



OFFICE OF THE
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Order F14-47

DELTA POLICE DEPARTMENT

Hamish Flanagan
Adjudicator

November 10, 2014

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Summary: The applicant requested records relating to a Delta Police Department investigation of a motor vehicle collision she was involved in. The DPD released some information to the applicant, but withheld some on the basis that disclosure would be an unreasonable invasion of the privacy of third parties under s. 22 of FIPPA. After considering all the relevant factors the adjudicator ordered the DPD to disclose the applicant's personal information in the records because disclosing it would not be an unreasonable invasion of the privacy of third parties under s. 22 of FIPPA.

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

Authorities Considered: B.C.: Order No. 330-1999, 1999 CanLII 4600 (BC IPC); Order F06-11, 2006 CanLII 25571 (BC IPC); Order F10-10, 2010 BCIPC 17 (CanLII); Order F13-09, 2013 BCIPC 10 (CanLII); Order F12-08, 2012 BCIPC 12 (CanLII); Order No. 305-1999, 1999 CanLII 1817; Order 02-23, 2002 CanLII 42448 (BC IPC); Order F10-37, 2010 BCIPC 55 (CanLII); Decision F10-10, 2010 BCIPC 49 (CanLII); Order 01-19, 2001 CanLII 21573; Order F13-08, 2013 BCIPC 9 (CanLII); Order F11-05, 2011 BCIPC 5 (CanLII); Order F07-19, 2007 CanLII 42408.

INTRODUCTION

[1] The applicant was involved in a motor vehicle collision in Delta. She requested that the Delta Police Department ("DPD") provide her with the records of the collision investigation and records from two other police inquiries into matters that arose from the collision.

[2] The DPD withheld some information in the responsive records on the basis that disclosure of the information would be an unreasonable invasion of personal privacy of third parties, particularly because the information was part of an investigation into a possible violation of the law under s. 22(3)(b) of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”). The DPD withheld the responsive records for the two police inquiries on the basis that s.182 of the *Police Act* excluded the records from the scope of FIPPA.

[3] The applicant requested a review of the DPD’s response by the Office of the Information and Privacy Commissioner (“OIPC”). OIPC mediation resolved all issues except the issue of whether the records of the motor vehicle collision investigation should be withheld under s. 22 of FIPPA. That issue proceeded to an inquiry.

[4] The applicant explains that she wants access to the DPD’s investigation records to exercise her right under s. 29 of FIPPA to correct information in the records about herself.¹ Accordingly, the applicant narrowed her request to exclude any third party information that relates solely to those third parties. However the applicant still wants any third parties’ opinions or interpretations of her actions, including those of police officers.² In other words, the applicant wants any personal information that is about her.

ISSUE

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

[6] For any instances where the DPD has withheld the applicant’s own personal information, the burden is on the DPD to establish that disclosure would unreasonably invade third party personal privacy under s. 22 of FIPPA.³

[7] Where the DPD has withheld third party personal information, even where that information is also the applicant’s own personal information, s. 57(2) of FIPPA places the burden on the applicant to prove that disclosure of the withheld information would not unreasonably invade third party personal privacy under s. 22 of FIPPA.⁴

¹ Applicant initial submission at para. 1.

² Applicant initial submission at paras. 44 and 45.

³ Order No. 330-1999, 1999 CanLII 4600 (BC IPC) at part 3.1; Order F06-11, 2006 CanLII 25571 (BC IPC) at para. 79, Order F10-10, 2010 BCIPC 17 (CanLII) at para. 37.

⁴ Order No. 330-1999, 1999 CanLII 4600 (BC IPC) at para 3.1.

DISCUSSION

[8] **Records in issue**— The records were created by the DPD in the course of investigating the applicant's motor vehicle collision. The records include statements made to DPD officers by the applicant and by third parties including the applicant's family member, witnesses and those whose property was damaged by the collision. The records also include handwritten notes and file notes made by DPD officers about actions taken in the course of the investigation.

Approach to s. 22

[9] Section 22 requires the DPD to refuse to disclose personal information to the applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. Consistent with previous orders,⁵ I have evaluated whether s. 22 applies by answering the following questions:

- 1) Is the information personal information?
- 2) If it is personal information, does it meet any of the criteria identified in s. 22(4)? (If so, disclosure would not be an unreasonable invasion of third-party personal privacy.)
- 3) If none of the s. 22(4) criteria apply, do any of the presumptions in s. 22(3) apply? (If so, disclosure is presumed to be an unreasonable invasion of third-party privacy.)
- 4) If any s. 22(3) presumptions apply, are they rebutted after considering all relevant circumstances including those listed in s. 22(2)?
- 5) If no s. 22(3) presumptions apply, after considering all relevant circumstances including those listed in s. 22(2), would disclosure would be an unreasonable invasion of a third party's personal privacy?

