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Order F15-30

DELTA POLICE DEPARTMENT

Hamish Flanagan
Adjudicator

July 2, 2015

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Summary: The applicant requested his personal information from records contained in a Delta Police Department ("DPD") motor vehicle collision investigation ("collision investigation") file and two DPD files about police officer behaviour related to the collision investigation. The DPD withheld some of the collision investigation records on the basis that disclosure would be an unreasonable invasion of the privacy of third parties under s. 22 of FIPPA. The DPD withheld almost all of the behaviour records on the basis they were outside the scope of FIPPA due to ss. 66.1 and/or 182 of the *Police Act.* The adjudicator determined that a withheld record arising from the applicant's complaint about DPD officer behaviour was outside the scope of FIPPA because the record arose out of and was created after an internal discipline complaint under Part 9 of the *Police Act*. For the records related to a complaint about the applicant, some information on one page is outside the scope of FIPPA under s. 182 of the *Police Act*. The DPD must process under FIPPA the remaining information withheld as outside the scope of FIPPA because it does not disclose or relate to a *Police Act* complaint or investigation or was created before a *Police Act* investigation began. The adjudicator also determined that s. 22 did not apply to the applicant's personal information withheld under that provision.

Statutes Considered: *Police Act,* Part 9 & Part 11; *Code of Professional Conduct Regulation, B.C. Reg. 205/98; Freedom of Information and Protection of Privacy Act*, s.22.

Authorities Considered: Order F15-05, 2015 BCIPC 5 (CanLII); Order 03-06, 2003 CanLII 49170 (BC IPC); F10-13, 2010 BCIPC 22 (CanLII); Order No. 330-1999, 1999 CanLII 4600 (BC IPC); Order F06-11, 2006 CanLII 25571 (BC IPC); Order F14-18, 2014

BCIPC 21 (CanLII); Order F10-10, 2010 BCIPC 17 (CanLII); Order F13-09, 2013 BCIPC 10 (CanLII); Order F14-47, 2014 BCIPC 51 (CanLII); Order F12-08, 2012 BCIPC 12 (CanLII); Order No. 305-1999, 1999 CanLII 1817 (BC IPC); Order 01-48, 2001 CanLII 21602 (BC IPC); 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 (BC IPC); Order F13-08, 2013 BCIPC 9 (CanLII); Order F11-05, 2011 BCIPC 5 (CanLII); Order F07-19, 2007 CanLII 42408 (BC IPC); Investigation Report F14-01, https://www.oipc.bc.ca/investigation-reports/1631.

Cases Considered: *R v Quesnelle* 2014 SCC 46.

INTRODUCTION

[1] An applicant requested any information about himself in three Delta Police Department ("DPD") files. The applicant is a Vancouver Police Department ("VPD") police officer who became involved in a DPD motor vehicle collision investigation (the "collision investigation") that was centered on one of his family members.

[2] Of the three DPD files, one is for the collision investigation. During the collision investigation, a second DPD file ("File 09-19") was opened in relation to concerns the applicant raised about the behaviour of certain DPD officers[1]. A third DPD file ("File 10-02") was later opened arising from concerns DPD officers raised about the applicant's behaviour in relation to the collision investigation. For ease of reference, I will refer to Files 09-19 and 10-02 together as the "behaviour files".

[3] The DPD disclosed some information in the collision investigation file to the applicant, but withheld other information in that file under s. 22 of the *Freedom of Information and Protection of Privacy Act* ("FIPPA") on the basis that disclosure would be an unreasonable invasion of the personal privacy of a third party.

[4] The DPD withheld the records in the behaviour files on the basis that they were excluded from the scope of FIPPA under both s. 182 of the *Police Act,* and its predecessor s. 66.1, which state that FIPPA does not apply to certain types of records.

[5] The applicant requested a review of the DPD's response by the Office of the Information and Privacy Commissioner ("OIPC"). OIPC mediation did not resolve the matter so it proceeded to an inquiry.

[1] The *Police Act* refers to a municipal constable, deputy chief constable or chief constable of a municipal police department or to "members", which encompasses all three titles. For simplicity, this order uses the term "officer" rather than "constable" or "member".

[6] The parties provided initial and reply submissions. After the inquiry closed, I sought additional submissions from the parties regarding which version, parts and sections of the *Police Act* were relevant to the records withheld by the DPD under the *Police Act*.[2] I also provided the parties with an opportunity to consider the recently issued Order F15-05,[3] an order dealing with the relationship between s. 182 of the *Police Act* and FIPPA. Both parties provided supplementary submissions.[4]

[7] At the same time as the DPD provided supplementary submissions, it reconsidered the records it was withholding under the *Police Act* and disclosed more information to the applicant. [5]

ISSUES

[8] The issues in this inquiry are whether:

1) either ss. 66.1 or 182 of the *Police Act* applies to exclude records in the behaviour files from the scope of FIPPA; and

2) the DPD is required to refuse access to information in the records not withheld under the *Police Act* because disclosure would be an unreasonable invasion of third party personal privacy under s. 22 of FIPPA;

[9] Consistent with previous Orders, the DPD has the burden of establishing that the *Police Act* applies to exclude records from FIPPA.[6] Under s. 57(2) of FIPPA, the applicant has the burden to prove that disclosure of information withheld under s. 22 of FIPPA would not unreasonably invade third party personal privacy.

DISCUSSION

[10] **Records in issue -** The records in issue are contained in the DPD's collision investigation file and in the behaviour files.

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[2] Given that significant amendments were made to the *Police Act* effective March 31, 2010. Also, while the DPD initial submissions say that the records in file 10-02 were created on or after a *Police Act* complaint under Part 9 of the old *Police Act,* they also say that the records can be withheld under s. 182, or a combination of ss. 66.1 and 182 of the *Police Act*. Partly for this reason I sought further submissions to clarify which version, Parts, Divisions and Sections of the *Police Act* the DPD asserted were applicable to the records.

[3] 2015 BCIPC 5 (CanLII).

[4] As part of their supplementary submission, the DPD provided a copy of the records withheld under the *Police Act* renumbered as pages 1-50 for ease of reference. I will refer to these renumbered page references in discussing these (*Police Act*) records.

