OFFICE OF THE
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COMMISSIONER
— for —
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Order F10-08

NORTHERN HEALTH AUTHORITY

Celia Francis, Senior Adjudicator

March 8, 2010

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Summary: In response to the applicant's request for access to her personal information, the NHA disclosed a number of records and withheld other records and information under ss. 13(1) and 22(1) of FIPPA. It also said that s. 51 of the *Evidence Act* prohibited disclosure of other records. Sections 13(1) and 22(1) are found to apply. The NHA is ordered to prepare a summary of the applicant's personal information under s. 22(5) of FIPPA. Section 51 of the *Evidence Act* is found not to apply and the NHA is ordered to process two pages under FIPPA.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 4(2), 13(1), 22(1), 22(2)(e), (f), (h), 22(3)(d), (h), 22(5); *Evidence Act*, s. 51.

Authorities Considered: B.C.: Order 02-38, [2002] B.C.I.P.C.D. No. 38; Order F06-15, [2006] B.C.I.P.C.D. No. 22; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 00-53, [2000] B.C.I.P.C.D. No. 57; Order F05-02, [2005] B.C.I.P.C.D. No. 2; Order 04-25, [2004] B.C.I.P.C.D. No. 25; F06-19, [2006] B.C.I.P.C.D. No. 32; Order 00-44, [2000] B.C.I.P.C.D. No. 48; Order F05-30, [2005] B.C.I.P.C.D. No. 41; Order 03-16, [2003] B.C.I.P.C.D. No. 16; Order 02-12, [2002] B.C.I.P.C.D. No 12.

Cases Considered: *Sinclair v. March,* [2000] B.C.J. No. 1676 (C.A.); *Munro v. St. Paul's Hospital,* 2008 BCSC 1408.

1.0 INTRODUCTION

[1] A physician in northern British Columbia ("applicant") requested access to all records about her within the Northern Health Authority ("NHA"), including the hospital in which she worked. After carrying out consultations with third parties,

the NHA disclosed records in stages, withholding some information under ss. 13(1) and 22(1) of FIPPA and other information under s. 51 of the *Evidence Act*.

[2] The applicant requested a review of the NHA's decision by this Office ("OIPC"). In her letter, she voiced a number of concerns. She said, for example, that a number of other physicians had written a letter about her which she had not seen but which was shared with the Chief of Surgery and Chief of Staff. She said this letter contained a number of inaccuracies, contrary to s. 28 of FIPPA, and she also wished to correct her personal information in the letter under s. 29 of FIPPA. She said the NHA had treated her "differentially" since a physician had written another letter a few years earlier about her "conflict of interest". She said, for example, that she had been "banned" from carrying out certain activities within the hospital and she had been removed from certain positions. The applicant also complained that her emails to certain individuals within the NHA had been forwarded to "Corporate NHA" without her consent.

[3] During mediation of the applicant's request for review, the NHA disclosed some additional information. The matter did not settle however and proceeded to an inquiry under Part 5 of FIPPA. The OIPC invited and received representations from the applicant, the NHA and third parties.

2.0 ISSUES

[4] The issues in this case are these:

1. Whether the NHA was authorized by s. 13(1) to withhold information.

2. Whether the NHA was required by s. 22(1) to withhold information.

3. Whether, under ss. 51(6) and (7) of the *Evidence Act*, the NHA is prohibited from disclosing certain records.

[5] Section 57 of FIPPA sets out the burden of proof in inquiries. Under s. 57(1), the NHA has the burden respecting s. 13(1) and under s. 57(2) the applicant has the burden respecting third-party personal information. Section 57 is silent respecting whether provisions like s. 51 of the *Evidence Act* apply. Previous orders have said that in such cases it is in the interests of the parties to present argument and evidence in support of their positions.

