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Order F14-23

MINISTRY OF JUSTICE (CIVIL FORFEITURE OFFICE)

Elizabeth Barker
Adjudicator

July 23, 2014

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Summary: The applicant requested all records related to the Ministry's processing of an earlier request for records regarding the Civil Forfeiture Office. The Ministry refused to disclose to the applicant two names and one work telephone number of the Civil Forfeiture Office's employees because it believed that disclosure would endanger their lives or physical safety (s. 15(1)(f)) and disclosure could reasonably be expected to threaten the employees' safety or mental or physical health (s.19(1)(a)). The adjudicator found that neither s. 15(1)(f) or s.19(1)(a) authorized refusing to disclose the information in dispute.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 15(1)(f) and 19(1)(a).

Authorities Considered: B.C.: Order 00-28, 2000 CanLII 14393 (BC IPC); Order 01-15, 2001 CanLII 21569 (BC IPC); Order 00-01, 2000 CanLII 9670 (BC IPC); Order 00-10, 2000 CanLII 11042 (BC IPC); Order F07-15, 2007 CanLII 35476 (BC IPC); Order No. 117-1996, 1996 CanLII 1046 (BC IPC).

Cases Considered: *R v. Mohan*, [1994] 2 S.C.R. 9; *British Columbia Lottery Corporation v. Skelton*, 2013 BCSC 12.

INTRODUCTION

[1] The applicant, a journalist, requested access to all records related to the processing of an earlier request for information regarding the names of the Civil

Forfeiture Office (“CFO”) staff and the professional background of its director. The earlier request was the subject of an inquiry and Order F14-22, [2014] B.C.I.P.C.D. No. 25.

[2] In the present case, the Ministry disclosed some of the requested information but withheld the rest under ss. 15 and 19 of FIPPA. The applicant disagreed with the Ministry’s response and requested the Office of the Information and Privacy Commissioner (“OIPC”) conduct a review. The matters in dispute were not resolved during the review, and the applicant requested that they proceed to inquiry under part 5 of FIPPA.

[3] Both parties provided initial and reply submissions. The Ministry sought and received prior approval to submit parts of its two supporting affidavits *in camera*.

[4] In addition, the Ministry sought and received permission to submit as evidence an email sent to the CFO after the close of the inquiry. The applicant did not object to the email being admitted into evidence. He was sent a copy of the email and stated that he would not make a submission in response to that additional evidence.

ISSUES

[5] The issues in this inquiry are:

1. Is the Ministry authorized by s. 15(1)(f) to refuse access to the requested information because disclosure would endanger the life or physical safety of a law enforcement officer or any other person?
2. Is the Ministry authorized by s. 19(1)(a) to refuse access to the requested information because disclosure could reasonably be expected to threaten anyone’s safety or mental or physical health?

DISCUSSION

[6] **Background**—The *Civil Forfeiture Act* provides a mechanism whereby the CFO’s director (also known as the executive director) may apply to the BC Supreme Court for an order forfeiting to the Province property that is the proceeds of unlawful activity or is an instrument of unlawful activity. The CFO’s director reports to the Assistant Deputy Minister for the Ministry’s Community Safety and Crime Prevention Branch.

[7] Part 3.1 of the *Civil Forfeiture Act* provides for an “administrative forfeiture” process that does not require that forfeiture commence by way of court proceedings, if the property in question is valued at \$75,000 or less and is not real estate. In the case of administrative forfeiture, if a notice of dispute is received within the requisite time period, the director must either commence court proceedings or withdraw the administrative forfeiture proceedings.

[8] Whether forfeiture proceedings are initiated in court or administratively, they are not reliant on criminal charges or convictions arising from the alleged unlawful activity.

[9] **Records at Issue**—The Ministry determined that a four page email exchange with the subject heading *New FOI request – JAG-2012-01673 Civil Forfeiture Office* is responsive to the applicant’s request. Three CFO employees participated in the email exchange: the director (who at that time was the deputy director and was promoted from within the CFO), the assistant deputy director and the executive assistant.

[10] The Ministry has refused to disclose to the applicant the names of the assistant deputy director and the executive assistant. Originally, the Ministry also refused to disclose the director’s name and his email address. However, it has revisited that decision and explains in its inquiry submissions that it now only objects to disclosing his work phone number. Therefore, the information in dispute in this inquiry is:

- the name of the assistant deputy director,
- the name of the executive assistant, and
- the director’s work phone number.

