with some information severed;
- One written witness statement, withheld in its entirety; and
- A draft report written by the investigator, with some information severed.

[10] The applicant says that he does not object to severing individuals' names from the records.³ I find that individuals' names are not information in dispute, and I will make no decision about TRU's decision to withhold them under s. 22(1).

Section 22 – Unreasonable Invasion of Third-Party Personal Privacy

[11] Section 22(1) requires a public body to refuse to disclose personal information if its disclosure would be an unreasonable invasion of a third party's personal privacy.⁴

[12] TRU argues that the information it severed is personal information, that disclosure would constitute an unreasonable invasion of a third party's personal privacy, and that the TRU must therefore refuse disclosure. The applicant says that disclosure would not be an unreasonable invasion of any third party's personal privacy and consequently TRU may not refuse disclosure.

[13] Past orders have established the analytical framework of s. 22(1) and I will apply the same framework here.⁵

Personal information

[14] Section 22(1) only applies to personal information, so the first step is to determine whether the information in dispute is personal information.

[15] Personal information is defined 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 contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual."⁶

³ Applicant's reply submission at p. 3.

⁴ 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.

⁵ See for examples: Order F15-03, 2015 BCIPC 3 (CanLII) at para. 58; and Order F16-38, 2016 BCIPC 42 (CanLII) at para. 108.

⁶ Schedule 1 of FIPPA contains the definitions of "personal information" and "contact information".

[16] Information is considered personal information when it is reasonably capable of identifying an individual on its own or when combined with other available sources of information.⁷

[17] In this matter, all of the disputed information relates to identifiable individuals. This information comprises the reasons for their workplace absences, descriptions of their interactions, and an investigator's assessment of those interactions. This information is capable of identifying individuals because, even with the third parties' names severed, the applicant or others could identify who the information is about based on what has already been disclosed in the records. None of this information is contact information as defined by FIPPA.

[18] Although all of the disputed personal information is about third parties, much of this information is simultaneously the applicant's personal information because it is about the third parties' interactions with the applicant.

[19] I conclude that all of the information in dispute is the personal information of one or more third parties. As such, the burden is on the applicant to establish that disclosure would not be an unreasonable invasion of their personal privacy.

Section 22(4) – Disclosure not an unreasonable invasion

[20] The second step in the s. 22(1) analysis is to determine whether the personal information falls into any of the circumstances listed in s. 22(4). If so, its disclosure is not an unreasonable invasion of a third party's personal privacy.

[21] The applicant did not discuss the circumstances listed in s. 22(4). TRU argues that none of the circumstances set out in s. 22(4) apply to the disputed information.⁸

[22] I have considered whether any circumstance listed at s. 22(4) applies to the personal information in dispute and I find that none of them apply in this matter.

Section 22(3) – Disclosure presumed to be an unreasonable invasion

[23] Section 22(3) sets out various circumstances. If any of these circumstances apply to the personal information in dispute, then disclosure of that information is presumed to be an unreasonable invasion of a third party's personal privacy.

⁷ Order F21-17, 2021 BCIPC 22 (CanLII) at para. 12; Order F16-38, 2016 BCIPC 42 at para. 112; and Order F13-04, 2013 BCIPC 4 at para. 23.

⁸ TRU's initial submission at p. 7.

[24] TRU submits that ss. 22(3)(b) and 22(3)(d) apply to all of the information it withheld from the records.⁹ I will consider each provision separately.

Section 22(3)(b) - Part of an investigation into a possible violation of law

[25] Section 22(3)(b) says that disclosure is presumed to be an unreasonable invasion of a third party's personal privacy if the disputed personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[26] The withheld information was clearly compiled and is identifiable as part of an investigation into complaints about the applicant and his colleague. Thus, the question is whether that investigation is an investigation into a possible violation of law within the meaning of s. 22(3)(b).