[5] Information in records at pp.4-5 and 15-19.

[6] Order 03-06, 2003 CanLII 49170 (BC IPC) at para. 6.

Collision Investigation File

[11] The records in this file include statements made to DPD officers by the applicant and by third parties, including witnesses to the collision and parties whose property was damaged in the collision. The file also includes file notes of DPD officers about actions taken in the course of their inquiries or the investigation.

Behaviour Files

[12] File 09-19 was created by the DPD following a February 17, 2009 telephone call from the applicant to complain about the conduct of DPD officers investigating the collision. The DPD say that this phone call was a complaint for the purposes of the *Police Act*. The applicant denies that his phone call constituted a *Police Act* complaint. File 09-19 contains two records. One is a record that, except for some information withheld under s. 22, was disclosed to the applicant at the time of the DPD's supplementary submissions. The other record is a report created by the DPD dated March 12, 2009 and all of it is withheld.

[13] File 10-02 contains documents created between 2009 and 2011 relating to the DPD's concerns about the applicant's involvement in the DPD's collision investigation. According to the DPD, the File 10-02 records arise from a December 30, 2009 complaint made about the applicant's conduct in relation to the collision investigation. The DPD say that they referred the complaint to the VPD in May 2010, so File 10-02 also contains records regarding that referral.

Overview of the *Police Act*

[14] The *Police Act* sets out the duties and obligations of police forces in British Columbia. It also establishes, among other things, the role and duties of the Office of the Police Complaints Commissioner ("OPCC") in providing independent oversight of complaints involving municipal police in British Columbia.

[15] Prior to March 31, 2010, s. 66.1 of the *Police Act* provided that FIPPA did not apply to certain types of records. Effective March 31, 2010, s. 66.1 was repealed. Section 182, a new provision similar in effect to s. 66.1 came into force, effectively replacing s. 66.1. While the language in ss. 66.1 and 182 of the *Police Act* are different and were in force at different times, they have the same purpose. That purpose is to exclude from the scope of FIPPA certain records in relation to complaints and investigations about police misconduct under the *Police Act*.

[16] The former s. 66.1 stated:

> 66.1 Except as provided by this Act and by section 3 (3) of the *Freedom of Information and Protection of Privacy Act*, that Act does not apply to any record that
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> (a) arises out of or is otherwise related to the making, submitting, lodging or processing of a conduct complaint under this Part, and
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> (b) is created on or after the conduct complaint is made, submitted or lodged.

[17] Section 182 states:

> 182 Except as provided by this Act and by section 3 (3) of the *Freedom of Information and Protection of Privacy Act*, that Act does not apply to
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> (a) any record of a complaint concerning the conduct of a member that is made, submitted, registered or processed under this Part,
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> (b) any record related to a record described in paragraph (a), including, without limitation, any record related to a public hearing or review on the record in respect of the matter,
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> (c) any information or report in respect of which an investigation is initiated under this Part, or
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> (d) any record related to information or a report described in paragraph (c), including, without limitation, any record related to a public hearing or review on the record in respect of the matter,
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> whether that record, information or report is created on or after a complaint is made, submitted or registered or the investigation is initiated, as the case may be.

[18] I first will consider which version of the *Police Act* ought to be considered for the various records at issue, and then consider whether the relevant provision applies to the records.

Which version of the Police Act applies?

[19] The DPD's submission is that some records are covered by s. 66.1 and some by s. 182. In several instances, where records were created after s. 182 was in force but which relate to matters beginning before s. 182 came into effect, they argue both s. 66.1 and s. 182 apply. The applicant responds to DPD's ss. 66.1 and 182 submissions, but focusses on his assertion that there was never a valid *Police Act* complaint or investigation relating to the DPD's records.

[20] For records relating to complaints made or investigations commenced prior to the changes to the *Police Act*, I find that s. 66.1 is the applicable provision, regardless of when the records themselves were created. This is because s. 66.1 covers records related to complaints or investigations made under Part 9 of the former Act. Nothing in the *Police Act* restricts the application of s. 66.1 to records created within a certain date range. If a record was created for a complaint made or investigation commenced when Part 9 was in effect, the record is related to that complaint or investigation and therefore s. 66.1 is the applicable provision. This leaves s. 182 as the relevant provision for records where a complaint was made and investigation begun after the changes to the *Police Act*, which were effective as of March 31, 2010.

File 09-19

[21] There is one record in Inquiry File 09-19 that is at issue with respect to the *Police Act*. The DPD states that it was created on the date stated on the record which is March 12, 2009, and the applicant argues the record was created later and post-dated. It is immaterial when the record was created because s. 66.1 covers records related to complaints or investigations under Part 9 of the Act. The record relates to a February 17, 2009 phone call. If that phone call was a *Police Act* complaint under Part 9, s. 66.1 is the relevant provision.

[22] Section 66.1 stated that records arising out of a "conduct complaint" under Part 9 of the *Police Act,* and created on or after the complaint is made, submitted or lodged, were excluded from the scope of FIPPA. The DPD says there was such a complaint, while the applicant says that he never made a *Police Act* conduct complaint. The DPD says that the applicant complained about two DPD members' conduct in a phone call with a DPD Inspector ("Inspector") on February 17, 2009. The applicant acknowledges the call occurred but denies that the phone call constituted a complaint for the purposes of the *Police Act*.

[23] In his affidavit, the Inspector says that he concluded that the phone call constituted a conduct complaint for the purposes of the *Police Act*. The Inspector says he reached this conclusion on the basis of the nature of the concerns reported, the fact that they related to municipal constables, and that the applicant had chosen to communicate the concerns to the Inspector who worked in the DPD's Professional Standards Section, which is the appropriate place to make a conduct complaint about DPD officers.[7]

[24] Also, in response to the applicant's submission that the February 17, 2009 phone call did not constitute a complaint, the DPD refers to a subsequent complaint by the applicant to the OPCC that alleges that the DPD failed to conduct a proper investigation of a complaint that the applicant made to the DPD

[7] Affidavit of DPD Inspector at para 6 in DPD initial submission.

on February 17, 2009.[8] The applicant does not dispute this subsequent complaint occurred. The position the applicant took in his subsequent OPCC complaint contradicts his position that the February 17, 2009 phone call did not comprise a complaint.