PRELIMINARY MATTERS

Expert opinion evidence

[11] The Ministry’s submission includes an affidavit from its strategic lead of Corporate Security and Risk (“strategic lead”) who provides security and risk assessment services to the Ministry, including security for the Ministry’s Criminal Justice Branch employees involved in the prosecution of organized crime and terrorism offences. The Ministry submits that the affidavit of the strategic lead is the type of expert evidence relating to s. 19 [sic] should be accorded deference.¹

[12] As a general rule, a witness may not give opinion evidence but may only testify as to matters within her or his knowledge, observation or experience. Expert evidence is an exception to this general rule. Experts are

¹ Ministry’s initial submissions, paras. 5.16 and 5.42-43.

allowed to provide opinions in regard to matters that are likely to be beyond the fact-finder's knowledge or experience.² The four criteria for expert opinion evidence were set out by the Supreme Court of Canada in *R v. Mohan*³ as:

- (a) relevance;
- (b) necessity in assisting the trier of fact;
- (c) the absence of any exclusionary rule;
- (d) a properly qualified expert.

[13] If the evidence meets the four part test, then it is admissible as “expert evidence”. If it does not, I may still admit it, given the flexible rules of evidence in administrative proceedings.

[14] The Ministry did not provide the strategic lead's résumé, but I have gleaned information about his professional background from his affidavit, in particular exhibit C which contains a brief biography. Based on that, I find he has specialized knowledge and experience regarding the security situation of the Ministry. I also find that the strategic lead's opinions are relevant to the question of whether disclosure of the CFO employees' identities could reasonably be expected to threaten their safety or mental or physical health (s. 19) or endanger the life or physical safety of a law enforcement officer or any other person (s. 15). Regarding the third criteria in *R. v. Mohan*, if I find that the evidence is admissible as expert evidence, there is no exclusionary rule that would otherwise render it inadmissible.

[15] However, I do not find that his opinion evidence meets the criteria of “necessity” which is explained in *R. v. Mohan* as follows:

This pre-condition is often expressed in terms as to whether the evidence would be helpful to the trier of fact. The word "helpful" is not quite appropriate and sets too low a standard. However, I would not judge necessity by too strict a standard. What is required is that the opinion be necessary in the sense that it provide information "which is likely to be outside the experience and knowledge of a judge or jury": as quoted by Dickson J. in *R. v. Abbey*, supra. As stated by Dickson J., the evidence must be necessary to enable the trier of fact to appreciate the matters in issue due to their technical nature. In *Kelliher (Village of) v. Smith*, [1931] S.C.R. 672 at p. 684, this Court, quoting from Beven on Negligence (4th ed. 1928), at p. 141, stated that in order for expert evidence to be admissible, "[t]he subject-matter of the inquiry must be such that ordinary people are unlikely to form a correct judgment about it, if unassisted by persons with special knowledge"...⁴

² *British Columbia Lottery Corporation v. Skelton*, 2013 BCSC 12, at para. 55.

³ [1994] 2 SCR 9. See para. 17.

⁴ *Ibid.*, at para. 22.

[16] There is nothing scientific, technical or particularly complex about the matters in this inquiry, so I do not consider the strategic lead's opinions to be necessary to my deliberations or understanding of the evidence. I will be able to draw my own inferences and reach my own conclusions based on the facts as I find them after considering all of the evidence and argument.

[17] In support of its submission that the strategic lead should be viewed as providing expert evidence, the Ministry also points to Order No. 117-1996.⁵ In that case, the Commissioner deferred to the opinion of a psychiatrist when deciding that disclosure of an applicant's medical records could reasonably be expected to result in immediate and grave harm to the applicant's safety or mental or physical health, under s. 19(2). The Commissioner explained that he was "strongly inclined to defer to professional expertise in matters such as this one..." In my view, he was referring to complex medical or psychiatric matters, which clearly require medical study and expertise to properly understand. I do not take Order No. 117-1996 as suggesting that similar deference must be given in a case of this nature, which deals with a very different subject matter. I simply am not persuaded that an expert opinion is necessary or that I should defer to the strategic lead's opinion on the very matter at the heart of this case.