[27] For the purpose of s. 22(3)(b), “law” includes a legislative provision which could result in a penalty or sanction if violated.¹⁰ TRU argues that the workplace investigation engages s. 22(3)(b) because the *Workers Compensation Act*¹¹ (WCA) outlaws bullying and harassment in the workplace while requiring employers, such as TRU, to prevent such bullying and harassment.¹²

[28] Past orders have found WCA investigations to be investigations into a possible violation of law under s. 22(3)(b).¹³ However, the Workers' Compensation Board did not perform the workplace investigation in this case using its investigative powers under the WCA. Instead, TRU hired a private investigator to investigate the complaints in the context of the employee's collective agreement. The records do not refer to the WCA at all.

[29] TRU has not explained, nor is it apparent to me, how a violation of the relevant collective agreement constitutes a violation of law under s. 22(3)(b). As I am not persuaded that the investigation was into a possible violation of law, I find that s. 22(3)(b) does not apply to the disputed information.

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

[30] Section 22(3)(d) says that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to employment, occupational or educational history.

⁹ TRU's initial submission at paras. 36 and 43; and TRU's reply submission at para. 10.

¹⁰ Order 01-12, 2001 BCIPC 21566 (CanLII) at para. 17; and Order F22-31, 2022 BCIPC 34 (CanLII) at para. 53.

¹¹ *Workers Compensation Act*, RSBC 2019, c 1.

¹² TRU's initial submission at paras. 32-36.

¹³ Order 01-19, at para. 30.

[31] The term “employment history” includes descriptive information about a third party’s workplace behaviours or actions in the context of a complaint investigation, disciplinary matter, or allegations of wrongdoing in the workplace.¹⁴ Employment history may also include information that clearly reveals the identity of subjects or witnesses in the context of what they said to investigators about the role that they and others played in the matter under investigation.¹⁵

[32] In this matter, almost all of the information in dispute relates to an investigation into allegations of wrongdoing in the workplace. Disclosing this information would reveal subjects and witnesses of that investigation as well as what they said or did in the events that were investigated. The matters described in the withheld information are not limited to what these third parties witnessed the applicant say or do. These third parties were personally involved in the matters under investigation. Therefore, I find that this information is about these third parties’ employment histories and s. 22(3)(d) applies to it.

[33] Most of the remaining information is about reasons for workplace absences. I find this information is third-party employment history information within the meaning of s. 22(3)(d).¹⁶

[34] Finally, TRU severed one line in an email from the investigator to TRU.¹⁷ This information is about what an individual thought about a meeting location but does not deal with any third party’s employment information at all, so s. 22(3)(d) does not apply to this information.

[35] In summary, I find that s. 22(3)(d) applies to nearly all of the information in dispute, and disclosure of it is presumed to be an unreasonable invasion of third parties’ personal privacy.

Section 22(2) – Relevant circumstances

[36] The fourth step in the s. 22(1) analysis is to determine whether disclosing the personal information would be an unreasonable invasion of personal privacy. This is done by considering all relevant circumstances, including those listed in s. 22(2). It is at this stage of the analysis that the applicant may rebut the s. 22(3)(d) presumption that disclosure is an unreasonable invasion of privacy.

[37] The parties’ submissions raise the following s. 22(2) circumstances:

¹⁴ Order 01-53, 2001 CanLII 21607 (BC IPC) at paras. 32-33; and Order F21-08, 2021 BCIPC 12 (CanLII) at para. 132.

¹⁵ Order F21-08, 2021 BCIPC 12 (CanLII) at para 137.

¹⁶ See for examples: Order F23-56, 2023 BCIPC 65 (CanLII) at paras. 78-80; and Order F23-49, 2023 BCIPC 57 (CanLII), at para. 44.

¹⁷ This information was severed from the records at p. 16.

22(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,

...

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

...

(h) the disclosure may unfairly damage the reputation of any person referred-to in the record requested by the applicant,

[38] I will consider each of these circumstances in this sequence.