[25] It is clear that when the call was made a complaint under the *Police Act* could be made orally.[9] I am satisfied that this call was a complaint. I make that finding on the basis of the affidavit evidence about the Inspector's position and function regarding professional standards, the nature of the matters discussed (which are revealed by the content of the record), the fact that the record was created as a result of the call, and the unexplained contradiction in the applicant's position revealed by his subsequent complaint.

[26] In order for s. 66.1 to apply, however, the complaint must be a "conduct complaint".

Is the complaint a conduct complaint?

[27] The version of the *Police Act* in effect at the time of the February 2009 call defined "conduct complaint" as "an internal discipline complaint or a public trust complaint".[10] "Internal discipline complaint" and "public trust complaint" were defined as follows:

> **"internal discipline complaint"** means a complaint that relates to the acts, omissions or deportment of a respondent and that
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> (a) is not a public trust complaint, or
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> (b) is a public trust complaint that is not processed as a public trust complaint under Division 4;
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> **"public trust complaint"** means a complaint to the effect that a respondent has committed a public trust default;

[28] There are several provisions in the former *Police Act* that provide assistance in determining if the record in File 09-19 relates to a conduct complaint. For example, s. 52.1 required that in certain circumstances (which are unnecessary to detail here) the complaint must be characterized as a public trust complaint, an internal discipline complaint or a service or policy complaint. There is no evidence in this inquiry that such a characterization took place.

[29] In addition, s. 64 deals with internal discipline complaints and offers insight into how the matter in File 09-19 was viewed and treated by the DPD.

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[8] DPD reply submission at para. 6 citing Appendix A to Affidavit of DPD Inspector at pp. 3 & 7.
[9] Section 52(4) of the *Police Act.*
[10] Section 46 of the *Police Act*.

In particular, s. 64(5) set out requirements for dealing with a complaint as an internal discipline complaint.

> 64(5) If a municipal constable, chief constable or deputy chief constable is alleged to have committed an act or to have omitted to do an act and the act or omission would, if proved, constitute a disciplinary default, the discipline authority may deal with the allegation as a matter of internal discipline under this Division if
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> (a) the police complaint commissioner has not, under section 54 (6) (a) or (8) or 55 (3), ordered an investigation into the act or omission and has not arranged a public hearing in respect of that act or omission, and
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> (b) one or more of the following applies to the allegation:
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> (i) the act or omission does not constitute a public trust default;
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> (ii) a record of complaint was not lodged under section 52 in respect of the act or omission;
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> (iii) a record of complaint was lodged under section 52 in respect of the act or omission but the complainant has filed a notice of withdrawal under section 52.2 and the discipline authority has ceased to process the complaint under Division 4.

[30] A "disciplinary default" was defined in s. 46(1) as "a breach of the Code of Professional Conduct" ("Conduct Code").[11]

[31] The DPD cites Orders 03-06[12] and F10-13[13] in support of its position that the February 2009 telephone call was a *Police Act* "conduct complaint". In particular, the DPD cites Order 03-06 regarding the requirements of s. 64(5):

> I am satisfied that the intent, and effect, of s. 64(5) is to leave it to a municipal police department to deal with allegations of disciplinary default that are contained in a conduct complaint that is made orally, but has not thereafter been reduced to writing in prescribed form or lodged and characterized as contemplated by s. 52.1.
> …
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> The absence of any Form 1 or complaint characterization under s. 52.1 does not exclude these complaints from the ambit of s. 64(5). This conclusion is reinforced by s. 64(5)(b)(ii), which provides that a discipline authority may deal with an "allegation" as a matter of "internal discipline" if "a record of

[11] i.e., the *Code of Professional Conduct Regulation*, B.C. Reg. 205/98. The Conduct Code was repealed at the same time as this iteration of the *Police Act*.
[12] 2003 CanLII 49170 (BC IPC).
[13] 2010 BCIPC 22 (CanLII).

> complaint under section 52 in respect of the act" alleged has not been lodged. [14]

[32] As Order 03-06 sets out, under s. 64(5), an alleged disciplinary default could be dealt with "as a matter of internal discipline" if the conditions set out in s. 64(5) were met. I find that they were for the reasons that follow.

[33] The applicant's complaint contained allegations that DPD officers acted unprofessionally and failed to appropriately exercise discretion. In my view, the allegations that were the subject of File 09-19 fall within the definition of "disciplinary default" and, therefore, could be classified as internal discipline complaints for the purposes of s. 64(5).

[34] Further, there is no evidence that an event described in s. 64(5)(a) occurred that prevented these allegations from being treated as an internal discipline complaint under s. 64(5).[15]

[35] In addition, s. 64(5)(b) is met because the complaint was made orally to a responsible DPD member and was not "lodged" under the *Police Act*. The header for the record in issue clearly indicates that the DPD treated the file as a "non-lodged complaint." Therefore, the conditions for the record at issue in File 09-19 to be treated as a matter of internal discipline as required by s.64(5)(b) were satisfied. I note that the applicant subsequently made a written complaint containing the same allegations, which was "lodged" with the OPCC under Part 9 in the manner contemplated by s. 52. However, it was made *after* the record in issue and File 09-19 was complete. I am satisfied that the February 2009 telephone call was its own discrete complaint for the purposes of s. 66.1.

[36] In summary, the s. 64(5) requirements for treating the February 2009 complaint as an internal discipline complaint were met. This supports the view that it met the definition of a "conduct complaint" in s. 46 of the former Act.

[37] The applicant submits that even if his February 2009 call constituted a complaint, it was not a "conduct complaint" for the purposes of s. 66.1 (so cannot be not excluded from the scope of FIPPA), because the DPD clearly did not treat it as a "conduct complaint". In support of this argument he points to what he says are procedural omissions on DPD's part. Specifically, the applicant submits that the DPD did not comply with s. 64(1), which requires that the discipline authority establish procedures for imposing disciplinary and corrective measures for internal discipline complaints. However, there is no evidence in the inquiry materials or the records of any disciplinary or corrective measures being imposed or contemplated related to File 09-19, so I am not persuaded that it is

[14] At para 31 (para 30 in Quicklaw).
[15] In fact, there is no evidence that the OPCC was notified of the February 17, 2009 complaint at all. Also, there is nothing to suggest it was "lodged" under s. 52 of the *Police Act*.

relevant for the purposes of this inquiry whether the DPD has or has not established such procedures.

