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Order F14-18

## UNIVERSITY OF NORTHERN BRITISH COLUMBIA

Ross Alexander  
Adjudicator

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**Summary:** A former University of Northern British Columbia (“UNBC”) student requested investigation materials in relation to complaints he made about a UNBC faculty member. UNBC withheld most of the responsive records on the basis that disclosure would be an unreasonable invasion of the privacy of third parties (s. 22). The adjudicator required UNBC to withhold some information in the records. However, there was other information UNBC was required to disclose.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, s. 22.

**Authorities Considered: B.C.:** Order 01-53, 2001 CanLII 21607; Order F12-12, 2012 BCIPC No. 17; Order F10-21, 2010 BCIPC 32; Order F08-04, 2008 CanLII 13322; Order F08-16, 2008 CanLII 57359; Order No. 62-1995, 1995 CanLII 416; Order F05-18, 2005 CanLII 24734; Order F05-02, 2005 CanLII 444; Order F14-10, 2014 BCIPC No. 12; Order F08-16, 2008 CanLII 57359.

### INTRODUCTION

[1] This inquiry involves a request for records by a former graduate student to the University of Northern British Columbia (“UNBC”). The requested records relate to UNBC’s investigation of the applicant’s complaints about a UNBC faculty member (“faculty member”) and his claims for payment for services connected to his graduate studies.

[2] UNBC initially disclosed one record, and denied access to the remaining responsive records on the basis that disclosure would be an unreasonable invasion of the privacy of the faculty member and others within the meaning of s. 22 of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”).

[3] The applicant requested a review of UNBC’s response by the Office of the Information and Privacy Commissioner (“OIPC”), and UNBC then released more information from the records. However, OIPC mediation did not resolve the remaining issues, and this matter proceeded to inquiry under Part 5 of FIPPA.

## **ISSUE**

[4] The issue in dispute is whether UNBC is required to refuse access to records because disclosure would be an unreasonable invasion of third party personal privacy under s. 22 of FIPPA.

[5] The applicant has the burden of proof in this inquiry pursuant to s. 57(2) of FIPPA.

## **DISCUSSION**

### *Background*

[6] The applicant is a former UNBC graduate student who made a number of complaints to UNBC about a faculty member. He also claimed that he was owed compensation for services he provided that were connected to his graduate studies.

[7] There was an investigation into the applicant’s complaints. After the investigation, UNBC sent the applicant a letter that enclosed a cheque for teaching assistant work and informed him that his other complaints were dismissed.

[8] The applicant requested copies of the records relating to the investigation of his complaints, including the records the faculty member received about the investigation, and how and why UNBC made its decisions. The applicant wants to know why UNBC dismissed his complaints. He believes the investigation was biased, and that UNBC does not want to release the investigation materials because the withheld information would disclose this alleged bias.

[9] In addition to UNBC’s letter to the applicant informing him of the outcome of his complaints, the records that UNBC has disclosed to the applicant to date

are those portions of an investigation timeline created by UNBC's investigator that relate to the applicant's participation in the investigation and a list of the evidence supplied by the applicant that the investigator considered. This list of evidence is a summary that was extracted from multiple sections of the investigation report.<sup>1</sup>

*Preliminary Matter*

[10] The applicant's initial request is for:

...access to records regarding the investigation performed by UNBC in response to my complaints against [the faculty member]. I'm also kindly requesting access to the records [the faculty member] received regarding the investigation and the records on how and why UNBC made their decision.

[11] UNBC asked the applicant for details of what types of records he was requesting, including what complaints he was referring to in his request. The applicant stated that he was seeking:

- The "records of review" of the applicant's complaints in three letters and one email in relation to the faculty member.
- The records the faculty member received regarding the investigation such as, for example, if he received a copy of the applicant's complaint letters.
- Records about how and why UNBC made its decision to dismiss the complaints that were dismissed.

[12] The applicant submits that UNBC has failed to respond to the second aspect of his request, which is for access to the records UNBC disclosed to the faculty member regarding the investigation.<sup>2</sup> Although not directly stated, I understand the applicant's submission to be that there are other records responsive to his request that UNBC has failed to identify. In other words, he is implying that UNBC has failed to comply with its obligation under s. 6(1) of FIPPA to respond to his request openly, accurately and completely.