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

[39] To engage s. 22(2)(a), disclosure of the personal information must be desirable for subjecting the activities of the public body to public scrutiny. The purpose of s. 22(2)(a) is to make public bodies more accountable, not to scrutinize or hold individual third parties to account.¹⁸

[40] TRU argues that the public interest is served by protecting the privacy and security of participants in workplace investigations but not by disclosing the contents of the withheld information.¹⁹

[41] The applicant argues that it is clearly desirable for the public to be made aware of the withheld personal information because it will show a pattern of behaviour by TRU and TRU's investigator. Specifically, he thinks the personal information will reveal "stonewalling and obfuscation that hindered due process and [his] efforts to defend [himself]",²⁰ which arose after the applicant exposed unethical research practices at TRU. He argues that any differences between the draft investigation report and the final version would reveal such unfair investigative practices.²¹

¹⁸ Order F18-47, 2018 BCIPC 50 (CanLII) at para. 32; and Order F16-14, 2016 BCIPC 16 (CanLII) at para. 40.

¹⁹ TRU's initial submission at paras. 47-48.

²⁰ Applicant's submission at p. 7.

²¹ Applicant's submission at p. 8.

[42] I have reviewed the disputed personal information in this case, and I find that it does not reveal anything about the TRU's investigative activities. In particular, the withheld personal information, even when compared to the final version of the report, does not reveal anything that resembles the type of behaviour the applicant says TRU and the investigator engaged in. I do not see how its disclosure would enhance public scrutiny of TRU or its investigative activities.

[43] I am not satisfied that disclosing any of the personal information in dispute would subject TRU or its investigative activities to public scrutiny, or that disclosure is desirable for that purpose. Therefore, s. 22(2)(a) does not apply.

Section 22(2)(c) - Fair determination of an applicant's rights

[44] Section 22(2)(c) requires a public body to consider whether the personal information is relevant to a fair determination of an applicant's rights. Past orders have said that s. 22(2)(c) applies where all of the following circumstances exist:²²

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 withheld personal information 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.

[45] I will apply the same analytical framework in this matter.

[46] The applicant argues that some of the information withheld under s. 22(1) is relevant to a fair determination of his rights, thereby engaging s. 22(2)(c).²³ He points to his pending labour relations arbitration and a pending complaint to the LSBC. The applicant provided copies of the grievance and LSBC complaint for my review.

[47] TRU argues that disclosure under FIPPA is not necessary for the applicant to prepare for the arbitration or his LSBC complaint, that the withheld information does not have the evidentiary value he suspects it does, and that it is unclear which of the applicant's rights are engaged.²⁴

²² See for examples: Order 01-07, 2001 CanLII 21561 (BCIPC) at para. 31; Order F15-11, 2015 BCIPC 11 (CanLII) at para. 24.

²³ Applicant's submission at pp. 4-7.

²⁴ TRU's reply submission at paras. 19-24.

[48] I accept that the applicant has a labour arbitration and a LSBC complaint underway, and that both proceedings are based on legal rights drawn from statute. The applicant's grievance and related labour arbitration matter are based on his rights under a collective agreement that is enforceable under the B.C. *Labour Relations Code*.²⁵ Similarly, the applicant filed his LSBC complaint as a member of the public protected from lawyer misconduct by the LSBC *Code of Professional Conduct for British Columbia*,²⁶ which is published by the LSBC Benchers exercising their authority under the *Legal Profession Act*.²⁷

[49] Next, the applicant must establish that the withheld information has some significance for the determination of these rights.

[50] The applicant says that he requires the disputed information in order to prove the investigator was not independent by comparing the differences between the draft and final versions of the report.²⁸

[51] After closely reviewing the withheld information, I find that the disputed information is irrelevant to any claims of a biased investigation or the investigator's failure as a lawyer to disclose their interest. The disputed information does not have the evidentiary value that the applicant suspects it does and I do not see how it could otherwise bear upon the determination of the applicant's rights.

[52] As the applicant has not established that the disputed information is relevant to a fair determination of his rights, I find that s. 22(2)(c) does not apply.