[18] In conclusion, I do not find that the strategic lead's opinions qualify as expert evidence. However, I recognize that he is very knowledgeable in the area of security and risk within the Ministry and that his evidence is relevant and useful to my analysis. So, I will consider his evidence but will give no weight to his opinions on the actual issues that I must decide (*i.e.*, whether disclosure of the CFO employees' identities could reasonably be expected to threaten their safety or mental or physical health (s. 19) or endanger the life or physical safety of a law enforcement officer or any other person (s. 15)).

[19] **Threat to Safety or Mental or Physical Health**—The Ministry relies on the more fulsome submissions it made in relation to s. 19(1)(a) to support its refusal to disclose CFO employee names under s. 15.⁶ For that reason, I will address s. 19 first.

[20] Section 19(1)(a) of FIPPA authorizes a public body to refuse to disclose information to an applicant if the disclosure could "reasonably be expected to threaten anyone else's safety or mental or physical health". In Order 00-28,⁷ the Commissioner said the following about the burden that rests on a public body seeking to apply s. 19(1)(a):

As I have said in previous orders, a public body is entitled to, and should, act with deliberation and care in assessing – based on the evidence

⁵ 1996 CanLII 1046 (BC IPC).

⁶ Ministry's initial submission, para. 5.71.

⁷ 2000 CanLII 14393 (BC IPC).

available to it – whether a reasonable expectation of harm exists as contemplated by the section. In an inquiry, a public body must provide evidence the clarity and cogency of which is commensurate with a reasonable person's expectation that disclosure of the information could threaten the safety, or mental or physical health, of anyone else. In determining whether the objective test created by s. 19(1)(a) has been met, evidence of speculative harm will not suffice. The threshold of whether disclosure could reasonably be expected to result in the harm identified in s. 19(1)(a) calls for the establishment of a rational connection between the feared harm and disclosure of the specific information in dispute.

It is not necessary to establish certainty of harm or a specific degree of probability of harm. The probability of the harm occurring is relevant to assessing whether there is a reasonable expectation of harm, but mathematical likelihood is not decisive where other contextual factors are at work. Section 19(1)(a), specifically, is aimed at protecting the health and safety of others. This consideration focusses on the reasonableness of an expectation of any threat to mental or physical health, or to safety, and not on mathematically or otherwise articulated probabilities of harm...⁸

[21] I agree with the above statement of the law and apply it to the facts in this case.

[22] **Ministry's Submissions**—The Ministry submits that disclosure of the information in dispute could reasonably be expected to threaten the safety or mental or physical health of third parties.⁹

Director's evidence

[23] The Ministry provides an affidavit from the individual designated under s. 21 of the *Civil Forfeiture Act* as the director of the CFO. He explains that as the CFO's spokesperson, his identity is already publicly known, so he does not object to being identified in response to the applicant's request. He has been provided with enhanced security due to his high level of public exposure.

[24] The director explains that in many of the forfeiture cases the individuals claiming ownership of the property in question are members of organized crime groups that engage in violence and criminal activity to control drug territories. An individual whose property is in dispute can be very angry with the CFO and this "creates real security concerns for CFO staff given the types of people involved."¹⁰ The CFO has dealt with files that involve individuals charged or

⁸ Order 00-28, 2000 CanLII 14393 (BC IPC) at p. 2.

⁹ Ministry's initial submission, paras. 5.06 and 5.67.

¹⁰ Director's affidavit, para 21.

convicted with violent offences, such as murder, kidnapping, assaults, extortion, criminal harassment, uttering threats and weapons possession.

[25] He explains that, since its inception, the CFO has followed the advice of the Ministry's Corporate Security office including: not revealing the identity of its staff or the location of its office in any of its communications or in the internal or public provincial government directories, giving staff security training, and having its own physical and electronic security arrangements that are separate and/or in addition to the normal government security systems. He explains that CFO employees have been directed not to provide callers with their names or information about the location of the office under any circumstances. He predicts that if their identities are disclosed, "some staff may seriously consider leaving the office and moving to a different office in Government unless extremely significant security enhancements were added."¹¹

[26] The director explains that there "have been many occasions where CFO employees have taken calls from irate individuals with significant criminal records".¹² He adds, "CFO staff can find it extremely challenging and sometimes very concerning to have to speak with persons involved in organized crime that may have also been convicted of drug and violent offences."¹³ By way of illustration, he provides the following examples:¹⁴