[13] Whether UNBC conducted an adequate search and identified the responsive records as required by s. 6(1) of FIPPA is not identified as an issue in the Investigation Report or listed as an issue in the Notice of Inquiry. Further, the

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<sup>1</sup> UNBC reply submissions at para. 12.

<sup>2</sup> The applicant states that he wants UNBC to tell him whether it provided the applicant's complaints and related documents. However, FIPPA requires UNBC to respond to requests for records, not answer questions about the investigation.

applicant has not explained why he has raised this issue at this late stage. Therefore, I find that s. 6(1) is outside of the scope of this inquiry, and I will not consider it further.

### *Records*

[14] The records in dispute in this inquiry are:

- The investigation report relating to all of the applicant's complaints.
- Those portions of the investigation timeline that have not already been disclosed to the applicant.
- A letter from UNBC to the faculty member stating the outcome of the investigation.

### *Section 22*

[15] Section 22 applies to the personal information of third parties. Numerous orders have considered the approach to s. 22 of FIPPA.<sup>3</sup> It is first necessary to determine if the information in dispute is "personal information". If so, it must be determined whether the information meets the criteria identified in s. 22(4). If s. 22(4) applies, s. 22 does not require the public body to refuse to disclose the information. If s. 22(4) does not apply, it is necessary to determine whether disclosure of the information falls within s. 22(3). If s. 22(3) applies, disclosure is presumed to be an unreasonable invasion of third party privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, it is still necessary to consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy.

[16] UNBC submits that s. 22 applies to all the information in dispute. The applicant submits that he is entitled to all of the withheld information. He does not specifically refer to s. 22, but his submissions refer to certain topics that fit within a s. 22 analysis. The faculty member is relying on UNBC's submissions.

### *Personal Information*

[17] FIPPA defines "personal information" as recorded information about an identifiable individual other than contact information. I find that the information in dispute is personal information. Most of the information at issue relates to

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<sup>3</sup> For example, see Order 01-53, 2001 CanLII 21607.

interactions between the applicant and the faculty member at UNBC, although there is also information about other third parties.

*Does s. 22(4)(e) or s. 22(3)(d) apply?*

[18] Section 22(4)(e) states that disclosure of personal information about a public body employee's position, functions or remuneration is not an unreasonable invasion of the third party's privacy. However, s. 22(3)(d) states that disclosing personal information that relates to a third party's employment, occupational or educational history is presumed to be an unreasonable invasion of the third party's privacy. Therefore, personal information is treated very differently if it is about a public body employee's "job functions" than if it relates to the employee's "employment history".

[19] Sections 22(4)(e) and 22(3)(d) are the only relevant provisions under ss. 22(4) and 22(3) in this inquiry. UNBC submits that s. 22(3)(d) applies to all of the withheld information, and that s. 22(4)(e) does not apply to any information. The applicant does not provide submissions on these points.

[20] The tension between ss. 22(4)(e) and 22(3)(d), and the circumstances when each of these provisions apply, have been considered in numerous orders.<sup>4</sup> In the context of a workplace investigation report, former Commissioner Loukidelis determined in Order 01-53 that s. 22(3)(d) applies to information created in the course of a workplace complaint investigation that "consists of evidence or statements by witnesses or a complainant about an individual's workplace behaviour or actions".<sup>5</sup> He also found that s. 22(3)(d) applies to an investigator's observations or findings. Other orders have since considered this issue, often relying on Order 01-53. As Adjudicator Boies Parker stated in Order F12-12, "[o]ther orders have suggested that a third party's name, position and other identifying information will only fall within s. 22(3)(d) in certain contexts". Adjudicator Boies Parker also referred to Order F10-21, which stated:

[22] The next step is to decide if s. 22(4)(e) applies. Information on the name, title and remuneration (including severance) of a public body employee is normally the type of information that would fall under this section, as being associated with the individual who occupies a particular position within the public body. Information about the duties or responsibilities associated with a particular position that a given public body employee holds normally also falls under s. 22(4)(e). However, I agree with ICBC that the context in which the information in dispute appears in this case determines whether or not it falls under s. 22(4)(e) or s. 22(3)(d).

