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Order F16-46

FRASER HEALTH AUTHORITY

Chelsea Lott
Adjudicator

November 17, 2016

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Summary: The applicant requested disclosure of records related to a licensing investigation following an accident at a day care. The public body provided the majority of the records, withholding some information under s. 22 (disclosure harmful to personal privacy). The adjudicator found the Health Authority was required to withhold most of the information on the grounds that disclosure would be an unreasonable invasion of third party personal privacy pursuant to s. 22(1) of FIPPA. A small amount of information was either not personal information or the Health Authority was not required to withhold it pursuant to s. 22.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22, 22(2)(c).

Authorities Considered: B.C.: Order F16-36, 2016 BCIPC 40 (CanLII); Order 01-53, 2001 CanLII 21607 (BC IPC); Order F16-33, 2016 BCIPC 37 (CanLII); Order 03-41, 2003 CanLII 49220 (BC IPC); Order 05-30, 2005 CanLII 32547 (BC IPC); Order F15-33, 2015 BCIPC 36 (CanLII); Order F15-60, 2015 BCIPC 64 (CanLII); Order F10-36, 2010 BCIPC 54 (CanLII); Order F12-01, 2012 BCIPC 1 (CanLII); Order F16-12, 2016 BCIPC 14 (CanLII); Order F16-01, 2016 BCIPC 1 (CanLII); Order F05-18, 2005 CanLII 24734 (BC IPC); Order 01-07, 2001 CanLII 21561 (BC IPC); Order F15-50, 2015 BCIPC 53 (CanLII); Order F05-32, 2005 CanLII 39586 (BC IPC); Order F16-19, 2016 BCIPC 21 (CanLII); Order F15-54, 2015 BCIPC 57 (CanLII); Order 01-19, 2001 CanLII 21573 (BC IPC); Order F15-30, 2015 BCIPC 33 (CanLII); Order F14-47, 2014 BCIPC 51 (CanLII); Order F10-37, 2010 BCIPC 55 (CanLII); Order F10-14, 2010 BCIPC 23 (CanLII).

Cases Considered: *Ryan v. Victoria (City),* 1999 CanLII 706 (SCC); *Sperling v. Queen of Nanaimo (the)*, 2014 BCSC 326 (CanLII).

INTRODUCTION

[1] An infant was seriously injured as the result of an accident at his day care. In response, the Fraser Health Authority conducted a licensing investigation of the day care. The infant's father made a request under the *Freedom of Information and Protection of Privacy Act* ("FIPPA") for access to the records compiled in the course of that investigation.

[2] Fraser Health Authority (the "Health Authority") responded by disclosing records with portions withheld under ss. 15(1)(d) (confidential source of law enforcement information) and 22 (disclosure harmful to personal privacy) of FIPPA. The applicant[1] requested the Office of the Information and Privacy Commissioner ("OIPC") review the Health Authority's decision. Mediation did not resolve the matter and the applicant requested that it proceed to inquiry under Part 5 of FIPPA. Subsequently, the Health Authority disclosed further information and also withdrew its reliance on s. 15.

[3] After the inquiry closed, I provided the parties with an opportunity to consider the recently issued Order F16-36,[2] which clarified the test under s. 22(2)(c), a section at issue in this inquiry. Both parties provided supplementary submissions.

ISSUE

[4] The issue before me is whether the Health Authority is required by s. 22 of FIPPA to withhold third party personal information. Pursuant to s. 57(2), the applicant has the burden of proving that disclosure of third party personal information would not be an unreasonable invasion of third party privacy.

DISCUSSION

[5] **Background –** The Health Authority is responsible for enforcing day care licensing requirements under the *Community Care and Assisted Living Act* ("CCALA") and the *Child Care Licensing Regulation* (the "Regulation"). The Health Authority's Community Care Facilities Licensing Program fulfills this mandate. Day care licence holders are required to notify the Licensing Program within 24-hours of "reportable incidents," which are defined in the Regulation and

[1] The initial access request was made by the minor's father on behalf of his son, but for the purpose of this inquiry, the named applicant is the infant who is now six years old. Neither party has raised this as an issue and I have conducted the inquiry considering the minor as the applicant.

[2] Order F16-36, 2016 BCIPC 40 (CanLII).

include incidents of personal injury.[3] The Licensing Program in turn investigates reportable incidents at licensed day cares. Findings of contravention of the CCALA or the Regulation may result in conditions, suspension or cancellation of a license.[4]

[6] While attending day care, the applicant, who was two years old at the time, received severe burns as a result of boiling water from a kettle spilling on him. He was taken by air ambulance to BC Children's Hospital for treatment. The accident was reported to the Licensing Program and they conducted an investigation. Once the investigation was completed, the licensing officer made findings regarding the day care's compliance with the CCALA and the Regulation. The day care closed a few months after the accident.

[7] **Records –** The information in dispute is contained in 123-pages of records compiled as part of the Licensing Program's investigation. The Health Authority has disclosed the records but is withholding some of the information in these records pursuant to s. 22 of FIPPA.