Personal Information

[10] For s. 22 to apply, the information at issue must be the personal information of a third party. FIPPA defines personal information as "recorded information about an identifiable individual other than contact information". Contact information is defined as "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax

⁵ Order F13-09, 2013 BCIPC 10 (CanLII); Order F12-08, 2012 BCIPC 12 (CanLII) et al.

number of the individual”.⁶ It is possible for information to be the personal information of more than one person.

[11] The DPD describes the withheld information as the personal information of the third party complainants, victims, witnesses or persons of interest in investigations into the motor vehicle collision.⁷ They state that none of the information is the applicant’s personal information.⁸ The applicant does not address whether the withheld information is personal information.

[12] As noted above, the applicant narrowed her request to exclude any third party personal information that relates solely to those third parties and does not contain any opinion or interpretation of the actions of the applicant. There is some personal information that is solely about third parties. That information includes names and contact information of third party witnesses and owners of vehicles damaged in the motor vehicle collision, and statements about actions of third parties unrelated to the applicant. Given that the applicant does not want such information, it will not be considered further in this inquiry.

[13] It is evident from my review of the records that any information that is solely the applicant’s personal information has already been released to her.

[14] The remaining withheld information is the personal information of the applicant and of third parties. It includes statements by third parties about the applicant’s actions before and after the collision. This information is the personal information of the third party that made the statements because it is their opinion. At the same time, it is also the applicant’s personal information because it is about the applicant.⁹ In several instances the information that falls in this category includes the identities of the third parties, which are an integral part of their opinions about the applicant, so are also, in this context, the applicant’s personal information.¹⁰

Section 22(4) Factors

[15] Section 22(4) sets out circumstances when disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy. The parties do not address s. 22(4) in their submissions, and I find that no s. 22(4) factors apply.

[16] The next step is to determine whether any of the presumptions against disclosure set out in s. 22(3) apply.

⁶ See Schedule 1 of FIPPA for these definitions.

⁷ Initial submission at para. 12.

⁸ Reply submission at paras. 1-2.

⁹ See Order F06-11, 2006 CanLII 25571 (BC IPC) at paras. 39-43.

¹⁰ See Order F06-11, 2006 CanLII 25571 (BC IPC) at para. 78.

Presumption of Invasion of Privacy – s. 22(3)

[17] Section 22(3) provides the circumstances in which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy.

Investigation into possible violation of law

[18] The DPD submits that s. 22(3)(b) applies to the records. Section 22(3)(b) states that a disclosure of personal information is presumed to be an unreasonable invasion of a third-party's personal privacy if the personal information was compiled and is identifiable as part of an investigation into a possible violation of law. I note that the presumption applies even if the investigation is complete.¹¹

[19] The personal information in the records was clearly compiled for, and is identifiable as part of, a police investigation into a possible violation of the law arising from the applicant's motor vehicle collision. Therefore, I find that s. 22(3)(b) applies and disclosure of the personal information is presumed to be an unreasonable invasion of third-party privacy. I will next consider whether other presumptions against disclosure also apply.

Medical information

[20] Disclosure of personal information that is medical diagnosis, condition, treatment or evaluation information of a third party is a presumed invasion of that person's privacy under section 22(3)(a). Small amounts of the withheld information disclose information about injuries third parties suffered in the collision and the resulting medical attention they received. This third party medical information falls within s. 22(3)(a).

[21] In summary, s. 22(3)(b) applies to all of the withheld information because the personal information was compiled and is identifiable as part of an investigation into a possible violation of law. Further s. 22(3)(a) also applies to some of the information because it is third party medical information.

Other Factors – s. 22(2)

[22] The presumption that disclosure of the withheld information that falls within ss. 22(3)(a) and (b) would be an unreasonable invasion of the third party's privacy can be rebutted. Section 22(2) requires public bodies to consider all relevant factors, including those listed in s. 22(2), in determining whether disclosure of personal information is an unreasonable invasion of privacy.