3.0 DISCUSSION

[6] **3.1 Background—**The NHA said that the applicant was a member of the NHA's active medical staff for a number of years, with privileges at one of its hospitals, where she practiced until she resigned her active status. The NHA said that during this time it became apparent that morale in the applicant's

department was poor and that there were conflicts, discord and mutual distrust among certain members of the department about various issues, including vacation planning and recruitment of physicians. Over time, these problems "grew to a point of serious departmental dysfunction and lack of leadership". Senior administrators became involved in attempting to reconcile personal differences, "solving routine administrative problems" and the management of the department. The NHA added:

> Because of the personal nature of the problems and the strong emotions they generated, this was understood to be a very sensitive issue, and communication about it was considered confidential and only to be shared when necessary.[1]

[7] **3.2 Records in Dispute**—The NHA said it located 250 pages of responsive records, of which approximately 30 are in dispute in this inquiry.[2] It described the records in dispute as follows:

> 6. …e-mails and letters most of which relate in one way or another to poor morale, discord, conflicts and mutual distrust, about various issues both personal and professional, among certain members of [the applicant's department], including [the applicant]. In the context of these problems there was a significant amount of confidential communication among executives, administrators and staff, including personal information supplied in confidence as well as advice and recommendations being received from members of staff or administration.

[8] **3.3 Advice or Recommendations**—The NHA applied s. 13(1) to information on pp. 55, 57, 74, 170, 181, 216 and 243-245 on the grounds that its disclosure would reveal confidential advice on how to deal with certain issues. Section 13(1) has been the subject of many orders and I take the same approach here.[3] The section reads as follows:

> **Policy advice, recommendations or draft regulations**
>
> 13(1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

[9] The NHA argued that it is clear from the records themselves that the withheld information is advice or recommendations, as indicated by such introductory phrases as "I suggest that …" or "I think the smartest thing would be …." The NHA said that it had disclosed any factual observations about the applicant and that any remaining factual information was essentially intertwined

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[1] Paras. 2 & 9-10, NHA's initial submission.
[2] Paras. 4-5, NHA's initial submission.
[3] See for example, Order 02-38, [2002] B.C.I.P.C.D. No. 38.

with the advice given.[4] The applicant generally disputed the NHA's application of s. 13(1).[5]

[10] In some cases, the withheld phrases relate to issues involving the applicant, while in other cases they concern administrative matters such as nursing staffing levels and recruitment of physicians. I agree with the NHA that the withheld information constitutes advice or recommendations on how to handle various issues, as past orders have interpreted these terms. I am also satisfied from the NHA's submission that the NHA exercised its discretion in deciding to apply s. 13(1). I therefore find that this information falls under s. 13(1).

[11] **3.4 Section 51 of the *Evidence Act*—**The NHA argued that s. 51(5) of the *Evidence Act* applies to pp. 196-197 and 210-214 and that their disclosure is therefore prohibited under ss. 51(7) and (8) of that Act.[6]

[12] The relevant parts of s. 51 of the *Evidence Act* read as follows:

> ***Health care evidence***
>
> 51(1) In this section:
>
> **"board of management"** means a board of management as defined in the *Hospital Act;*
>
> **"committee"** means any of the following:
>
> (a) a medical staff committee within the meaning of section 41 of the *Hospital Act;*
>
> (b) a committee established or approved by the board of management of a hospital, that includes health care professionals employed by or practising in that hospital, and that for the purpose of improving medical or hospital care or practice in the hospital
>
> (i) carries out or is charged with the function of studying, investigating or evaluating the hospital practice of or hospital care provided by health care professionals in the hospital, or
>
> (ii) studies, investigates or carries on medical research or a program;
>
> (c) a group of persons who carry out medical research and are designated by the minister by regulation;

[4] Paras. 12-22, NHA's initial submission. See also Butcher & Horvat affidavits, portions of which the NHA submitted, appropriately, *in camera*. Section 13(2)(a) states that public bodies may not apply s. 13(1) to factual information. I did not identify any information to which s. 13(2)(a) applies.
[5] Para. 11, (confidential) part II of initial submission.
[6] The NHA initially refused access to pp. 210-214 under s. 22 of FIPPA but, in its initial submission, said it now took the position that s. 51 of the *Evidence Act* applies to them. It also provided submissions in the alternative on the application of s. 22(1) to these pages. The NHA has taken the position since its decision letter that s. 51 of the *Evidence Act* applies to pp. 196-197.