[38] The applicant also submits that the DPD did not comply with s. 64(4)(b), which requires that the discipline authority must provide the OPCC with a copy of the final decision reached by the discipline authority respecting an internal discipline complaint. While there is no evidence before me that the DPD complied with the reporting requirement in s. 64(4)(b), I am still satisfied that the February 2009 telephone call met the requirements under the former Act to be treated as a "conduct complaint". As the quote from Order 03-06 above makes clear, s. 64(5) sets out certain essential requirements that entitled a municipal police department to deal with allegations of disciplinary default contained in a conduct complaint made orally and not reduced to writing in prescribed form. Based on the evidence before me the applicant's February 2009 telephone call met those essential requirements. The fact that the DPD appears not to have complied with s. 64(4)(b), (which may have resulted in the OPCC being unaware of the complaint and therefore unable to exercise its oversight role), is a matter for the OPCC and one that is outside the scope of the issues before me in this inquiry.

[39] In conclusion, the DPD was entitled to treat the applicant's February 2009 communication as an internal discipline complaint under s. 64(5). Thus, the call met the definition of a "conduct complaint" in the former *Police Act*. Further, the withheld record clearly arose from the applicant's complaint and was created after the complaint was made. Therefore, the record at issue in File 09-19 falls within the scope of s.66.1 of the *Police Act* and is excluded from the scope of FIPPA.

File 10-02

[40] File 10-02 contains records created both before and after the March 31, 2010 change to the *Police Act*. The DPD submits that the records in Inquiry File 10-02 arise from a December 30, 2009 complaint by a DPD police officer to the DPD about the applicant. DPD says that other records in the file relate to its forwarding of that complaint to the VPD in May 2010 and the assistance it provided during the VPD's investigation.[16]

[41] Therefore the DPD's position is that the complaint, to which the records relate, was received before the change to the *Police Act*, therefore s. 66.1 of the former *Police Act* applies to the records in File 10-02. In the alternative, the OPCC submits that s. 182 of the current *Police Act* applies because the investigation of the complaint took place after the change to the *Police Act*. I will first consider whether s. 66.1 applies to the records in this file, and then consider s. 182 if required.

[16] DPD supplementary submission at paras.12B and 12D.

[42] The applicant says:

1) neither the DPD nor any member of the public ever made a *Police Act* complaint about the applicant;
2) the DPD were never authorized to conduct an investigation of the applicant pursuant to the *Police Act*;
3) the DPD requested a criminal investigation into the actions of the applicant. That criminal investigation, which was conducted by the New Westminster Police Service[17] ("NWPS"), was not a *Police Act* investigation.[18]

Section 66.1 of the former Police Act

[43] In the same way as I did for the File 09-19, I will first consider whether a conduct complaint was made to the DPD on December 30, 2009 under Part 9 of the former *Police Act*.

[44] Section 52(2) of the former *Police Act* provided that complaints could be made to:

1) the police complaint commissioner;
2) the "discipline authority" or;
3) the senior constable of the municipal police department with which the respondent is employed.

[45] Under s. 46 of the former Act, the "discipline authority" was defined as the chief constable of the municipal police department, with which the applicant is employed, or the delegate of the chief constable. Since the applicant is a VPD employee, the VPD, not the DPD, is the "discipline authority" for the purposes of receiving a complaint about the applicant.

[46] The records in File 10-02 do not demonstrate that the VPD chief constable, the VPD's senior constable or the Police Complaint Commissioner had any knowledge of, or involvement in, the events of December 30, 2009. The December 30, 2009 records are communications between DPD members. If a complaint had been made to the Police Complaint Commissioner or the senior constable of the VPD, s. 52(7) required that those individuals promptly provide a copy of that complaint to VPD's chief constable. There is no evidence that this procedural requirement was met, which suggests that no complaint was made under s. 52 on December 30, 2009.

[17] Now the New Westminster Police Department.
[18] Applicant's initial submission at paras. 27-28.

[47] Section 52.1 placed multiple subsequent obligations on the recipient of a record of complaint such as characterizing the nature of a complaint, notifying specific individuals of that characterization decision, and beginning to process the complaint. As with File 09-19, there is no information that indicates the DPD formally characterized any complaint under s. 52.1. There is also no evidence before me that DPD pursued or met the other procedural requirements in s. 52.1.

[48] I note also that because the DPD was not a "discipline authority" with respect to the applicant, Division 6 of the former *Police Act,* which provided for investigating complaints as internal discipline complaints, is not relevant here. Both parties' submissions acknowledge that the DPD records do not relate to an internal discipline complaint under Part 6 of the *Police Act*.[19]

[49] The records in issue in File 10-02 provide documentary evidence of the events of December 30, 2009, which is when the DPD say a complaint was made. Without disclosing the precise contents of the records in issue, the records of December 30, 2009 relate to a discussion between DPD officers of issues arising from the applicant's involvement in the DPD's collision investigation and subsequent enforcement action. Though the DPD officers' discussion was about the applicant's conduct, there is no mention of a conduct complaint. The word "complaint" does not appear in any records dated December 30, 2009. The records show that though several possible next steps were noted, the discussion concluded without any firm conclusion as to the next steps to take.

[50] In summary, the activities of December 30, 2009 as revealed in the records of that date, occurred amongst DPD officers. No complaint was made to any one of the three named individuals or entities to which a complaint could be made in s. 52(2) of the former *Police Act*. Specifically, the DPD is not a discipline authority for a complaint about the applicant, as he is a VPD employee. Nor is there any evidence that the VPD or the Police Compliant Commissioner had any involvement in the DPD activities of December 30, 2009. None of the procedural obligations in Part 9 that would be required - if a complaint had been made - resulted from the events of December 30, 2009. I therefore conclude that the records dated December 30, 2009 do not disclose, arise out of, or are related to, the making, submitting, lodging or processing of a conduct complaint under Part 9. Therefore, the December 30, 2009 records do not establish that records in File 10-02 are outside the scope of FIPPA on the basis of s. 66.1.