Section 22(2)(e) - Unfair exposure to harm

[53] Section 22(2)(e) weighs against disclosure if doing so would unfairly expose a third party to financial or other harm. "Harm" under s. 22(2)(e) includes "serious mental distress or anguish or harassment".²⁹ Embarrassment, upset, or negative reactions do not rise to the required level of mental harm.³⁰ The question is whether disclosing the personal information would at least expose the third parties to the type of harm listed in s. 22(2)(e). It is not necessary to find that the harm would actually occur.

²⁵ *Labour Relations Code*, RSBC 1996 c 244; see also Applicant's submission at pp. 4 and 126-128.

²⁶ Available online at: <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/>

²⁷ *Legal Profession Act*, SBC 1998, c 9; see also Applicant's submission at p. 130.

²⁸ Applicant's submission at p. 5.

²⁹ Order 01-37, 2001 CanLII 21591 (BC IPC), at para. 42.

³⁰ Order 01-15, 2001 CanLII 21569 (BC IPC), at paras. 49-50; and Order F20-37, 2020 BCIPC 43 (CanLII), at para. 120.

[54] TRU says that the applicant's former colleagues will be exposed to public harassment by the applicant, and therefore mental harm, if the disputed information is disclosed. TRU points to content of the records and affidavit evidence as proof that the applicant has harassed his colleagues in the past.³¹ TRU argues that this engages s. 22(2)(e) to weigh against disclosure.³²

[55] Having considered what the affidavit evidence³³ and the draft and the final report reveal about the applicant's behaviour, I am satisfied that in the past he engaged in behaviour that could reasonably be described as harassment of his former colleagues. However, for the reasons below, I am not persuaded that disclosing the information in dispute in this case would unfairly expose anyone to similar treatment in the future.

[56] First, the underlying conflicts are distinguishable. The applicant's conflicts with his former colleagues occurred more than four years ago and arose from academic disagreements which led to interpersonal conflicts. Conversely, the applicant's current dispute is with TRU and its investigator over TRU's investigative activities. What the applicant says in his submission satisfies me that he is only concerned with obtaining the disputed information to advance his dispute with TRU and its investigator.

[57] Second, the applicant has not, as far as I can tell, weaponized his existing knowledge of the disputed information to attack his former colleagues. The applicant already has his personal recollection of the underlying events and a copy of the final investigation report which he believes he is free to disclose.³⁴ Despite this existing knowledge, TRU has not raised any evidence of the applicant publicly attacking his former colleagues using this type of information. The information used in the applicant's earlier public statements was about scholarly integrity in academia whereas the disputed information here is of an investigative and employment relations nature.

[58] The parties do not dispute that the applicant previously used academic information to publicly comment on his former colleagues' academic integrity, or that the investigator considered some of these actions to constitute harassment. However, it does not follow that there is a risk of the applicant repeating those actions, years later, using a different type of information (which largely reflects poorly on him), while litigating against TRU and the investigator.

[59] In the circumstances of this case, I am not persuaded that disclosing the severed personal information would unfairly expose any third parties to harm. I find that s. 22(2)(e) does not apply to the withheld information.

³¹ TRU's initial submission at para. 56 and TRU's final submission at para. 16.

³² TRU's initial submission at paras. 53-56.

³³ Affidavit #1 of MS (re-sworn), at para. 17.

³⁴ Applicant's submission at p. 9.

Section 22(2)(f) - Supplied in confidence

[60] Section 22(2)(f) considers whether the personal information has been supplied in confidence. If so, this weighs in favour of withholding the information. In order for s. 22(2)(f) to apply, there must be evidence that an individual supplied the information and did so under an objectively reasonable expectation of confidentiality at the time the information was provided.³⁵

[61] TRU says that third party witnesses confidentially supplied personal information to its investigator and that this information is reproduced in the records.³⁶ In his submission, the applicant does not discuss the witnesses' expectations of confidentiality over their statements to the investigator.

[62] TRU points to the collective agreement as evidence of what the witnesses expected when they supplied the information to the investigator. That agreement requires investigations to be conducted confidentially.³⁷ Furthermore, the text of the report confirms that the investigator told the witnesses at the outset about the limited way that their statements would be used.³⁸ I consider this to be persuasive evidence that the individuals who supplied personal information to the investigator did so under a reasonable expectation of confidence.