<sup>4</sup> For example Order F12-12, 2012 BCIPC No. 17; Order F10-21, 2010 BCIPC 32; Order F08-04, 2008 CanLII 13322.

<sup>5</sup> Order 01-53, 2001 CanLII 21607 at para. 32.

[23] In Order 01-53, Commissioner Loukidelis found that the third party's name and title, normally captured by s. 22(4)(e), were in that case part of the third party's employment history under s. 22(3)(d), but only because they appeared in the context of a workplace investigation:

[40] I accept that the name, and other identifying information of the third party, is the third party's personal information and that it is, in this context, information that "relates to" the third party's employment history under s. 22(3)(d). The third party's name and other identifying information is covered by s. 22(3)(d) only because that information appears in the context of a workplace investigation. This is not to say that, in the ordinary course, the name or other identifying information of a public body officer, employee or member is covered by s. 22(3)(d). Moreover, even in cases such as this, where the identifying information is covered by s. 22(3)(d), any third-party identifying information that in some way relates to the third party's job duties in the normal course of work-related activities falls into s. 22(4)(e). I refer here to objective, factual statements about what the third party she (*sic*) did or said in the normal course of discharging her or his job duties, but not qualitative assessments or evaluations of such actions. For a similar finding, see, for example, Order 00-53, [2000] B.C.I.P.C.D. No. 57.<sup>6</sup>

[21] Adopting the approach set out above, I find that one email reproduced in the investigation report falls within s. 22(4)(e).<sup>7</sup> This email contains personal information about the author of the email in the form of his name and the fact that he is one of the people who decides the curriculum for certain university courses. This information identifies the author in relation to his position or functions in the normal course of his work-related activities, and the personal information is not directly tied to the applicant's complaints and therefore the investigation. Since s. 22(4)(e) applies, disclosing this email would not be an unreasonable invasion of personal privacy and UNBC is required to disclose this email.

[22] There is other information in the investigation report that would ordinarily fall under s. 22(4)(e) because it is personal information about the name, position or functions of third parties. However, the information falls within s. 22(3)(d) in this case because it is in the context of a workplace investigation report.<sup>8</sup> For example, the applicant was a teacher's assistant for certain courses, and there is a list of those courses that names the professors who taught the courses. Section 22(3)(d) applies to the names in this case because it is in the context of a workplace investigation report that is connected to the applicant's complaints and discloses the identity of the faculty member.<sup>9</sup>

<sup>6</sup> Order F12-12, 2012 BCIPC 17 (CanLII).

<sup>7</sup> At pp. 15 and 16.

<sup>8</sup> At pp. 9, 10, 14, 18, 19, and 30.

<sup>9</sup> At p. 14.

[23] In addition to the name information described above, the remainder of the personal information is also presumed to be an unreasonable invasion of third party privacy under s. 22(3)(d). The records in this case, like those in Order 01-53, exist in the context of a workplace investigation. Further, most of the information was created in the course of the complaint investigation,<sup>10</sup> such as statements made by various people, the faculty member's actions during the investigation, or investigative findings that relate to the employment or educational history of the faculty member or other third parties.

[24] In summary, s. 22(4)(e) applies to one email in the investigation report, which means that its disclosure would not be an unreasonable invasion of third party privacy and UNBC is required to disclose it.<sup>11</sup> However, s. 22(3)(d) applies to the remainder of the personal information, which consists of the entire letter from UNBC to the faculty member, the withheld portions of the timeline and most of the investigation report. There is a presumption that disclosure of this information would be an unreasonable invasion of third party personal privacy. For the remaining information, I must now consider all relevant factors to determine whether this presumption is rebutted.

*Factors under Section 22(2)*

[25] Section 22(2) states in part:

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,  
...
- (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, and  
...

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<sup>10</sup> There is also documentary evidence in the investigation report that relates to the subject matter of the complaints.