[51] In addition to the December 30, 2009 records, I have reviewed all of the other records in issue in File 10-02, to determine whether they disclose the

[19] Therefore, the discussion in Order 03-06 about the circumstances in which an internal discipline complaint can exist under s. 64(5) are not in play.

existence of a conduct complaint made under Part 9 of the *Police Act*.[20] The records include the notes of various DPD officers about events arising from the collision investigation and the issues related to the applicant's conduct arising from that investigation. None of these other records disclose a complaint for the purposes of Part 9 of the *Police Act.* As none of the records disclose a complaint for the purposes of Part 9 of the former *Police Act*, s. 66.1 does not apply and none are outside the scope of FIPPA on this basis.

[52] In summary, s. 66.1 does not apply to any of the records in File 10-02 because they do not arise out of or relate to the making, submitting, lodging or processing of a conduct complaint under Part 9 of the former *Police Act*.

Sections 182(a) and (b) of the current Police Act

[53] I will now consider if the records in dispute in File 10-02 relate to a complaint concerning the conduct of a member that was made, submitted, registered or processed under Part 11 of the current *Police Ac*t.

[54] The DPD's supplementary submission says that several pages of the records in File 10-02 were created after March 31, 2010 and relate to a conduct complaint under Part 11, which was forwarded by it to the VPD in May 2010. The DPD refers to an entry in a record dated May 7, 2010 as evidence that they referred the December 30, 2009 complaint to the VPD. It says that the communication of this date establishes that s. 182 applies as of May 7, 2010, so all entries in that record from that date on were created on or after a conduct complaint was made under Part 11 of the *Police Act*.

[55] Part 11 of the *Police Act* contains the complaint process that is the equivalent to the repealed Part 9. Part 11 includes s. 182, which as previously stated differs from s. 66.1 in some respects and states:

> Except as provided by this Act and by section 3 (3) of the *Freedom of Information and Protection of Privacy Act*, that Act does not apply to
>
> (a) any record of a complaint concerning the conduct of a member that is made, submitted, registered or processed under this Part,
>
> (b) any record related to a record described in paragraph (a), including, without limitation, any record related to a public hearing or review on the record in respect of the matter,
>
> (c) any information or report in respect of which an investigation is initiated under this Part, or

[20] This includes one record on page 7 dated before March 31, 2010 and the records at pages 12-31.

> (d) any record related to information or a report described in paragraph (c), including, without limitation, any record related to a public hearing or review on the record in respect of the matter,
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> whether that record, information or report is created on or after a complaint is made, submitted or registered or the investigation is initiated, as the case may be.

[56] Order F15-05, which was the first OIPC order to consider s. 182 of the *Police Act*, sets out a two part test for s. 182 to apply to information:

1. The record, information or report must fall within one of the categories denoted in s. 182(a), (b), (c) or (d).
2. The record, information or report must be created on or after a complaint is made, submitted or registered, or the investigation is initiated, as the case may be.[21]

[57] I will consider whether a conduct complaint arose under Part 11 of the current *Police Act*. If such a complaint exists, or an investigation under Part 11 commenced, s.182 could operate to exclude from the scope of FIPPA the records to which the complaint or investigation relates.

[58] As Order F15-05[22] identified, there are three primary types of complaints or investigations in Part 11 of the *Police Act*:

a) complaints and investigations alleging police officer misconduct[23] under Division 3.[24] For example, an investigation into an allegation of unnecessary use force by a police officer would be conducted under this division;

b) complaints and investigations to the police complaint commissioner about a service or policy of a municipal police department under Division 5; and

c) internal discipline matters for municipal police departments under Division 6. These investigations relate to matters that do not directly involve or affect the public.[25]

[59] The DPD's submissions do not state which type of complaint arises under Part 11, but given the nature of the issues revealed by the records, it appears that they considered it to be a misconduct complaint under Division 3.

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[21] F15-05, 2015 BCIPC 5 (CanLII) at para. 22. F15-05 is subject to a petition for judicial review.
[22] At para. 35.
[23] Section 77 defines the term "misconduct" for Part 11.
[24] Division 4 relates to resolution of Division 3 complaints by mediation or other informal means.
[25] The definition of "internal discipline matter" is at s. 76 of the *Police Act*.

[60] The applicant says that no *Police Act* complaint was made by the DPD or anyone else, rather a criminal investigation was started by the NWPS at the request of the DPD.

[61] I have reviewed the records at issue in File 10-02. They demonstrate that on May 7, 2010 the DPD attempted to make contact with the VPD to discuss the applicant's conduct in the DPD collision investigation, but no actual discussion between VPD and DPD occurred until May 10, 2010. Without disclosing the content of the May 10 entry, no complaint is evident from the record of that date. The tenor of the interaction was in the nature of a "heads up" and general discussion. This is reinforced by the next entry of May 26, 2010, which describes DPD officers sharing background records with the VPD for their information. A subsequent entry makes clear that the agreed next step was a criminal investigation conducted by an "outside agency" (i.e. not the VPD or the DPD), rather than a VPD *Police Act* investigation. Subsequent entries in the record, including an excerpt from a NWPS Report to Crown Counsel and a NWPS file entry corroborate this.[26] Further, there is no evidence in the records of any of the procedural steps related to the pursuit of a complaint or a complaint investigation under the *Police Act* occurring following the May 10, 2010 discussion between the DPD and VPD.

[62] There are other indications that no conduct complaint was made under Part 11 of the *Police Act*. Specifically, there is no evidence that s. 78 and other sections in Part 11, Division 3 of the *Police Act* were followed. Under s. 78, complaints concerning a member that are alleged to constitute misconduct can be made to the Police Complaint Commissioner or to other designated individuals, including under s. 78(2)(b), to certain individuals at a municipal police department. However, when a member or designated individual referred to in s. 78(2)(b) receives a complaint, s. 80 requires that the member or designated individual must immediately:

(a) record the complaint and the date and time of its receipt,

(b) provide the complainant with a written acknowledgment of its receipt, and

(c) forward to the police complaint commissioner a copy of the complaint or, if the complaint was not made in writing, a copy of the record of the complaint.