[63] After considering these circumstances, I find that the personal information in the draft report and written witness statement was supplied in confidence to TRU's investigator, which weighs against its disclosure under s. 22(2)(f).

[64] TRU did not argue that s. 22(2)(f) applies to other personal information in the records. This information includes reasons for workplace absences and the investigator's assessment of certain events. Given the lack of evidence and circumstances supporting expectations of confidentiality over this information, I find that s. 22(2)(f) does not apply to it.

Section 22(2)(h) - Unfair damage to reputation

[65] If disclosing the disputed information may unfairly damage the reputation of a person referred to in the records, then s. 22(2)(h) weighs against disclosure. Two requirements must be met in order to engage s. 22(2)(h). First, the information must damage an individual's reputation. Second, that damage must be unfair.³⁹

³⁵ Order F11-05, 2011 BCIPC 5 (CanLII) at para. 41, citing Order 01-36, 2001 CanLII 21590 (BC IPC) at paras. 23-26; See also Order F23-02, 2023 BCIPC 3 (CanLII) at para. 45.

³⁶ This information is included in the written witness statement and the repetition of witness-supplied information in the draft report.

³⁷ TRU's initial submission at para. 58.

³⁸ The records at page 27 and the Applicant's submissions at p. 75.

³⁹ Order F19-02, 2019 BCIPC 2 (CanLII), at para. 69.

[66] TRU argues that disclosing the disputed information would result in unfair reputational harm to individual third parties.⁴⁰ TRU's concern is that the severed information repeats allegations of misconduct of third parties but does not expressly make findings about the allegations.⁴¹ The applicant does not discuss s. 22(2)(h).

[67] Most of the disputed personal information was severed from a draft report and witness statements which arose from complaints and allegations of wrongdoing. There are two types of allegations of wrongdoing that appear in the records:

1. Allegations that the actions of the applicant and one individual third party breached their collective agreement; and
2. Allegations that multiple individual third parties acted with academic dishonesty or incompetence.

[68] In the context of investigating allegations of wrongdoing, past orders have found s. 22(2)(h) to apply if disclosure would reveal incomplete information⁴² or if allegations are repeated in the information without including a conclusive finding about whether the allegations were substantiated.⁴³

[69] TRU withheld information from the draft report that discussed whether a third party's behaviour constituted a breach.⁴⁴ In my view, the nature of the draft report as a draft (as opposed to a final version) means that any findings about whether the allegations are substantiated are not truly conclusions in the sense contemplated by s. 22(2)(h). The investigator is not accountable for their draft findings which are, by definition, subject to further change. Disclosing the allegations in the draft report would therefore result in reputational harm to a third party without the accompanying fairness of conclusive findings on whether the allegations were substantiated.

[70] Regarding the allegations of academic dishonesty and incompetence, these are discussed in detail both in the draft report and at other locations in the records.⁴⁵ The investigator did not decide whether these allegations were substantiated because they fell outside the scope of the investigation. Furthermore, it is unclear whether all of the subjects of these allegations had a chance to respond to them.

⁴⁰ TRU's final submission at para. 12.

⁴¹ TRU's final submission at para. 17.

⁴² See for example, Order F23-58, 2023 BCIPC 68 (CanLII) at para. 90; and Order F23-48, 2023 BCIPC 56 (CanLII) at para. 52.

⁴³ Order F23-48, 2023 BCIPC 56 (CanLII).

⁴⁴ This information was withheld from the records at pp. 23, 73, and 77.

⁴⁵ This information was withheld from the records at pp. 10-13, 17, 18, 32, 38, 39, 41, 46, 47, 52, and 54.

[71] These circumstances lead me to find that disclosing the information that repeats allegations of wrongdoing by third parties would lead to unfair reputational damage to those third parties. Accordingly, I find that s. 22(2)(h) weighs against disclosing this information.