- a) In June 2012, an individual who was involved in administrative forfeiture proceedings sent "threatening emails" to CFO staff and CFO legal counsel. The emails were referred to the BC Sheriff's Threat Assessment Unit. The individual was known to associate with a group called "Freedom of the Land", which is considered to be a risk to government employees. It is unclear if the director personally saw the contents of the emails. No detail was provided about what the emails actually said or how the Sheriff's office responded.
- b) In January 2013, a male who was involved in administrative forfeiture proceedings was "verbally angry on phone with a CFO employee and intimated that, as a native person, he was considering attending office to set up a protest." No further detail is provided.
- c) A male who was involved in administrative forfeiture proceedings was "verbally angry and threatening with staff." No detail is provided about what was actually said.

¹¹ Director's affidavit, para. 31

¹² Director's affidavit, para. 20.

¹³ Director's affidavit, para. 24.

¹⁴ Director's affidavit, para. 24.

[27] The director explains that the CFO has particular concerns about identifying its employees in light of its administrative forfeiture process, which does not commence by way of court proceedings. For that process, CFO employees instead of CFO legal counsel deal with the individuals whose property is subject to forfeiture. He provides no detail, however, about the nature of the work tasks and who performs them, or if staff interact face-to-face with individuals who are involved in the administrative forfeiture process.

[28] The director also provides multiple examples of the safety-related experiences of the CFO's legal counsel including verbal threats and intimidation from defendants and their associates and the need for police and sheriff protection on more than one occasion both inside and outside of court.¹⁵ The director also states that he was told by the CFO's acting deputy director that some of the defendants in forfeiture proceedings against Hells Angels' BC clubhouses have been investigated for "intimidating witnesses and making threats against prosecutors."¹⁶ Although he does not expand on this, I understand that by using the term "prosecutors" in that context he is referring to crown counsel, not CFO staff.

[29] Regarding his own personal safety-related experiences, the director provides two examples. In May 2012, a man who was subject of administrative forfeiture "made an angry and threatening call and verbally advised me [*i.e.*, the director] that the CFO had no right to initiate proceedings against seized cash and that CFO staff had better 'watch out'".¹⁷ In addition, he and CFO legal counsel once had to conduct an examination for discovery in a location surrounded by a police SWAT team because the person being examined had recently been shot and was vulnerable to a further gun attack. He also adds, without elaborating, that some of the CFO cases require evaluation by the BC Sheriff's Threat Assessment unit.¹⁸

Strategic lead's evidence

[30] As mentioned in the preliminary issues above, the Ministry's submissions also include an affidavit from the Ministry's strategic lead of Corporate Security and Risk. His evidence does not include examples or details of threats to the CFO and its staff. Instead, he refers to reports, news articles and his experiences regarding the safety risks to individuals working in the North American justice system in general, such as police, judges, prosecutors, lawyers, correctional officers and probation workers.

¹⁵ Director's affidavit, para. 27.

¹⁶ Director's affidavit, para. 17.

¹⁷ Director's affidavit, para. 24.

¹⁸ Director's affidavit, paras. 29.

[31] Regarding the types of threats against such justice officials in British Columbia, in particular, he says that they include verbal abuse, intimidation within the courts, stalking, threats to rape and kill, suspicious mail, social engineering and assaults. He says that it also includes gang members appearing in court wearing bullet proof vests or arriving in armoured vehicles with their own security teams. For example, he relates how a prosecutor was told “you better watch your [expletive] back, you’re [expletive] dead” after he helped convict two BC Hells Angels on drug charges. In the last two years the strategic lead has helped with the relocation of two prosecutors who received threats to their safety. He also explains that the Ministry’s Criminal Justice Branch has seen an increase in “security related files” between 2007 and 2012; that in 2003 the Vancouver Courier published an article in which three “justice officials” spoke of the threats they received and the safety precautions they needed to take; that he has “60 justice personnel under protective services”; and an ICBC employee inappropriately accessed personal information and gave it to an individual who attempted to burn down a correctional officer’s house.¹⁹

[32] In recent years, he has made several recommendations to the Ministry in order to deal with safety risks to its various employees, including putting address blockers on BC Online,²⁰ delisting phone numbers, upgrading physical security on residences and providing police/sheriff escorts and protection for residences. He also explains how BC Online could be used to find out where an individual lives once their identity is known.