[63] DPD provides no evidence that the procedural requirements for misconduct complaints in s. 80 or elsewhere in Division 3 of Part 11 were followed by the VPD on or after May 7, 2010.

[64] Some of the withheld records dated after March 30, 2010 relate to NWPS's criminal investigation of the applicant. These records comprise file

[26] Exhibits 3 and 4 in the Applicant's initial submissions.

notes, emails and letters requesting and responding to information, as well as communicating the outcome of the criminal investigation. They are not records to which s. 182 applies because they clearly arise from a criminal investigation and do not relate to any existing *Police Act* complaint.[27] The fact that the criminal investigation was about the conduct of the applicant, who happens to be a police officer, does not make it a *Police Act* investigation such that s. 182 comes into play. The existence of a Part 11 *Police Act* complaint is a prerequisite for s. 182 to apply to the record in issue.

[65] Although the DPD's submissions do not specifically refer to ss. 182(c) or (d), I have considered whether the records could also fall within those provisions of s. 182 because they relate to a *Police Act* investigation. Under Part 11 the investigating entity in a *Police Act* investigation is the "discipline authority"[28] - specifically a chief constable of the municipal police department with which the member is employed (or the chief constable's delegate).[29] As the applicant was a VPD police officer, the VPD and not the DPD was the "discipline authority" for the purposes of conducting any *Police Act* investigation about his conduct under Part 11. While there is provision for the chief constable's investigatory power to be delegated to another municipal police department,[30] there is no argument or evidence before me that such a delegation[31] occurred.

[66] Although the records and evidence do not disclose a *complaint* about the applicant's conduct for the purposes of the *Police Act*, it is clear that the VPD did conduct a *Police Act* investigation respecting him. The applicant acknowledges this and includes excerpts from the VPD's final report of its *Police Act* investigation in his reply submission.[32]

[67] The parties agree that the VPD conducted an investigation of the applicant under the *Police Act* because it was directed to do so by the OPCC. The DPD maintains that the VPD investigation was ordered by the OPCC, in part due to the concerns the DPD communicated to the VPD in May 2010. However, the fact that the OPCC had to order the VPD to investigate supports my finding above that the May 2010 communication was not a complaint under Part 11 of the *Police Act*, so it did not trigger the VPD to investigate at that time.

[68] Under the *Police Act*, both before and after the March 30 2010 amendment, records can only fall within the exception to FIPPA for *Police Act* complaints and investigations if they were created on or after the date a complaint is made, submitted or registered or the investigation is initiated.

[27] Part of an entry dated May 28, 2010 on p. 10, entries dated May 31, 2010 and June 4, 2010 on p. 10-11 of the records, records at pp. 41-45, 48, 50.
[28] Section 76 *Police Act,* effective March 31, 2010.
[29] With certain exceptions that do not arise on the facts here.
[30] Section 134 *Police Act* effective March 31, 2010.
[31] See s. 134(2) *Police Act* effective March 31, 2010.
[32] Exhibit 2 and 3 to the Applicant's reply submission.

The applicant says that the investigation that the OPCC ordered the VPD to conduct began on September 28, 2010.[33] I only have small excerpts of the VPD's *Police Act* investigation report,[34] so I do not have documentary evidence to support the applicant's submission about when the VPD investigation began, but this date is not contradicted by the DPD.[35] However, even if, for argument's sake, I were to accept May 10, 2010 was the date on which a *Police Act* complaint was made or the VPD investigation began, almost all the records in issue in File 10-02 pre-date May 10, 2010. Putting aside the records which are clearly related to NWPS's criminal investigation, only the record at page 49 and some information at pages 9 to 11 were created on or after May 10, 2010.

[69] The record at page 49 is an internal email between various DPD officers. While its subject line and one sentence in the email refer to the VPD investigation, it does so only incidentally to acknowledge that the author of the email knows that the VPD investigation exists, which was in progress at the time of the email. The email is clearly not "related" to the VPD investigation but instead concerns an administrative issue relating to a criminal proceeding arising from the DPD's original collision investigation. Given the subject matter of the email, and that it was distributed only amongst DPD officers, I am satisfied that this record is not at all related to the VPD *Police Act* investigation such that it could fall within the scope of s. 182. The record therefore is not excluded from the scope of FIPPA by s. 182.

[70] Some of the information on pages 9 to 11 is about the NWPS's criminal investigation of the applicant, and other information concerns an administrative issue relating to DPD's original collision investigation. Only three entries on page 11 relate to the VPD *Police Act* investigation and are dated after it commenced in October 2010. Therefore, only these three entries on page 11 are outside the scope of FIPPA under s. 182 of the *Police Act*.

[71] In summary, I find that pages 1 to 3 in File 09-19 are outside the scope of FIPPA under s. 66.1 of the former *Police Act*. Similarly, the entries in File 10-02 on page 11 which are dated in October 2010 are outside the scope of FIPPA under s. 182 of the *Police Act*. Since neither ss. 66.1 or 182 of the *Police Act* exclude the remaining records at issue from the scope of FIPPA, the DPD must process the applicant's request with respect to these records.[36]

[72] I will now consider the application of s. 22 of FIPPA to both the information in the behaviour files (i.e., File 09-19 and File 10-02) that the DPD did not

[33] Applicant's supplementary submission at para. 4c.
[34] At Exhibit 2 and 3 to the Applicant's reply submission.
[35] DPD entries in the records show that the VPD had begun a *Police Act* investigation about the applicant by shortly after the September 28, 2010 date provided by the applicant.
[36] For clarity, this does not mean that the DPD is required to disclose the records to the applicant. It must, however, provide a response to the applicant pursuant to s. 8 of FIPPA with respect to these records.

withhold under the *Police Act* and the information withheld under s. 22 in the collision investigation records.

Section 22 of FIPPA

[73] The applicant's request was for information about himself in the DPD's files. Section 22 requires the DPD to refuse to disclose the applicant's personal information to him if the disclosure would be an unreasonable invasion of a third party's personal privacy. Consistent with previous orders,[37] 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 be an unreasonable invasion of a third party's personal privacy?