(d) a group of persons who carry out investigations of medical practice in hospitals and who are designated by the minister by regulation;

"health care professional" means

(a) a medical practitioner,

(b) a person qualified and permitted under the *Dentists Act* to practise dentistry or dental surgery,

(c) a registered nurse as defined in the *Nurses (Registered) Act,*

(d) [Repealed 1998-42-7.]

(e) a person registered as a member of a college established under the *Health Professions Act,*

(f) a pharmacist as defined in the *Pharmacists Act, or*

(g) a member of another organization that is designated by regulation of the Lieutenant Governor in Council;

"hospital" means a hospital as defined in the *Hospital Insurance Act* and includes

(a) a hospital as defined in the *Hospital Act,* and

(b) a Provincial mental health facility as defined in the *Mental Health Act;* …

(5) A committee or any person on a committee must not disclose or publish information or a record provided to the committee within the scope of this section or any resulting findings or conclusion of the committee except

(a) to a board of management,

(b) in circumstances the committee considers appropriate, to an organization of health care professionals, or

(c) by making a disclosure or publication

(i) for the purpose of advancing medical research or medical education, and

(ii) in a manner that precludes the identification in any manner of the persons whose condition or treatment has been studied, evaluated or investigated.

(6) A board of management or any member of a board of management must not disclose or publish information or a record submitted to it by a committee except in accordance with subsection (5) (c).

(7) Subsections (5) and (6) apply despite any provision of the *Freedom of Information and Protection of Privacy Act* other than section 44 (2) and (3) of that Act.

(8) Subsection (7) does not apply to personal information, as defined in the *Freedom of Information and Protection of Privacy Act,* that has been in existence for at least 100 years or to other information that has been in existence for at least 50 years.

[13] The provisions of the *Hospital Act* that s. 51 of the *Evidence Act* refers to are these:

> **"board of management"** means the directors, managers, trustees or other body of persons having the control and management of a hospital;
>
> 41(1) In this section, **"medical staff committee"** means a committee established or approved by a board of management of a hospital for
>
> (a) evaluating, controlling and reporting on clinical practice in a hospital in order to continually maintain and improve the safety and quality of patient care in the hospital, or
>
> (b) performing a function for the appraisal and control of the quality of patient care in the hospital.

[14] In Order F06-15,[7] I considered the interpretation and application of s. 51 of the *Evidence Act*. I take the same approach here without repetition.

Does section 51 of the Evidence Act apply?

[15] The NHA said that it must show that the records in question were provided to a "committee" within the meaning of s. 51 of the *Evidence Act*, that the subject matter of the records concerns issues within the scope of that section and that the records were provided to such a "committee", rather than to administrators.

[16] The NHA said that Dr Richard Raymond, Chief of Staff, NHA, and Dr Dan Horvat, at that time Medical Director, Northern Interior, NHA, were members of the Northern Interior Medical Advisory Committee ("NI MAC"). It said that Dr Horvat was also a member of the Northern Health Authority Medical Advisory Committee ("NHA MAC"). It argued that the NI MAC and the NHA MAC are both "committees" for the purposes of s. 51 of the *Evidence Act*, as they were established under the NHA's Medical Staff Rules to advise the NHA's Board of Directors on the provision of medical care within the NHA, the monitoring of the quality and effectiveness of medical care and the adequacy of medical staff resources.[8]

[17] The NHA did not say which type of "committee" the NI MAC and the NHA MAC are for the purposes of s. 51. However it appears from the NHA's submissions that it considers them to be "medical staff committees" under para. (a) of the definition of "committee" in s. 51 and possibly also "committees" under para. (b) of that definition.

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[7] [2006] B.C.I.P.C.D. No. 22.