[33] Regarding the CFO employees specifically, the strategic lead explains that he “dealt with the CFO in recent years in dealing with security issues relating to their staff.”²¹ He provides no particulars. However, he does express the following opinions:

Based on my experience dealing with security issues for the Ministry of Justice, I believe that CFO staff are confronted with the same level of risk in relation to their personal safety as prosecutors. It is for that reason that the Ministry applies the same security measures to CFO staff whose identities are made public through the filing of their affidavits in court as it does to provincial prosecutors. However, CFO staff whose identities have not been made publicly [sic] do not enjoy the same security protection. As such, their health and safety will be threatened if their identities are revealed through a FOI request.

...

In my view, the safety risk to CFO staff in British Columbia may be higher than it is in relation to many other staff in the justice system. I say that

¹⁹ Strategic Lead’s affidavit, paras. 12, 7, 20, 9, 8, 25, 21.

²⁰ BC Online allows account holders access to provincial and municipal government information including land title information.

²¹ Strategic Lead’s affidavit, para 22.

because CFO staff are seen “going after” the clubhouses of organized crime, including the Hells Angels, and other assets, including cash, of known offenders. In the organized crime community, successfully committing a criminal act against CFO employees and going to jail for such an act may be seen as a badge of honour in that community. It would be a way of trying to climb the organization hierarchy of such organizations.²²

[34] **Applicant’s Submissions**—The applicant submits that the names of CFO employees should be public in the same way as the names of other officials who deal with organized crime, such as judges, crown prosecutors and some police officers. In his view, CFO employees are at no more danger from dealing with angry individuals with criminal records than employees in other public agencies, such as the Ministry of Social Development, for example. He also provides a copy of a 2012 article he wrote for the *Times Colonist* newspaper in which he explains how he learned that several civil forfeiture offices in other provinces do not refuse to identify their staff or the location of their offices.

[35] The applicant explains that the newspaper he works for previously requested the Ministry provide any security assessments related to employee safety at the CFO. The information that the Ministry provided in response does not satisfy the applicant of the legitimacy of the Ministry’s security concerns.

[36] The applicant also submits that s. 2 of FIPPA states that the purpose of FIPPA is to make public bodies more accountable to the public. The applicant submits that accountability is not achieved when the Ministry is allowed to hide the identities of its CFO staff and the location of the CFO office.

Analysis – s. 19(1)(a)

Assistant deputy director’s name

[37] The identity of one of the two individuals to whom the information in dispute relates (*i.e.*, the assistant deputy director) is already in the public domain. The Ministry explains:

The Assistant Deputy Director with CFO, [name], has attended Examinations for Discovery, trials and sworn affidavits in the course of his day to day practice with the CFO. In addition he was a presenter at a CLE course related to civil forfeiture and this information is available online at the CLEBC website. The Assistant Deputy Director has been provided with enhanced security due to his high level of exposure. Although that third party’s name can be found in physical court files, the Ministry submits that there is a significant difference between information being available in a physical court file and information being available on the internet. There

²² Strategic Lead affidavit, paras. 24 and 26.

is nothing to stop this applicant from publishing the names at issue in this inquiry, including on the internet.²³

[38] In other words, although the name of assistant deputy director is already publicly accessible, the Ministry submits that it should not be disclosed in the context of this FIPPA request because there are no restrictions on what the applicant can do with it, including publishing it or putting it on the internet. I do not understand this argument because the potential for further disclosure that the Ministry fears already exists. Clearly, the identity of the assistant deputy director has not been kept secret. One could also learn his name by requesting the publicly accessible court registry file related to any case in which he swore an affidavit or participated in court proceedings. For the same reason, his name is also known to civil forfeiture defendants whose cases he is involved in. However, more importantly, I do not see how further disclosure of the assistant deputy director's name could reasonably be expected to result in the s. 19 harms, and the Ministry does not explain.

[39] Section 19(1)(a) of FIPPA authorizes a public body to refuse to disclose information to an applicant if the *disclosure* could reasonably be expected to threaten anyone else's safety or mental or physical health. I am not satisfied that disclosure of information which is already in the public domain qualifies for protection under s. 19(1)(a). That is because any threat that might flow from the individual's identity being known already exists. Therefore, I find that the Ministry has failed to demonstrate a clear and rational connection between disclosure of the assistant deputy director's name and a reasonable expectation of a threat to his safety or mental or physical health.