[72] The rest of the severed information neither repeats nor reveals any allegations of wrongdoing. It is not apparent to me how any of this other personal information would harm the reputation of anyone referred to in the records. Therefore, I find that s. 22(2)(h) does not apply to this other information.

Applicant's personal information

[73] Where the withheld information is an applicant's own personal information, this will weigh in favour of disclosure.⁴⁶ In this matter, none of the withheld information is only about the applicant but most of it is the personal information of both the applicant and third parties because it describes their interactions with each other. In these cases, the fact that it is the applicant's personal information weighs in favour of disclosing it.

Sensitivity

[74] The sensitivity of the disputed information is not a factor listed under s. 22(2) but many past orders have considered it relevant. If the disputed information is sensitive, this weighs in favour of withholding it. On the other hand, if the disputed information is not sensitive, this weighs in favour of disclosure.⁴⁷

[75] Most of the withheld information is not particularly sensitive. In a few instances however, the withheld information describes how certain events have affected the psychological well-being of third parties.⁴⁸ This information is more detailed than a general expression of discomfort. In these instances, I find that this is sensitive information about third parties' mental health which weighs against its disclosure.

Applicant's existing knowledge

[76] Past orders have found that an applicant's existing knowledge of the withheld information is a relevant circumstance in the s. 22(1) analysis. An

⁴⁶ Order F10-10, 2010 BCIPC 17 (CanLII) at para. 37; and Order F20-13, 2020 BCIPC 15 (CanLII) at para. 73.

⁴⁷ Order F10-09, 2010 BCIPC 14 (CanLII), at para 123; Order F16-38, 2016 BCIPC 42 (CanLII), at para. 143; and Order F19-15, 2019 BCIPC 17 (CanLII) at para. 99.

⁴⁸ This information was withheld from the records at pp. 12, 13, 34, and 53.

access applicant's accurate knowledge of the withheld information may weigh in favour of disclosing it.⁴⁹

[77] The applicant's position is that he has substantial knowledge of the withheld information because it is already known or disclosed to him. He says that this means that further disclosure is not an unreasonable invasion of anyone's personal privacy.⁵⁰

[78] What the applicant says in his submission satisfies me that he has a detailed knowledge of most of the withheld information. For example:

- He provided a finalized copy of the report with all individual names anonymized.⁵¹ This copy did not come into the applicant's possession as a result of a request made under FIPPA, but instead through the investigative process that generated the report.
- He has demonstrated in his submissions that he can discern who certain third parties are in the draft report using his existing knowledge, despite TRU severing their names.⁵²
- The applicant argues that he already has unsevered copies of certain email correspondence in the records.⁵³
- He provided detailed arguments and documents that would only be available to someone with substantial knowledge of the withheld information.

[79] On the other hand, many of the applicant's arguments about s. 22(2)(c) are based on his suspicion that the withheld portions of the records contain other information that I found it does not.

[80] TRU says that the applicant's existing knowledge should not be determinative of s. 22(1) analysis. Regarding the investigation report, TRU strenuously argues that confidentiality obligations restrain the applicant from using his copy of the final report. TRU says that I should not consider this report as being public knowledge nor find that the applicant's knowledge weighs in favour of disclosure in light of these restrictions.⁵⁴ The applicant denies that he is subject to any confidentiality agreements over his final copy of the report.

[81] The applicant's ability to disseminate his copy of the final report is not determinative because he clearly gained his knowledge of these matters from

⁴⁹ See for examples: Order F17-02, 2017 BCIPC 2 (CanLII) at paras. 28-30; Order F15-14, 2015 BCIPC 14 (CanLII) at paras. 72-74; and Order F05-13, 2005 CanLII 11964 (BC IPC), at para. 28.

⁵⁰ Applicant's submission at p. 3.

⁵¹ Applicant's submission at Appendix F.

⁵² Applicant's submission at p. 3.

⁵³ Applicant's submission at p. 2.