[8] The NHA provided relevant extracts from its Medical Staff Rules and Medical Staff Bylaws, as well as the terms of reference for the NI MAC. They suggest that the NI MAC is a subsidiary committee of the NHA MAC. I have considered these items carefully although I have not reproduced them here.

[18] The NHA also argued that the subject matter of the records concerns issues within the scope of s. 51 of the *Evidence Act* as follows: pp. 196-197 relate to a matter concerning quality of patient care; pp. 210-214 are directly relevant to "medical manpower planning, one of the stated objectives of the NI MAC", and to the maintenance of the adequacy of certain services "provided by qualified physicians", a "matter concerning quality of care" in the hospital where the applicant worked.[9] The NHA says this approach is consistent with the broad view of the subject falling within s. 51 mandated by the British Columbia Court of Appeal decision in *Sinclair v. March*.[10]

[19] The NHA argued that pp. 196-197 and the third parties' letter (pp. 210-211) were provided to Drs Raymond and Horvat in their capacities as members of s. 51 "committees" and not as administrators. In its view, Dr Raymond's reply to the third parties' letter (pp. 212-214) should be accorded the same protection as the letter. The NHA also said that Dr Horvat's evidence was that the subject matter of pp. 196-197 "could have become a matter for the NI MAC".[11] The third parties supported the NHA's position.[12]

[20] The applicant did not take issue with the NHA's argument that the NHA MAC and NI MAC are "committees" for the purposes of s. 51 of the *Evidence Act*. However, she argued the records were a product of "infighting" within her department and that they were provided to Drs Raymond and Horvat in their respective capacities of Chief of Staff and Medical Director. The applicant also argued the NHA did not provide any evidence, such as minutes or resolutions, showing any of these things: that the subject matter of the records was referred to the NI MAC or another committee; that the NI MAC reviewed the records or "pursued their contents" as a committee; or that the NI MAC directed the compilation of the records to it or their submission to it. Referring to the NHA's submission that the subject matter of pp. 196-197 "could have become a matter for NI MAC", she argued that it provides "cogent evidence" that the correspondence addressed to Dr Horvat did not relate to any active proceeding before the NI MAC. She added that, in *Sinclair v. March*, the Court of Appeal confirmed Dillon J.'s conclusion on the scope of s. 51, which reads as follows:

> 13 It also does not protect the actions of individuals as a matter of course, regardless of incidental membership on a committee. There must be a "proceeding" before a committee in which the individual participates or the individual must have made a record

[9] Paras. 48-52, NHA's initial submission. A few phrases in these paragraphs were submitted *in camera* as they would reveal information in dispute.
[10] [2000] B.C.J. No. 1676 (C.A.) which reversed *Sinclair v. March,* [2000] B.C.J. No. 397 (S.C.), in part, though not on the issue of the scope of s. 51. Paras. 41-47, NHA's initial submission; para. 4, Raymond affidavit; para. 5, Horvat affidavit.
[11] Paras. 50-52, NHA's initial submission; para. 4, Raymond affidavit; para. 5 *(in camera)*, Horvat affidavit.
[12] Para. 53, third parties' reply submission.

> that was used by a committee and prepared for the committee or at the request of the committee.[13]

Analysis

[21] I am satisfied from the material before me that the NI MAC and NHA MAC are committees for the purposes of s. 51 of the *Evidence Act*. In order for the records in question to be prohibited from disclosure under s. 51(5) of the *Evidence Act*, however, they must have been submitted to one or the other of the above committees within the meaning of s. 51 or they must constitute "findings or conclusions" of one of those committees. For reasons that follow, I am not persuaded that pp. 196-197 and 210-214 were provided to the NI MAC or NHA MAC within the scope of s. 51 nor that they are conclusions or findings of either of those committees.