[8] The records at issue comprise:

- Licensing Program intake records.
- Day care employees' statements.
- Notes of the licensing officer's interviews with day care employees.
- The licensing officer's notes to the file documenting the status of the investigation.
- Internal Licensing Program emails about the progress of the investigation and licensing issues.
- Emails between staff of the day care and the licensing officer providing records and advising on licensing issues.
- Facility Inspection Reports.
- Two letters and typed notes outlining the licensing officer's analysis, preliminary and final findings as well as the day care's letter of response to the findings.

[9] **Disclosure Harmful to Personal Privacy (s. 22) –** The Health Authority is withholding all of the information at issue under s. 22. Section 22 provides that the head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. In Order 01-53[5], Commissioner Loukidelis set out the manner

[3] s. 55(2) and Schedule H of the *Child Care Licensing Regulation*.
[4] See ss. 13 – 15 of the CCALA.
[5] Order 01-53, 2001 CanLII 21607 (BC IPC) at p. 7.

in which s. 22 is to be applied in determining whether a public body is required to sever or withhold records on the basis that disclosure would constitute an unreasonable invasion of third party personal privacy. I have applied the same analytical framework in this case.

Personal Information

[10] The first step in a s. 22 analysis is to determine if the information in dispute is personal information. Personal information is defined 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."[6]

[11] The Health Authority submits the withheld information is personal information because it either directly identifies an individual by name or position, or is reasonably capable of being attributed to a particular individual when combined with other available sources of information in the records.

[12] The applicant says that he accepts that the withheld information is personal information and makes no argument on this issue.

[13] The Health Authority has withheld:

- The identities of the employees of the day care who were involved in the incident, as well as other identifying information such as their positions and responsibilities at the day care.
- The Licensing Program's code names[7] for certain staff contained in their findings.
- Any third party names which appear in the context of the employees' statements or interview notes (even where those name(s) may have been disclosed elsewhere).
- The names of the other children in the day care.
- Some information about a second child involved in the incident.
- Staff's views about other staff's workplace behaviour, actions and competency.
- There is also some withheld information about the third parties' employment and educational history.
- References to vacation and sick leave.
- The staff schedule.

[6] See Schedule 1 of FIPPA for these definitions.
[7] The Licensing Program assigned unique letters to certain staff members.

- Email addresses, home addresses, personal telephone numbers and in one instance a date of birth.

[14] I find that the majority of the withheld information is personal information of third parties.[8] Some of the withheld information in isolation would not be sufficient to identify employees; however when combined with other information available in the records it would be possible for someone with knowledge of the day care, such as parents or other staff, to identify the employees.[9] I also agree with the Health Authority that the relatively small size of the day care is a factor which makes identification or re-identification of the employees and children more likely.[10]

[15] In my view, a small amount of the withheld information is not personal information within the meaning of FIPPA. At the top of pages 83 to 91, the withheld information appears to be a church fax number and name and is not about an identifiable individual and therefore not personal information. I also note that the Health Authority has disclosed this information elsewhere in the records without explanation.

[16] In addition, the Health Authority has withheld third party email addresses which appear on pages 35 to 47. The Health Authority submits that these are personal email addresses. While it is true that the withheld email addresses do not use an obvious business domain name, it is the use of the address, rather than its form, which determines whether an address is contact information for the purpose of FIPPA.[11] From the portions of the emails that have been disclosed, it is clear that the emails are of a business and not personal nature. The third parties used these email addresses to communicate regarding the licensing investigation and compliance issues. It is also evident from the contents of the emails, that these third parties are involved with the licensing and administration of the day care and are not parents of the day care children.[12]

[17] I have highlighted the information which I found is not personal information in the copy of the records that I am providing to the Health Authority with this order.

Section 22(4)

[18] The next step in the s. 22 analysis is to determine if the personal information falls into any of the types of information listed in s. 22(4) because if it

[8] I note the Health Authority has not withheld any of the applicant's own personal information.
[9] Order F16-33, 2016 BCIPC 37 (CanLII) at para. 14.
[10] Order 03-41, 2003 CanLII 49220 (BC IPC) at para. 56.
[11] Order F15-33, 2015 BCIPC 36 (CanLII) at para. 31.
[12] I make one exception to my finding that the email addresses on pp. 35-47 are "contact information." Specifically, the sender's name and email address in the March 19, 2013 email on p. 45. This email is not obviously about work or business issues.

does, disclosure would not be an unreasonable invasion of personal privacy. In this case, neither party suggests that s. 22(4) applies. I have considered s. 22(4)(e), which states that disclosure of personal information about a public body employee's position, functions or remuneration is not an unreasonable invasion of that third party's privacy. Some of the withheld information is about third parties' positions and functions as employees of the day care. As the day care is not a "public body" under FIPPA, s. 22(4)(e) does not apply. Further, from my review of the records, I am satisfied that the withheld personal information does not fall into any of the remaining categories of information listed in s. 22(4).

Section 22(3)

[19] The third step is to determine whether any of the presumptions in s. 22(3) apply, in which case disclosure is presumed to be an unreasonable invasion of third party privacy.