<sup>11</sup> At pp. 15 and 16.

[26] UNBC submits that ss. 22(2)(e), (f) and (h) are the relevant circumstances in this case. The applicant does not specifically refer to s. 22(2). However, I will also consider the relevance of s. 22(2)(a) due to the applicant's belief that the withheld records will show that the investigation was biased and because of the nature of some of the information. I will also first consider the relevance of the fact that the applicant provided or knows some of the information at issue.

*Applicant supplied and knows some of the information*

[27] The investigation report contains verbatim quotes from the applicant's complaints to UNBC. The applicant clearly knows this information. While this is not a factor listed in s. 22, previous orders have stated information that is an applicant's own complaint is a significant factor that weighs in favour of disclosing this information. As Senior Adjudicator Francis stated in Order F08-16:

Disclosure to a complainant of the existence and nature of her or his own complaint, despite this information being personal information of the individual complained against, is not generally an unreasonable invasion of that individual's personal privacy because the complainant is already aware of the details of her or his own complaint. However, if the record in question aggregates or intertwines the information provided by the complainant with other complaints or with complaint information from other sources, then the balance under s. 22 will normally favour protection of the third party's privacy.<sup>12</sup>

[28] I adopt this approach from Order F08-16, and agree that it is not normally an unreasonable invasion of third party privacy to disclose an applicant's own complaint to the applicant.

[29] In this case, excerpts from the applicant's complaints are reproduced in the investigation report and are not intertwined with information from other sources. In my view, the fact that the applicant provided and knows the complaint information is a significant factor weighing in favour of disclosing this information.

[30] Further, the investigator also summarized the applicant's evidence in certain places in the report. The report also contains a few emails between the applicant and a third party relating to one of the applicant's complaints.<sup>13</sup> The applicant clearly knows this information since he is either the author or recipient of each of these emails. The applicant's knowledge of both of these types of information weighs in favour of disclosure.

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<sup>12</sup> Order F08-16, 2008 CanLII 57359 at para. 65.

<sup>13</sup> At pp. 21 and 22. The investigator was copied on each these emails.



*Public scrutiny – s. 22(2)(a)*

[31] Section 22(2)(a) is a factor that applies if disclosure is desirable for the purpose of subjecting the activities of a public body to public scrutiny. As stated in Order F05-18, the principle behind s. 22(2)(a) is that where disclosure of records would foster accountability of a public body, this may in some circumstances support a finding for the release of third party personal information.<sup>14</sup>

[32] The applicant submits that UNBC is refusing disclosure because of the faculty member's role at UNBC, speculating that releasing the information will reveal that the investigation was biased. UNBC submits that s. 22(2)(a) does not apply because it is obvious from the investigator's sworn affidavit, and on the face of the records themselves, that UNBC conducted a careful, thorough and proper investigation into the applicant's complaints.

[33] The investigation in this case was a workplace investigation conducted by UNBC in its role as the faculty member's employer pursuant to a collective agreement. In this respect, the investigation is similar to the one in Order No. 62-1995 where a school board issued disciplinary action against a teacher due to an altercation between the teacher and a student.<sup>15</sup> In that case, in which the applicant was the student's parent, former Commissioner Flaherty stated there was a distinction between an applicant's right to scrutinize the school board's "activities" (*i.e.*, was the applicant's complaint investigated or ignored) and the details of the decision made by the school board. In that case, s. 22(2)(a) applied to information about the investigation activities, but not details of the decision.

[34] I am satisfied the applicant already knows that UNBC investigated his complaints<sup>16</sup> and the general process of the investigation. The investigator has confirmed that he conducted the investigation pursuant to the faculty collective agreement, and the applicant has already received those portions of the investigation timeline that relate to his actions. The investigator also explained that he interviewed and corresponded with the applicant and the faculty member, reviewed the evidence that was provided to him, located and followed up on

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<sup>14</sup> Order F05-18, 2005 CanLII 24734.

<sup>15</sup> Order No. 62-1995, 1995 CanLII 416; Workplace investigations are somewhat contrasted for s. 22(2)(a) from self-governing professional body decisions. See, for example, Order F05-02, 2005 CanLII 444.