[22] In *Munro v. St Paul's Hospital*, Justice Groves stated:

> The leading case on the interpretation and history of s. 51 of the *Evidence Act* is *Sinclair v. March*, 2000 BCCA 459, 78 B.C.L.R. (3d) 218. In ¶23 of that decision, the court adopted the words of Baker J. in *Lew (Guardian ad litem) v. Mount St. Joseph Hospital Society* (1995), 46 C.P.C. (3d) 168. At ¶18, Baker J. states:
>
> > … the purpose of s. 57, [a previous version of the provision], which is to protect efforts made by hospitals to ensure that high standards of patient care and professional competency and ethics are maintained, by ensuring confidentiality for documents and proceedings of committees entrusted with this task.
>
> The court in *Sinclair* accepted that s. 51 was intended to protect hospital committee deliberations. However, the court also observed that the provision does not protect evidence from witnesses merely on the basis that witnesses are members of a hospital committee. In order to be precluded from litigation, the hospital must show that the witness participated in committee work as described in s. 51. **The court expressly recognized that the section does not protect evidence pertaining to hospital administration, and not within the committee structure**.[14]
> [emphasis added]

[23] Drs Raymond and Horvat deposed that they had duties both as medical administrative leaders and as members of the committees in question, and that the subject matter of the records concerned them in both capacities. There is however no evidence that the NI MAC and NHA MAC considered the subject matter of these records, that the records contain any conclusions or findings of

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[13] [2000] B.C.J. No. 397 (S.C.), in which Dillon J. was considering s. 51(2) of the *Evidence Act*. The applicant's main submissions on s. 51 of the *Evidence Act* are found at paras. 35-47 of her reply. She also attached to her initial submission a copy of minutes from a NI MAC meeting of May 3, 2007, which show that the members included health care professionals.

[14] 2008 BCSC 1408, at paras. 15 and 16.

these committees, or that that the records were submitted to the NI MAC and NHA MAC within the scope of s. 51. The evidence of Drs Raymond and Horvat does not in my view support a conclusion that they created and received pp. 196-197 and 210-214 as committee members within the meaning of s. 51. The NHA's own description of the situation and how the records came to exist also does not assist its position.

[24] I agree rather with the applicant's characterization of pp. 210-214 as arising out of longstanding interpersonal issues and conflicts among the members of the applicant's hospital department. The third parties' letter is addressed to Dr Raymond, both as Chief of Staff and Chair of the NI MAC. He replied as Chief of Staff. In my view, Dr Raymond received and created pp. 210-214 as part of his administrative responsibilities as Chief of Staff, which included "providing medical staff leadership" to the hospital. The contents of these pages do not indicate that the subject matter of the records or the records themselves were, or had been, before the NI MAC or NHA MAC. On the contrary, the letter shows that the issues were being raised and handled at the departmental level.[15]

[25] As for pp. 196-197, I agree with the applicant that the NHA's submission that the subject matter of these records "could have become a matter for the NI MAC" indicates that the records did not relate to a matter which the NI MAC considered. Rather, in my view, Dr Horvat was handling the matter at the departmental level in his role as Medical Director, which he deposed included overseeing physician services, recruitment and discipline.[16] The contents of pp. 196-197 support this view.

[26] For these reasons, I conclude that s. 51(5) of the *Evidence Act* does not prohibit disclosure of pp. 196-197 and 210-214. The NHA must therefore make a decision under FIPPA as to whether the applicant is entitled to have access to pp. 196-197 and I make the appropriate order below. I consider below the NHA's alternative arguments on s. 22 regarding pp. 210-214.

[27] **3.5 Section 22—**Section 22 has been the subject of many orders and I take the same approach here without repetition.[17] The relevant provisions read as follows:

> **Disclosure harmful to personal privacy**
>
> 22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[15] Para. 2, Raymond affidavit.
[16] Para. 2, Horvat affidavit.
[17] See for example Order 01-53, [2001] B.C.I.P.C.D. No. 56.

> (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,
>
> (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.
>
> (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if …
>
> (d) the personal information relates to employment, occupational or educational history, …
>
> (h) the disclosure could reasonably be expected to reveal that the third party supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation, …
>
> …
>
> (5) On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the public body must give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information.

Does section 22 apply?