Executive assistant's name

[40] The only name that is not already in the public domain is that of the executive assistant. The Ministry explains that the executive assistant is part of the CFO's "support staff" and her name is not in any CFO related communications or court records.²⁴ As support staff, she does not receive the enhanced security provided to other staff. Therefore, I conclude that it was the support staff that the director meant when he says, "some staff may seriously consider leaving the office and moving to a different office in Government unless extremely significant security enhancements were added."²⁵

[41] I have considered with great care the information provided in this inquiry both for and against disclosure of the identities of the CFO's employees. This was challenging due to the fact that a significant part of the Ministry's evidence, namely, most of the director's evidence about what he describes as threatening

²³ Ministry's initial submission, para. 5.65.

²⁴ Ministry's initial submission, para. 5.62.

²⁵ Director's affidavit, paras. 30-31

behaviour towards CFO employees and CFO legal counsel is hearsay. I expect that is the reason why detail of what was actually communicated is lacking in most of his examples involving CFO staff. The Ministry does not explain why it did not provide direct evidence from its other employees or from CFO legal counsel, even on an *in camera* basis. I have considered this hearsay, although I treat it with caution given its lack of detail and the questions that it leaves unanswered about the specifics of the work experiences of CFO staff.²⁶

[42] It is evident that given the nature of the CFO's work there is anger directed at its staff. For example, on occasion defendants or other individuals involved in CFO proceedings have expressed their anger when communicating by phone and email with the CFO's staff. While dealing with angry individuals may not be uncommon when working with the public, I believe that the segment of the public that the CFO deals with would cause increased concern. For instance, some of the defendants involved in civil forfeiture proceedings have been convicted and/or suspected of committing dangerous crimes and others are involved in organized crime groups.

[43] The strategic lead's evidence provides context about the justice system environment in which the CFO carries out its activities. However, other than his observation that CFO employees deal with dangerous individuals, some of who may be involved in organized crime and drugs, he does not explain what information he used to conclude that CFO employees face the same level of risk as prosecutors. In fact, his evidence does not appear to recognize the differences between the various job functions within the CFO. There are no obvious similarities between the job duties of a prosecutor and those of the CFO employees, and in particular the executive assistant. The Ministry provided no information about the job functions or duties of the different CFO employees' jobs, so if there are similarities between their work and that of prosecutors or other justice system officials for which he provides threat examples, it has not been explained in the inquiry materials. The only common thread that I see is that they all deal with a particular subset of the public: individuals who have been convicted of, or are suspected of having committed, serious crimes.

[44] The Ministry does not actually explain the nature of the feared threats to the safety or physical or mental health of the CFO employees if their identities are disclosed. However, I understand the Ministry to be arguing that they will be similar to what the CFO's legal counsel experiences or what the strategic lead describes other justice system participants have experienced. That being the case, one would expect to see similar evidence of threats to the CFO employees

²⁶ This is consistent with the approach taken by the Commissioner in earlier s. 19(1)(a) inquiries where hearsay evidence was provided: Order 01-15, 2001 CanLII 21569 (BC IPC); Order 00-01, 2000 CanLII 9670 (BC IPC).

whose identities have not been kept anonymous. However, there was no evidence that they experienced anything of a similar nature.

[45] In order to illustrate his concerns about the threats to CFO staff safety, the director gave four examples of communications which he describes as “threatening”. He provides detail of what was actually communicated in only two, however. In one, the caller told him directly that the CFO had no right to initiate proceedings against seized cash and that CFO staff had better ‘watch out’. In another, an angry caller “intimated” to another CFO staff member “that, as a native person, he was considering attending office to set up a protest”. While I can agree that telling someone to “watch out” implies a threat to safety or physical wellbeing, I do not agree that the second example regarding a protest does. Also, without detail of what was said in the other two examples, and no explanation of who specifically was on the receiving end of the communication, those examples are not persuasive. Therefore, I am only convinced that the label “threatening” is appropriate to the “watch out” example.