¹¹ See for example Order No. 305-1999, 1999 CanLII 1817 at part 9.

[23] DPD submits that there are no relevant s. 22(2) factors in issue. The applicant argues several s. 22(2) factors are relevant. The factors listed in s. 22(2) that arise in this case are:

22(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

...

(c) the personal information is relevant to a fair determination of the applicant's rights,

...

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

(g) the personal information is likely to be inaccurate or unreliable,

...

Relevant to determination of applicant's rights – s. 22(2)(c)

[24] The applicant says that s. 22(2)(c) is relevant because she needs access to the withheld information to exercise her rights under s. 29 of FIPPA. Section 29 states that an applicant who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or under its control to correct the information. The DPD says that s. 22(2)(c) is not relevant as none of the withheld information is the applicant's personal information. However, I have already determined that some of the third party personal information is also the applicant's personal information. Therefore, s. 29 of FIPPA may be relevant if s. 22(2)(c) applies here.

[25] Previous orders have outlined the following four part test for determining if s. 22(2)(c) applies:¹²

- 1) The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
- 2) The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;

¹² See for example Order 02-23, 2002 CanLII 42448 (BC IPC) at para. 19.

- 3) The personal information sought must have some bearing on, or significance for, determining the right in question; and
- 4) The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.

[26] I find that these four requirements are met for the applicant's plan to use her information to exercise her rights under s. 29 of FIPPA.

[27] I note that in weighing the importance of s. 22(2)(c) in rebutting the presumption, that some of the personal information of the applicant that has been withheld consists of opinions by third parties about the circumstances surrounding the collision. Third party opinions are less susceptible to correction under s. 29 of FIPPA. However, in contrast, where the personal information is more factual in nature it is more conducive to correction and s. 22(2)(c) is particularly relevant.

Supplied in Confidence – s. 22(2)(f)

[28] Section 22(2)(f) states that whether personal information was supplied in confidence is a factor relevant to a determination of whether s. 22 applies. The DPD submits that the personal information in this case is analogous to complainant information in a law enforcement investigation, which is typically kept confidential. It cites Decision F10-10¹³ in support. The applicant disputes that the information in the records was supplied in confidence.

[29] I do not find Decision F10-10 particularly useful because the only third party personal information at issue in that decision was the names of complainants. The third parties in the present case are not complainants as they were in Decision F10-10. More importantly, the applicant already knows the identity of almost all of the third parties and the nature of their statements due to the criminal proceedings that followed the motor vehicle collision. In support of the state of her knowledge, the applicant notes that she has a court transcript which includes the testimony of all third party witnesses.

[30] I see some parallels with Order F10-37,¹⁴ which also involved a request for information compiled during a police investigation. An issue in that case was whether witnesses provided their statements in confidence. The adjudicator concluded that there was no evidence that the third parties had provided their statements in confidence.¹⁵ The adjudicator also agreed with the applicant that the witnesses could have had no reasonable expectation that their statements

¹³ 2010 BCIPC 49 (CanLII).

¹⁴ 2010 BCIPC 55 (CanLII).

¹⁵ At para. 62.

would remain confidential given that the investigation could have led to criminal charges.¹⁶

[31] Similarly in the present case, there is no evidence in the records of any assurances of confidentiality being provided to witnesses.¹⁷ I accept the applicant's evidence that as a result of the criminal proceedings she already knows the identity of witnesses and DPD investigators and the general nature of their statements. This supports the position that the witnesses had no reasonable expectation of confidentiality because their statements were made in the context of a criminal investigation which could (and did) lead to criminal charges. The exception to this is one section of third party personal information that also contains some of the applicant's personal information where I am not persuaded based on the evidence that the applicant knows the identity of the third parties.

[32] In summary, with the exception of the piece of information just described, I consider that s. 22(2)(f) is a relevant factor in favour of disclosure of the information because the evidence does not demonstrate that the withheld information was supplied to the DPD in confidence.

Inaccurate or Unreliable information – s. 22(2)(g)

[33] The applicant is concerned that the DPD collected inaccurate information about her. The applicant argues that this weighs in favour of disclosure because without access to the withheld information she cannot address its potential inaccuracies.