<sup>16</sup> The UNBC investigator did not decide one of the applicant's complaints. However, an email chain enclosed with the applicant's initial submissions confirms that the investigator met with the applicant and informed him of this.

other relevant evidence, and obtained a limited amount of information from other people when necessary. The investigator both met and emailed with the applicant, including after the investigation concluded.<sup>17</sup> He also recommended that the applicant involve a neutral party to support the applicant during the investigative process, which the applicant did.

[35] However, UNBC is withholding the entire investigation report, including the excerpt that sets out the scope of the investigation. It is also withholding portions of the investigation timeline, which provides more specific details about the investigative process than is known to the applicant. Given that the excerpts about the scope of the investigation and the portions of the timeline provide more concrete and detailed information about the investigation process than is known to him, I find that s. 22(2)(a) is a factor in favour of disclosing this information, notwithstanding the information and explanations that UNBC has already provided about the investigation.

[36] For the remaining information in the investigation report and the letter from UNBC to the faculty member, I am not satisfied that disclosure is necessary to understand what took place in the investigation because the information is about the merits of the complaints, not the investigation “activities”. Further, in my view, disclosing the withheld information about the merits of the complaints is not desirable for the purpose of subjecting the activities of UNBC to public scrutiny in this case. Therefore, while I understand the applicant’s desire to know more details about why the investigator dismissed his complaints, I find that s. 22(2)(a) is not a relevant factor for this remaining information.

*Supplied in confidence – s. 22(2)(f)*

[37] UNBC argues that the information in the records was supplied in confidence within the meaning of s. 22(2)(f). It states that its investigation was conducted pursuant to a collective agreement requiring UNBC to maintain the confidentiality of the investigative process and its findings.

[38] The investigator states that he assured participants that the confidentiality of the investigation would be strictly maintained, and he investigated each of the applicant’s complaints on a highly confidential basis. He also states that the report was only to be reviewed by a few UNBC and faculty association executives.<sup>18</sup> The investigator lists the names of the individuals who he knows to be aware of the investigation, and provides an explanation of which portion(s) of the information each person knows. This list only contains a handful of names, and the applicant does not dispute the contents of the list.

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<sup>17</sup> This is confirmed by emails enclosed with the applicant’s initial submissions.

<sup>18</sup> The Interim President and Vice Chancellor, the Provost and the President of the UNBC Faculty Association.

[39] The investigator's evidence satisfies me that the information supplied to him was supplied in confidence, with two exceptions. The first is a statement in the investigation report that was made by a third party to the investigator that relates to an email exchange between the applicant and the third party.<sup>19</sup> In my view, the content of the statement itself and the investigator's findings regarding the related complaint suggest that this information was intended to be forwarded to the applicant. Given this, and absent evidence to the contrary, I find that this statement was not supplied in confidence under s. 22(2)(f).

[40] The second exception relates to information supplied by the applicant to the investigator. The fact that it was originally submitted in confidence does not mean that s. 22(2)(f) is a factor in favour of withholding the information supplied by the applicant. Previous orders such Order 01-53 have stated that s. 22(2)(f) does not support withholding information that was supplied by the applicant because he or she is the source of the information.<sup>20</sup> In this case, some of the information at issue – such as the complaints and the applicant's evidence – was supplied by the applicant, so s. 22(2)(f) does not apply to it.

[41] Based on the discussion above, s. 22(2)(f) is not a relevant factor for information that was provided by the applicant or for the statement made by a third party to the investigator.<sup>21</sup> However, s. 22(2)(f) applies to all of the other information that was supplied to the investigator.

*Unfair harm and unfair damage to reputation - ss. 22(2)(e) and (h)*

[42] Section 22(2)(e) requires a public body to consider whether disclosure of a third party's personal information will unfairly expose the third party to financial or other harm. Section 22(2)(h) requires a public body to consider whether disclosure of a third party's personal information may unfairly damage the third party's reputation.