⁵⁴ TRU's initial submission at para. 61 and TRU's final submission at para. 14.

multiple sources. The applicant's personal experience in the matters under investigation means that most of the withheld information was known to him from the beginning of the underlying conflicts.

[82] After considering these circumstances and the parties' submissions, I find that the applicant has a sufficiently detailed and accurate knowledge of the disputed information to weigh in favour of disclosing most of it. This finding does not apply to information in the email correspondence about where witnesses were at certain times that they were scheduled to meet with the investigator because there is no evidence before me to show that he knows that information.

Conclusions - s. 22

[83] All of the information that TRU withheld from the records is the personal information of third parties. Almost all of the information is about the applicant and third parties' interactions in the workplace as well as the consequences that flowed from those interactions. This third-party workplace history information is presumed to be an invasion of third-party personal privacy under s. 22(3)(d).

[84] The applicant's existing knowledge of the withheld information, and the fact that much of it is his own personal information, both weigh in favour of disclosure. However, weighing against disclosure are the fact that much of the disputed information was supplied in confidence by third parties, some of it includes sensitive details about third parties' psychological health, and some of the withheld information may unfairly damage third parties' reputations if disclosed.

[85] After weighing all of the relevant factors, I find that the applicant has not rebutted the presumption created by s. 22(3)(d) for almost all of the disputed information. Consequently, disclosing this information would be an unreasonable invasion of third-party personal privacy and TRU is required by s. 22(1) to refuse to disclose it. There are two exceptions to this finding.

[86] First, TRU severed information from one paragraph which contains the investigator's analysis of how TRU faculty members could communicate with their departmental dean.⁵⁵ I do not see how disclosing this information would expose anyone to reputational or mental harm of any kind. The references to the dean and faculty are innocuous, none of the information was supplied in confidence, and the information is already within the applicant's knowledge.

[87] Second, TRU withheld one sentence from an email it received from its investigator which does not constitute anybody's employment history.⁵⁶ That sentence is the investigator's statement that they did not know the name of one

⁵⁵ This information was withheld from the records at p. 72.

⁵⁶ This information was withheld from the records at p. 16.

of the buildings at TRU. This sentence is prefaced with “Between us”, which implies an expectation of confidentiality. However, the context of that sentence clearly shows that it is the investigator admitting to an inconsequential misunderstanding while conveying innocuous self-deprecating humour. I do not see how its disclosure could cause reputational or other harm if disclosed.

[88] These circumstances lead me to find that the s. 22(3)(d) presumption is rebutted for the information that I excepted above. TRU is not required to withhold this information under s. 22(1) because disclosure would not be an unreasonable invasion of any third parties’ personal privacy.

Summary of the applicant’s personal information, s. 22(5)

[89] Under s. 22(5)(a), TRU must give a summary of personal information supplied in confidence about the applicant unless the summary cannot be prepared without also disclosing the identity of a third party who supplied that information. Neither party addressed whether s. 22(5) applies in this matter.

[90] I am not satisfied that any of the information supplied in confidence about the applicant can be summarized without revealing the suppliers’ identities. The applicant has extensive knowledge of the underlying disputes and a final version of the report. This means that disclosing the information that was supplied in confidence, no matter how it is rephrased or reorganized, would immediately enable the applicant to identify its suppliers.

[91] I find TRU is not required to provide the applicant with a s. 22(5) summary of any personal information about the applicant.

CONCLUSION

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

1. Subject to item #2 below, I require TRU, in part, to refuse to disclose the information in dispute under s. 22(1).
2. TRU is not required under s. 22(1) to withhold the information highlighted in green on pages 16 and 72 in a copy of the records that will be sent to TRU with this order.
3. I require TRU to give the applicant access to the information that it is not required to withhold. TRU must concurrently provide the OIPC registrar of inquiries with proof that it has complied with the terms of this order, along with a copy of the records that it will provide to the applicant.

[93] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by January 31, 2024.

December 15, 2023

ORIGINAL SIGNED BY

Alexander R. Lonergan, Adjudicator

OIPC File No.: F21-86619