[46] Although the director’s evidence about what the CFO’s legal counsel told him would have been preferable coming from that individual directly, it useful in understanding the director’s opinion that the CFO legal counsel’s safety is at risk due to contact with convicted criminals and gang members. However, it is not evident that what legal counsel experiences in his face-to-face dealings in court as part of his prosecutorial role and while serving documents and inspecting properties is relevant or in any way parallels what CFO support staff experience at work. The Ministry provides no evidence to demonstrate any similarity. In fact the Ministry confirms that the administrative forfeiture process requires CFO staff to deal with known criminals by phone, not in person.²⁷

[47] I have also considered the email that the Ministry sought and received permission to submit into evidence after the close of the inquiry. The Ministry provides little background other than to say that the email came from a known third party considered to be a threat to staff. In my view, this email is directed at the leadership of the CFO and is not a credible threat against support staff, such as the executive assistant, who it is reasonable to conclude has no decision making power regarding whether to prosecute forfeiture cases.

[48] Therefore, the Ministry’s submissions and evidence do not persuade me that disclosure of the executive assistant’s name could reasonably be expected to threaten her safety or physical health. Furthermore, I cannot draw any conclusions regarding the impact that disclosure of her name might have on her mental health because the Ministry provided no evidence in that regard.

²⁷ Ministry reply submission, para. 1.

Director's work telephone number

[49] Although the Ministry also refuses to disclose the director's work telephone number, it did not provide any submissions on that point. In his affidavit, the director states that he has consented to the disclosure of the information about himself. Therefore, the Ministry has not persuaded me that disclosing the director's work telephone number could reasonably be expected to threaten his safety or mental or physical health.

[50] Finally, the submissions of the applicant and the Ministry both touched on the issue of whether crown prosecution offices, police departments and civil forfeiture agencies in other provinces publicly identify their staff. The information they provided about how this matter is handled by other public bodies, however, is lacking in specifics. In my view, the risk experienced by employees in any particular agency is influenced by many factors, not the least being whether they work in an environment like a court house or police station where there are sheriffs and police trained to deal with threats and dangerous situations. It is also influenced by the nature of the work the employees perform and the segment of the population with whom they work. The inquiry materials contain no information about the factors that influenced the other public bodies or provinces' decisions regarding safety risks and disclosure of employee identities, so it was not particularly helpful in this analysis. I have decided this case on its own merits and on the information pertaining to the CFO and its staff.

[51] In conclusion, the Ministry has not established that disclosure of the assistant deputy director's name, the executive assistant's name or the director's work phone number could reasonably be expected to threaten the safety or mental or physical health of those individuals. Therefore, the Ministry is not authorized to refuse to disclose that information under s. 19(1)(a).

[52] **Disclosure Harmful to Law Enforcement**—The Ministry also relies on s. 15(1)(f) to withhold the information in dispute. The relevant portions of FIPPA are as follows:

15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

....

(f) endanger the life or physical safety of a law enforcement officer or any other person....

[53] As is the case with s. 19(1)(a), in order to prove that s. 15(1)(f) applies, the Ministry must establish that there is a clear and direct connection between the disclosure of the information in question and the harm that is alleged. Although

there is no need to establish certainty of harm, it is not sufficient to rely on speculation.²⁸

[54] The Ministry explains that it relies on the submissions it made in relation to s. 19 to support its position that it was authorized by s. 15(1)(f) to refuse to disclose the names of the CFO employees.²⁹

[55] For the same reasons as those given above regarding s. 19(1)(a), I find that the Ministry is not authorized under s. 15(1)(f) to refuse to disclose to the applicant the name of the assistant deputy director, whose identity is already in the public domain. Regarding the director's work phone number, the Ministry has provided no submissions or evidence to suggest that its disclosure could endanger anyone's life or physical safety. Finally, in my view, the information in the inquiry materials does not support the conclusion that disclosure of the executive assistant's name could reasonably be expected to endanger her life or physical safety.

[56] Therefore, the Ministry is not authorized by s. 15(1)(f) to refuse to disclose any of information in dispute.

CONCLUSION

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

1. The Ministry is not authorized under ss. 15(1)(f) or 19(1)(a) of FIPPA to refuse to disclose to the applicant any of the information in the record.
2. The Ministry must provide the applicant an unsevered copy of the record on or before **September 5, 2014**. I also require the Ministry to copy me on its cover letter to the applicant, together with a copy of the record.

July 23, 2014

ORIGINAL SIGNED BY

Elizabeth Barker, Adjudicator

OIPC File No.: F13-51739

²⁸ Order 00-10, 2000 CanLII 11042 (BC IPC) at p.10. Order F07-15, 2007 CanLII 35476 (BC IPC) at para. 17.

²⁹ Ministry's initial submission, para. 5.67.