[43] UNBC jointly addresses ss. 22(2)(e) and (h). UNBC submits that disclosure of the records could unfairly damage the professional, academic and personal reputations of the faculty member and other third parties, and that disclosure would unfairly expose them to harm. The investigator explains in his affidavit how faculty member job performance is evaluated, and states that in his opinion there would be serious harm to the faculty member's career and reputation if the records are released due to these criteria and nature of the academic community. There are also *in camera* submissions on this point about why there would be harm from disclosure.

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<sup>19</sup> At p. 22.

<sup>20</sup> Order 01-53, 2001 CanLII 21607 at para. 62. Also see F14-10, 2014 BCIPC No. 12 at para. 30

<sup>21</sup> At pp. 7, 9, 11, 13, 17, 20, 22, 24, 25 and 26.

[44] The applicant responds by stating that his complaints were dismissed, so disclosure will not harm the faculty member's reputation unless UNBC believes it did something wrong or is hiding something.

[45] The issue of unfair exposure to harm and damage to reputation in the context of a workplace investigation was dealt with in Order 01-53, and many of the same principles from that order apply here. In Order 01-53, the applicant complained to her employer about another employee, and the inquiry related to the resulting investigation report and other investigation materials. Order 01-53 addressed the issue of whether ss. 22(2)(e) and (h) apply to investigation records when the applicant is the person who made the complaint. In that order, former Commissioner Loukidelis stated:

Arguments as to unfair harm or damage to reputation fail to account for the fact that the applicant does not need records of the allegations, or of her evidence, to harm the third party's reputation. As I also noted above, the investigation report exonerated the third party entirely. If the applicant nonetheless were to attempt to besmirch the third party's reputation, she would do so at risk of liability in damages for defamation. The fact is that any damage she might do to the third party's reputation would not hinge on her receiving copies of the allegations that she made or records of the evidence she gave to the investigator in support of the allegations. I am not persuaded that a reasonable person would give any more credence to the applicant's allegations because she brandishes a copy of a School District record in which her own allegations are documented, without supporting evidence or any validating comment by the School District.<sup>22</sup>

[46] In my view, the principle in the above quote applies in this case.

[47] In this case, the potential damage to reputation and exposure to harm of the faculty member and other third parties relates to connecting them to the allegations. However, the applicant already knows the identity of the faculty member and other third parties named in the complaints, as well as the nature of the complaints, because they are his complaints. Therefore, the applicant is already in a position to expose the faculty member and other third parties to harm and damage their reputations by connecting them to the allegations – at risk of liability in damages for defamation. Further, since most of the applicant's complaints were dismissed and UNBC has provided written acknowledgment and compensation for the applicant's claim for compensation for teaching assistant work, the applicant could go no further with the report than he could already do in making unsubstantiated allegations about the faculty member and other third parties. I am therefore not satisfied that ss. 22(2)(e) and (h) weigh against disclosure in this case.

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<sup>22</sup> Order 01-53, 2001 CanLII 21607 at paras. 78 and 79.

*Section 22(1)*

[48] To summarize, the records in dispute contain personal information. Disclosure of one email in the investigation report would not be an unreasonable invasion of personal privacy because it is about a third party's position, function or remuneration under s. 22(4)(e).<sup>23</sup>

[49] With respect to the remaining personal information at issue, I find there is a presumption that its disclosure would be an unreasonable invasion of third party privacy under s. 22(3)(d). In determining whether this presumption has been rebutted, I have considered the relevant circumstances, including those listed in s. 22(2), to determine if the presumption has been rebutted. Section 22(2)(f) is a factor in favour of withholding most of the information, and s. 22(2)(a) is a factor in favour of disclosing the investigation timeline and a small excerpt from the investigation report about the scope of the investigation. Further, the fact that the applicant knows the content of his complaint and other information in the investigation report is a significant factor that favours disclosure of that information.

[50] After considering all of the relevant factors, I find the presumption that disclosure would be an unreasonable invasion of personal privacy has been rebutted for approximately half of the information.