[28] The information withheld under s. 22 consists of the personal information of identifiable individuals, both of the applicant and of third parties.[18] The applicant expressly stated that she does not want the personal information of third parties.[19] I have not considered this type of information where it appears in isolation on the following pages: pp. 32 (first and third withheld portions), 107-110, 127, 153, 155, 168, 215, 219, 232-233, 236, 243, 246. I will also not consider passing references to the applicant on p. 216 and in one sentence at the top of p. 245, as I found above that s. 13(1) applies to these items. I consider below the remaining withheld personal information, which is on pp. 30, 32 (second withheld portion), 210-214, 226-229, 231 and 235.[20] This information consists in part of third-party personal information and in part of intertwined personal information of the applicant and third parties.

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[18] The parties did not address s. 22(4). This section lists categories of personal information disclosure of which is not an unreasonable invasion of third-party privacy. I see no basis for finding that it applies here.

[19] Para. 9, part I, applicant's initial submission.

[20] The NHA withheld all of pp. 210-214. It disclosed the other pages in severed form. The withheld information on p. 235 duplicates that withheld on pp. 228-229.

Unreasonable invasion of third-party privacy

[29] The NHA acknowledged that some of the withheld information is the applicant's personal information, in the form of comments about the applicant in letters and emails sent in confidence. It said other information is identifying information of the third parties. The NHA argued that s. 22(3)(h) applies to all of the withheld information as it constitutes personal recommendations or evaluations about the applicant that the third parties supplied in confidence.[21]

[30] The third parties said that some of the views and opinions they express are about the applicant but that some is not, as it consists of their views and opinions about a workplace situation affecting them. They argue that disclosure of all of the withheld information would be an unreasonable invasion of their privacy under s. 22(3)(d). In an open passage from their submissions, the third parties said that, although the applicant knows their identities, the disputed information also falls under s. 22(3)(h), as it consists of their confidential evaluative comments about the applicant. The third parties appear to consider their comments and opinions about the applicant to be their personal information.[22]

[31] The applicant conceded that the withheld information might include the personal information of third parties. She said however that she only wants access to personal information about herself in the records, to correct "misinformation being propagated either intentionally or unintentionally about me since 2004".[23] She argued that evaluations and character references normally arise in a formal context, where someone in authority conducts the evaluation or requests the reference, whereas the letter in this case was unsolicited. The applicant argued that the withheld information does not fall under s. 22(3)(h), as the vice president of medicine had assured her in writing that he was not aware of any "written peer based performance evaluation" conducted in accordance with the medical staff rules. In her view, the letter contains the third parties' opinions about her which she is entitled to have.[24]

[32] The withheld personal information relates to workplace incidents and matters involving both the applicant and third parties. It is therefore information about the employment history of all of these individuals. Insofar as this personal information relates to the third parties, it falls under s. 22(3)(d).

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[21] Paras. 24-40, NHA's initial submission; NHA's reply submission. Portions of the NHA's initial submission were received *in camera* as they might reveal information in dispute.

[22] Paras. 2-53, third parties' initial submission; paras. 15-22, third parties' reply submission. Much of the third parties' argument and all of their evidence were received *in camera* as they might reveal information in dispute. I have considered all of this material carefully although I am constrained in what I can say about it.

[23] Paras. 8-9, part I, applicant's initial submission.

[24] Paras. 10-12, part I, applicant's initial submission.

[33] The purpose of s. 22(3)(h) is to protect the identity of a third party who has provided evaluative or similar material, in confidence, about an individual. It has generally arisen in the context of a formal workplace investigation or in human resources matters. In the context of s. 22(3)(g), which refers to the same kind of evaluative material, past orders have interpreted the terms "personal recommendation or evaluation, character reference or personnel evaluation" as applying to the following:

- evaluative material such as an investigator's comments about individuals' actions or work performance and in the course of investigations of complaints about workplace issues[25]
- information about performance appraisals or evaluations, academic or job references and assessments of a witness's abilities in preparation for a trial[26]