Personal Information

[74] 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 number of the individual".[38] It is possible for information to be the personal information of more than one person.

[75] The DPD describes the withheld information as the personal information of the third party complainants, victims, witnesses or persons of interest in relation

[37] Order F13-09, 2013 BCIPC 10 (CanLII); Order F12-08, 2012 BCIPC 12 (CanLII) et al.
[38] See Schedule 1 of FIPPA for these definitions.

to the collision investigation.[39] The applicant does not address whether the withheld information is personal information.

[76] I have reviewed the withheld information and am satisfied that it is personal information for the purposes of s. 22 of FIPPA. One piece of personal information is solely the applicant's personal information and therefore should be disclosed to him because it is not third party personal information and therefore does not fall within s. 22.[40]

[77] Some of the information is the applicant's personal information and also the personal information of third parties.[41] Examples of this type of personal information include statements or opinions made by third parties about the applicant and other third parties. Some of this type of personal information is about the applicant and his family member. The DPD state that he has already received the family member's personal information because he acted on her behalf in an earlier access request for her personal information in the same collision investigation records. That request by the applicant's family member was the subject of Order F14-47.[42] The applicant's knowledge of his family member's personal information is discussed below.

[78] The remaining withheld information at issue that was withheld under s. 22 is the personal information of third parties. This information includes names and personal contact information of third parties such as witnesses and owners of vehicles damaged in the motor vehicle collision, and statements about the actions of third parties unrelated to the applicant. As the applicant has limited his request to personal information that is about him, I will not consider any further the third party personal information that does not relate to the applicant in some way. None of the information in the behaviour files (i.e., File 09-19 and File 10-02) that the DPD did not claim was outside the scope of FIPPA but which was withheld under s. 22[43] is the personal information of the applicant. As a result, the balance of this s. 22 analysis is limited to personal information of the applicant in the collision investigation records, and as mentioned, that personal information is about both the applicant and third parties.

Section 22(4) Factors

[79] Section 22(4) sets out circumstances when disclosure of personal information is not an unreasonable invasion of a third party's personal privacy.

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[39] Initial submission at para 13.
[40] Information from a query of the CPIC database containing information about the applicant's vehicle.
[41] See Order F06-11, 2006 CanLII 25571 (BC IPC) at paras. 39-43.
[42] 2014 BCIPC 51 (CanLII).
[43] Information at pp.16-18.

The parties do not address s. 22(4) in their submissions and from my review of the records I find no s. 22(4) factors apply.

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

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

[81] 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.[44]

[82] The personal information in issue in the collision investigation records was clearly compiled for, and is identifiable as part of, a police investigation into a possible violation of the law arising from a motor vehicle collision. Therefore, I find that s. 22(3)(b) applies and disclosure of the personal information in the collision investigation records is presumed to be an unreasonable invasion of third-party privacy.

Personal recommendation or evaluation

[83] The DPD's reply submission says that the presumption against disclosure in s. 22(3)(h) for information that would reveal a personal recommendation or evaluation is relevant to some of the withheld information. I have reviewed the records, and they do not contain the kind of material covered under s. 22(3)(h), which is a "personal recommendation or evaluation, character reference or personnel evaluation." Section 22(3)(h) is intended to cover evaluative material and not opinions or statements like those made by witnesses to Police.[45]

Other Factors – s. 22(2)

[84] The presumption that disclosure of the withheld information that falls within s. 22(3)(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.

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[44] See for example Order No. 305-1999, 1999 CanLII 1817 (BC IPC) at part 9.
[45] See for example Order 01-48, 2001 CanLII 21602 (BC IPC) at para. 46-47.

[85] 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:

> (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
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> …
>
> (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)

[86] The applicant says that s. 22(2)(c) is relevant because he needs access to the withheld information to exercise his 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 does not address s. 22(2)(c) because its position is that the withheld information is not the applicant's personal information, so the s. 29 right does not arise. However, I have already determined that some of the third party personal information is also the applicant's personal information. Therefore, I will consider whether s. 22(2)(c) applies here because the applicant wants to exercise his rights under s. 29 of FIPPA.

[87] Previous orders have outlined the following four part test for determining if s. 22(2)(c) applies:[46]

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

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

4) The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.

[88] These requirements are met for the applicant's personal information, given his intended use of it, which is to exercise his rights under s. 29 of FIPPA. Section 29 provides a legal right to request personal information be corrected. It is clear from the evidence that it is a right that the applicant may wish to exercise, and this motivated his request for access. The information is significant because without it he does not know whether he wants or needs to exercise his right under s. 29 to request the information be corrected. In this way the information is necessary for him to prepare to exercise his legal right. Section 22(2)(c) is therefore a factor in support of disclosing the applicant's personal information.

Supplied in Confidence – s. 22(2)(f)

[89] 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.

[90] The DPD submits that the personal information in this case was supplied in confidence as part of a law enforcement investigation. The applicant disputes that the information in the records was supplied in confidence.

[91] In *R v Quesnelle,*[47] a decision released subsequent to the parties making their s. 22 submissions, the Supreme Court of Canada discussed the issue of the privacy interests of complainants and witnesses. Although it deals with disclosure of personal information in the context of the *Criminal Code*, it provides some useful statements on expectations of privacy regarding information provided to police:

> People provide information to police in order to protect themselves and others. They are entitled to do so with confidence that the police will only disclose it for good reason. The fact that the information is in the hands of the police should not nullify their interest in keeping that information private from other individuals.
>
> Fundamentally, the privacy analysis turns on a normative question of whether we, as a society, should expect that police occurrence reports will be kept private. Given the sensitive nature of the information frequently contained in such reports, and the impact that their disclosure can have on the privacy interests of complainants and witnesses, it seems to me that there will generally be a reasonable expectation of privacy in police occurrence reports.[48]

[47] 2014 SCC 46.
[48] At paras. 43-34.

[92] Though the evidence does not demonstrate that the withheld information was supplied to the DPD in confidence, I agree with the statements of Karakatsanis J. in *R v Quesnelle* that there is generally a reasonable expectation of privacy in information provided to police. I therefore find that the information was supplied in confidence and that s. 22(2)(f) is a factor that weighs against disclosure of the information.