[34] Section 22(2)(g) is not a relevant factor in this inquiry. Section 22(2)(g) is intended to prevent the harm that can flow from disclosing third party personal information that may be inaccurate or unreliable. The disclosure the applicant is advocating for under s. 22(2)(g) is of her own personal information, not third parties' personal information.¹⁸

[35] I recognize that the applicant's concern is ultimately about disclosure of inaccurate information about her to others, and that at some future time the DPD may disclose the records that contain information about her. In the event of such a disclosure she would be a third party and s. 22(2)(g) may be relevant. However the issue in this inquiry is the applicant's request for access to information so s. 22(2)(g) is not relevant. That said, the applicant's concern about future disclosure of inaccurate information about her to others is a relevant general

¹⁶ Order F10-37, 2010 BCIPC 55 (CanLII) at para. 60.

¹⁷ Order F10-37, 2010 BCIPC 55 (CanLII) at para. 60.

¹⁸ See for example, Order 01-19, 2001 CanLII 21573; Order F13-08, 2013 BCIPC 9 (CanLII) at para. 53; Order F11-05, 2011 BCIPC 5 (CanLII) at para. 33; Order F07-19, 2007 CanLII 42408 at para. 54.

concern and is considered below in the wider discussion of other relevant s. 22 factors.

Other factors

Applicant's personal information

[36] Previous orders have stated that it would only be in rare circumstances where disclosure to applicants of their own personal information would be an unreasonable invasion of a third party's personal privacy.¹⁹ One such circumstance is potentially relevant here - where the applicant's personal information is also the personal information of third parties and disclosure of that information would be an unreasonable invasion of the third party's personal privacy.²⁰ Nonetheless, the fact that the applicant is seeking her own personal information is a factor in favour of disclosure of that information.

Knowledge

[37] From my review of the evidence, it is clear that the applicant knows or could ascertain the content of some of the withheld information given:

- the extent of the information already released to the applicant in response to the access request;
- the applicant's knowledge of the events the records relate to from the criminal proceeding arising from the DPD's investigation; and
- the applicant's relationship to the third parties, including her knowledge of the identity of almost all of the third parties whose identities are withheld.

[38] For example, some of the withheld information is about a close family member of the applicant and some of the information contains statements made by a witness who was a passenger in the applicant's vehicle at the time of the motor vehicle collision. In both cases I have no doubt the applicant already knows the withheld information.

[39] In summary, the fact that the applicant already has a general knowledge of much of the information that has been withheld, and clearly has knowledge of certain specific withheld information (including the identity of almost all of the third parties) weighs in favour of disclosure of the information.

¹⁹ Order F10-10, 2010 BCIPC 17 at para 37; Order F06-11, 2006 CanLII 25571 (BC IPC) at para. 77.

²⁰ Order F06-11, 2006 CanLII 25571 (BC IPC) at para. 77.

Legitimate interest

[40] Another factor in favour of disclosure is that the investigation was about a motor vehicle collision involving the applicant, so she has a legitimate interest in obtaining the records of the DPD's investigation.²¹

Less sensitive information

[41] Some of the withheld information is about the activities of DPD officers in the ordinary exercise of their duties in investigating the motor vehicle collision. It describes how they went about their everyday work duties and therefore is not sensitive information, particularly now that the investigation has definitely concluded. This is a factor weighing in favour of disclosure of this information.

Conclusion on s. 22(1)

[42] I find above that the withheld information is personal information to which ss. 22(3)(a) and (b) apply.

[43] I conclude that though the applicant's personal information is also the personal information of one or more third parties, I am satisfied that disclosure of much of it would not be an unreasonable invasion of the third party's personal privacy.

[44] The relevant circumstances weighing in favour of disclosure rebut the presumed invasion of third-party privacy in ss. 22(3)(a) and (b) respecting the vast majority of the withheld personal information of the applicant. Sections 22(2)(c) and (f) weigh in favour of disclosure, while s. 22 (g) does not apply. Another strong factor that favours disclosure is the applicant's knowledge of much of the withheld information, including evidence that she knows the identity of almost all of the third parties whose personal information is in issue. Another strong factor that weighs in favour of disclosure is that the applicant is seeking her own personal information.

CONCLUSION

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

²¹ See for example Order F10-37, 2010 BCIPC 55 (CanLII) at para. 66 and Order 01-19, 2001 CanLII 21573 at para. 44.

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1. I require the DPD to disclose the information highlighted in the copy of the records that accompany the DPD's copy of this decision on or before December, 23, 2014.
 2. The DPD must copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

November 10, 2014

ORIGINAL SIGNED BY

Hamish Flanagan, Adjudicator

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