[34] Previous orders have explicitly found that s. 22(3)(h) does not apply to witnesses' statements about an employee's actions or behaviour in the workplace, including in the context of workplace investigations of complaints or in similar situations.[27]

[35] The withheld personal information in this case does not flow from a formal investigation of complaints in the workplace. Nor does it relate to a formal performance appraisal or evaluation of an individual. Rather it consists in part of unsolicited comments and opinions about the applicant and her actions and behaviour in the workplace. As I noted above, it includes the personal information of third parties. The comments and opinions about the applicant and other individuals are not personal evaluations or recommendations, as past orders have interpreted these terms. I find that s. 22(3)(h) does not apply to any of the withheld personal information.

Relevant circumstances

[36] The NHA and the third parties argued that the information in question was supplied and treated in confidence. The third parties said that the information related to "very serious issues affecting individuals' work environment" and that the communications were exchanged in confidence. They added that they had received assurances of confidentiality regarding their letter. In their view, disclosing the withheld information would deter individuals from voicing their

[25] See for example Order 00-53, [2000] B.C.I.P.C.D. No. 57, and Order F05-02, [2005] B.C.I.P.C.D. No. 2.
[26] See Order 04-25, [2004] B.C.I.P.C.D. No. 25, and Order F06-19, [2006] B.C.I.P.C.D. No. 32, at para. 158, which discusses evaluative material in the context of s. 22(3)(g).
[27] See Order 00-44, [2000] B.C.I.P.C.D. No. 48, for example, and Order F05-30, [2005] B.C.I.P.C.D. No. 41.

concerns about work situations.[28] The third parties also argued that disclosure of the disputed information could result in harm to them, including to their reputations.[29]

[37] The applicant said she believes one of the withheld items at pp. 210-214 is a letter the third parties wrote about her and recruitment issues. She disputed that the information in question was supplied in confidence, arguing that the third parties had discussed and signed the letter in front of other people, including patients and staff in operating rooms. She also said the chief of staff and the chief of surgery at the hospital had both discussed the letter with her and that the letter had been shared with other hospital staff, including four individuals, whom she named. She also questioned how disclosure to her of her own personal information could cause harm to the third parties' reputations.[30]

[38] The NHA and third parties responded that the letter in question had been shared with NHA administrators on "a minimal need-to-know basis". The third parties acknowledged that they may have signed the letter in operating rooms but said they did not discuss its contents at those times, as they had previously done so in private.[31]

[39] I accept from the material before me that for some time the applicant and third parties had been experiencing serious interpersonal challenges and difficulties in the workplace and that NHA management had been attempting to assist those involved to resolve the issues. It is also clear that discord and conflict resulted from these interpersonal clashes and that emotions frequently ran high. I therefore give considerable weight to the evidence of the NHA and the third parties regarding the desirability of engaging in confidential communications, as the individuals involved struggled to resolve the issues. I also accept that the individuals involved in these mutual exchanges expected that their communications were being made, and would be received and maintained, in confidence. I find that s. 22(2)(f) applies to all of the withheld personal information, favouring its withholding.

[40] I also accept the NHA's and third parties' *in camera* arguments and evidence on the unfair harm to third-party reputations they believe might flow from disclosure of the information in dispute. I therefore find that s. 22(2)(h) applies in this case, favouring non-disclosure of the personal information in dispute. The NHA's and third parties' submissions and evidence regarding other types of harm are vague and speculative, however, and I find that s. 22(2)(e) does not apply.

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[28] Paras. 25-27, 37-38, NHA's initial submission. See also Butcher & Horvat affidavits. Paras. 62-77, third parties' initial submission; third parties' affidavits.
[29] Paras. 54-61 & 78-81, third parties' initial submission; third parties' affidavits.
[30] Paras. 3-6, part I, applicant's initial submission; paras. 18-23 & 31-32, applicant's reply submission.
[31] Pages 1-2, NHA's reply submission; paras. 1-11, third parties' reply submission.