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

[93] The applicant is concerned that the DPD collected inaccurate information about him. The applicant argues this weighs in favour of disclosure here because without access to the withheld information he cannot address potential inaccuracies in it about him.

[94] 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 a third party's personal information that may be inaccurate or unreliable. The applicant is advocating for disclosure of his own personal information, not disclosure of a third party's personal information.[49]

[95] I recognize that the applicant's concern is ultimately about disclosure of inaccurate information about himself to others (*i.e.* that at some future time the DPD may disclose the records that contain information about him). In the event of such an access request by another person, he 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 disclosure, not a possible future disclosure of information, so s. 22(2)(g) is not relevant. That said, I will consider the applicant's concern about future disclosure of inaccurate information about himself to others below in the wider discussion of other s. 22 factors.

Other factors

Applicant's personal information

[96] Previous orders have stated that only in rare circumstances would disclosure to applicants of their own personal information be an unreasonable invasion of a third party's personal privacy.[50] An example of such a circumstance is where the applicant's personal information is also the personal information of third parties and disclosure of that information would be an unreasonable

[49] See for example, Order 01-19, 2001 CanLII 21573 (BC IPC); 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 (BC IPC) at para. 54.

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

invasion of a third party's personal privacy.[51] Here, the applicant's personal information is also the personal information of third parties, in almost all cases that of the applicant's family member. The fact that the information is the personal information of the applicant provides some support for disclosure, but the ultimate question is whether disclosure of the applicant's information would be an unreasonable invasion of third party privacy.

Knowledge

[97] It is clear that the applicant already knows the content of much of the withheld information. In many of the instances where the applicant's personal information is also the personal information of a third party and has been withheld under s.22, the third party is the applicant's family member. This information has already been disclosed to the applicant, either voluntarily by the DPD or because it was directed to do so in Order F14-47. As the DPD acknowledges in its submissions, the applicant has reviewed all the records provided to his family member[52] because he was the agent for his family member in the inquiry that resulted in Order F14-47. Therefore, as he already has this withheld information, it is not an unreasonable invasion of his family member's personal privacy to disclose it to him here.

[98] There is just one instance where the applicant's personal information is also the personal information of another third party (i.e., not his family member). It appears in an opinion by the applicant that refers to an unnamed but potentially identifiable DPD officer. In this instance, because the opinion was expressed by the applicant, he knows the withheld information.[53] I therefore consider the fact that the applicant made the statement to be a strong factor in favour of its disclosure.

[99] In summary, the fact that the applicant already has a copy of the withheld information (through disclosures when he was his family member's agent in a previous access request), or the information is a statement he made, weighs heavily in favour of disclosure of that information.

Legitimate interest

[100] The fact that the collision investigation involved a close family member and the applicant was involved in that investigation is a factor in favour of

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[51] Order F06-11, 2006 CanLII 25571 (BC IPC) at para. 77.
[52] DPD initial submission at para. 16.
[53] This is analogous to the situation where an applicant's own complaint is typically ordered disclosed to the applicant because it is the applicant's personal information and the applicant knows the information. See, for example, Order F14-18, 2014 BCIPC 21 (CanLII) at para. 27-29.

disclosure. The applicant has a legitimate interest in obtaining any personal information about himself in the records of the DPD's collision investigation.[54]

Future disclosure of inaccurate information

[101] The applicant's request for information is driven by a concern about future disclosure of inaccurate information about him to others. As a police officer he is aware of how personal information in police records is used and disclosed, and he expresses concerns about the extent of such disclosure. I note that the general adoption by police in B.C. of the recommendations in the OIPC's 2014 Investigation Report, *Use of Police Information Checks in British Columbia,*[55] has reduced the broad nature of such disclosures. Nonetheless, I recognize that this concern is a legitimate one that does support disclosure of the information, for the reasons discussed above in relation to the application of s. 22(2)(c).

Summary, s. 22(1)

[102] In summary, the only personal information at issue is the personal information in the collision investigation records that is about both the applicant and third parties. I find that the withheld information is personal information to which s. 22(3)(b) applies. I also find that s. 22(2)(c) weighs in favour of disclosure, s. 22(2)(f) weighs against it, and s.22(g) does not apply. As for the relevant circumstances that are not listed in s. 22(2), a strong factor in favour of disclosure is that some of the information is the applicant's personal information. However, the most significant factor in favour of disclosure is the applicant's knowledge of the withheld personal information arising from his involvement in the collision investigation and Order F14-47.

[103] I conclude that the relevant circumstances weighing in favour of disclosure rebut the presumption under s. 22(3)(b) that disclosing information would be an unreasonable invasion of third-party personal privacy. In the circumstances it is not an unreasonable invasion of the privacy of third parties, under s. 22(1), to disclose to the applicant his personal information where it is intertwined with the personal information of other third parties.

CONCLUSION

[104] For the reasons given above, I find that FIPPA does not apply to pages 1-3 due to s. 66.1 of the former *Police Act*. Further, I find that that due to s. 182 of the *Police Act*, FIPPA does not apply to the information highlighted on page 11 of the record accompanying the DPD's copy of this order. For the information withheld under s. 22, I find that disclosure of the personal information of the

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

[55] Investigation Report F14-01, available at https://www.oipc.bc.ca/investigation-reports/1631

applicant would not be an unreasonable invasion of third party personal privacy. This information has been highlighted in a copy of the Collision Investigation File records accompanying the DPD's copy of this order.

ORDER

[105] Under s. 58 of FIPPA, I make the following order:

1. The DPD is required to process the applicant's request with respect to the information at pages 6-10, 11 (excluding the highlighted information), 12-14, and 20-50 that I found may not be withheld under the *Police Act* and give him a decision under FIPPA about whether he is entitled to have access to that information.
2. The DPD is required to disclose the applicant's personal information which is highlighted in the collision investigation records accompanying the DPD's copy of this order. The DPD must copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.
3. The DPD must comply with this Order by August 14, 2015.

July 2, 2015

ORIGINAL SIGNED BY

Hamish Flanagan, Adjudicator

OIPC File No.: F12-49581