[51] Among the information where the presumption has been rebutted is for the complaint and evidence the applicant provided for the investigation. It would not be an unreasonable invasion of third party privacy to disclose this information to the applicant, which he already knows because he is the source of the information. I also find that the presumption has been rebutted for the emails between the applicant and the third party, since the applicant already knows the contents of those emails.<sup>24</sup> I therefore find that s. 22 does not apply to this information, and require UNBC to provide it to the applicant.

[52] I also find that the presumption has been rebutted for some of the other information in the report. I reach this conclusion, for example, for the information outlining the scope of the investigation, as well as a list of monies awarded to the applicant. Most of this information where the presumption is rebutted is from other records that are directly copied or transcribed into the investigation report. One of these records is a website printout.<sup>25</sup> There is also information from the applicant's student file that is primarily about the applicant, but also contains personal information about the faculty member. In my view, it would not be an

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<sup>23</sup> At pp. 15 and 16.

<sup>24</sup> At pp. 18, 21 and 22.

<sup>25</sup> At pp. 9 and 10.

unreasonable invasion of the faculty member's privacy to disclose this information.

[53] Further, there is an email in the investigation report that is primarily about the applicant, but in which the author of the email expresses an opinion.<sup>26</sup> The personal information about the author is limited, provides context to the other information in the email, and, if anything, casts a favourable light on the author. In my view, disclosure of this information would not be an unreasonable invasion of the author's personal privacy.

[54] I also find the presumption that disclosure would be an unreasonable invasion of personal privacy has been rebutted for the statement by a third party updating the investigator as to the subject matter of an email exchange between the applicant and the third party.<sup>27</sup> This statement is more about the applicant than anyone else and refers to an action that, if anything, reflects on the third party in a positive light. Further, the context and content of the information suggests that the third party expected the investigator to tell the applicant this information. I require UNBC to disclose this information.

[55] For all other information in the investigation report, most of which relates to the faculty member's evidence and the investigator's comments, I find that there are no factors sufficient to rebut the presumption that disclosure would be an unreasonable invasion of third party privacy. I reach this same conclusion for UNBC's letter to the faculty member about the outcome of the investigation.

[56] The remaining record at issue is the investigation timeline, which is mostly about the faculty member's actions and participation in relation to the investigation. In Order F08-16, an investigation by a school district into allegations against a teacher, Senior Adjudicator Francis stated about similar types of information:

Particulars of how the Teacher chose to participate in the investigation (*i.e.*, to provide information to and meet with the investigator) have also been withheld. Although this information is arguably mostly "about" the investigation process and only marginally "about" the Teacher, I have erred on the side of protection of the Teacher's privacy. Information about other identifiable third parties (*i.e.*, other students, parents and collaterals who provided documents or were interviewed) has also been withheld as their personal information.<sup>28</sup>

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<sup>26</sup> At p. 27. The email refers to an interaction between the applicant and another unidentified individual. Because that individual is not identifiable, the reference to him is not personal information.

<sup>27</sup> At p. 22.

<sup>28</sup> Order F08-16, 2008 CanLII 57359 at para. 77.

[57] I reach a similar conclusion here as in Order F08-16. In my view, while the withheld information in the investigation timeline is arguably mostly “about” the investigative process and s. 22(2)(a) is a relevant factor, I am erring here on the side of protecting the faculty member’s privacy. I am not satisfied that the presumption that disclosure of the withheld portions of the investigation timeline would be unreasonable has been rebutted.

[58] In summary, I find that UNBC is required to withhold information in dispute under s. 22 because disclosure would be an unreasonable invasion of third party privacy. However, it must disclose portions of the investigation report.

## **CONCLUSION**

[59] For the reasons given, under s. 58 of the Act, I order that UNBC is required to:

- (a) refuse to disclose to the applicant the information in dispute under s. 22 of FIPPA, subject to (b); and
- (b) give the applicant access to the information in the report that I have highlighted in a copy of the record that will be sent to UNBC along with this decision by **August 1, 2014**, pursuant to s. 59 of FIPPA. UNBC must concurrently copy me on its cover letter to the applicant, together with a copy of the records it provides to the applicant.

June 19, 2014

## **ORIGINAL SIGNED BY**

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Ross Alexander, Adjudicator

OIPC File No.: F12-49518