Conclusion on section 22

[41] I found above that s. 22(3)(d) applies to the third-party personal information but not s. 22(3)(h). Disclosure of the third-party personal information in dispute is therefore presumed to be an unreasonable invasion of third-party privacy. I also found that ss. 22(2)(f) and (h) apply to the withheld personal information, weighing in favour of withholding it, but that s. 22(2)(e) does not apply. No relevant circumstances favour disclosure of the information. I find that s. 22(1) requires the NHA to withhold the third-party personal information.

Is severing under section 4(2) reasonable?

[42] This is not the end of the matter, however, as I must consider whether, in accordance with s. 4(2) of FIPPA, it is reasonable to sever the third-party personal information from the records and disclose the applicant's own personal information to her.

[43] Both the NHA and the third parties argued that the third-party personal information is intertwined with the applicant's personal information such that it would not be reasonable to sever the excepted third-party personal information and disclose the rest of the information. In addition, disclosure would, they say, reveal third-party identifying information.[32] The applicant responded that disclosure of third-party identifying information would not be an unreasonable invasion of third-party privacy as she already knows the identities of the third parties as the holders of opinions about her. She reiterated that she only wants her own personal information within those opinions and this should not unreasonably invade third-party privacy.[33]

[44] Section 4(2) reads as follows:

> 4(2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record an applicant has the right of access to the remainder of the record.

[45] Some of the withheld information in the pages in question is solely the personal information of the third parties. It could reasonably be severed and withheld. However, the rest of the withheld personal information consists of intertwined personal information of the applicant and the third parties. I agree that the third parties' personal information cannot reasonably be severed from this intertwined personal information such that the applicant's personal information can be disclosed to her. The result would be disjointed, disconnected snippets of information—meaningless out of context. In arriving at

[32] Para. 24, NHA's initial submission; paras. 82-83, third parties' initial submission.
[33] Paras. 33-34, applicant's reply submission.

this conclusion, I have applied the principles expressed in previous cases about the interpretation and application of s. 4(2).[34] It follows that I find that s. 22(1) requires the NHA to refuse the applicant access to all of the withheld information on pp. 30, 32 (second withheld portion), 210-214, 226-229, 231 and 235.

Should the NHA prepare a summary under section 22(5)?

[46] The parties did not address s. 22(5). Bearing in mind the number of third parties involved and the principles for the application of this section in past orders,[35] I consider it possible for the NHA to prepare a summary of the applicant's personal information in pp. 30, 32 (second withheld portion), 210-214, 226-229, 231 and 235 without revealing the identities of the third parties who supplied the applicant's personal information in confidence. I make the appropriate order below.

4.0 CONCLUSION

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

1. I confirm that the head of the NHA is authorized to refuse access to the information the head withheld under s. 13(1).

2. I require the head of the NHA to comply with FIPPA by processing the applicant's request for access to pp. 196-197.

3. Subject to para. 4 below, I require the head of the NHA to refuse the applicant access to the information it withheld under s. 22(1).

4. I require the head of the NHA to comply with its duty under s. 22(5) to give the applicant a summary of her personal information in pp. 30, 32 (second withheld portion), 210-214, 226-229, 231 and 235.

5. As conditions under s. 58(4), I specify the following:

    (a) The NHA is to submit to me for approval a copy of the summary I order under para. 4 above, no later than 5 days before the date for compliance with this order, as FIPPA defines "day", that is, on or before April 14, 2010.

    (b) I require the head of the NHA to give the applicant and me evidence of its compliance with paras. 2 and 4 above within 30 days of the date of this order, as FIPPA defines "day", that is, on or before April 21, 2010 and, concurrently, to copy me on its cover

[34] See for example, Order 03-16, [2003] B.C.I.P.C.D. No. 16, at paras. 42-64.
[35] See Order 02-12, [2002] B.C.I.P.C.D. No. 12, for example.

letter to the applicant, together with a copy of the summary it prepares under para. 4 and any records it discloses as a result of my order under para. 2.

March 8, 2010

ORIGINAL SIGNED BY

Celia Francis
Senior Adjudicator

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