[20] The Health Authority submits that ss. 22(3)(b), (d), (g) and (h) apply. The applicant concedes that one or more of the presumptions in s. 22(3) apply, but he does not specifically address any of the presumptions in his submissions.

Section 22(3)(a)

[21] Neither party made submissions regarding s. 22(3)(a) which applies to personal information which relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation. Some of the withheld information relates to the fact that an employee was on medical leave at the time of the incident and whether she would return. Section 22(3)(a) creates a presumption against disclosing information about an employee's medical leave because it relates to that person's medical condition and treatment.[13] There is also one sentence about a child's psychological condition following the incident. The presumption plainly applies to this type of information.

Section 22(3)(b)

[22] Section 22(3)(b) of FIPPA creates a presumption against disclosure where the personal information was "compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation."

[23] The records in dispute were compiled as part of the Health Authority's investigation under the CCALA into a reportable incident at the day care. Ultimately, the Health Authority concluded that the day care had contravened

[13] Order F15-60, 2015 BCIPC 64 (CanLII) at para. 31.

a number of provisions of the CCALA and the Regulation, although no action was taken because the facility closed.[14]

[24] The Heath Authority submits that s. 22(3)(b) applies and relies on Order F10-36[15] in which the presumption under s. 22(3)(b) was held to apply to a regulatory investigation by WorksafeBC. The present inquiry also involves a regulatory investigation and I am persuaded that the licensing investigation was an investigation into a possible violation of law. I am satisfied, therefore, that the s. 22(3)(b) presumption applies to all of the personal information which has been withheld with one exception.

[25] That exception is the information withheld from the records on pages 71 to 73, which falls outside of the scope of s. 22(3)(b). As is evident in the portions of these pages disclosed to the applicant, the withheld information relates to the day care's application for a licensing exemption prior to the accident. Although it may have been relevant to the investigation, the information was not compiled as part of the investigation. It was compiled before the incident, in order for the day care to apply for a licensing exemption. Accordingly, the information withheld in these pages does not fall within the meaning of s. 22(3)(b).

Section 22(3)(d)

[26] Disclosing personal information that relates to a third party's employment history is a presumed invasion of that person's privacy under s. 22(3)(d).

[27] Some of the withheld information refers to staff's education, training and experience in early child care education. Further withheld information relates to employees' employment history with the day care. This type of information squarely falls within s. 22(3)(d).

[28] In addition, as discussed above, there is information withheld throughout the records related to an employee's medical leave. There is also a small amount of withheld information about an employee's vacation. Information about an employee's vacation or sick leave falls within s. 22(3)(d).[16]

[29] Section 22(3)(d) also applies to a third party's name and identifying information where it appears in the context of a workplace investigation. In Order F10-36, the public body had withheld the identifying information of witnesses in a WorkSafeBC investigation into a fatal accident. Adjudicator Francis held s. 22(3)(d) applied to the withheld information because it was in the context of a workplace investigation.[17] I make the same finding in this case.

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[14] Affidavit of J Park, Exhibit A.
[15] Order F10-36, 2010 BCIPC 54 (CanLII).
[16] Order F12-01, 2012 BCIPC 1 (CanLII) at para. 36.
[17] Order F10-36, 2010 BCIPC 54 (CanLII), at paras. 21–23.

[30] Section 22(3)(d) further applies to certain information gathered in the course of a workplace investigation which would not otherwise be subject to the presumption. In Order 01-53, Comissioner Loukidelis held:

> [35] It follows that disclosure of evidence of, or statements made by, witnesses about the third party's workplace behaviour or actions (including any opinions or views expressed by others about the third party) is presumed, under s. 22(3)(d), to be an unreasonable invasion of the third party's personal privacy. This includes the investigator's views or opinions, any evidence given by, or statements made by, the applicant about the third party, and any findings or conclusions expressed by the investigator.[18]

[31] Some of the withheld information consists of evidence of or statements made by employees about their co-workers' workplace behaviour and actions, including their personal views about co-workers. This is the type of information described in Order 01-53, and accordingly, I find that s. 22(3)(d) applies to it.

Section 22(3)(g)

[32] Section 22(3)(g) provides a presumption against disclosure where the personal information "consists of personal recommendations or evaluations, character references or personnel evaluations about the third party."

[33] Previous orders have held that s. 22(3)(g) applies to an investigator's evaluative statements about a third party's performance in the workplace.[19] The Health Authority has disclosed the licensing officer's preliminary and final findings regarding staff's contraventions of the CCALA and the Regulation, but has withheld the identities of those staff. The identity of the staff when combined with the findings/evaluations of the licensing officer, clearly fall within s. 22(3)(g).

[34] The Health Authority argues that s. 22(3)(g) extends to "the statements made by the interviewees in this case regarding other third parties whose conduct was the subject of investigation."[20] Some of the withheld information relates to employees' views of their colleagues' workplace behaviour and competency. These opinions were supplied in the context of interviews with the licensing officer. As discussed previously, this type of information falls within s. 22(3)(d) because it was compiled in the course of a workplace investigation. However, in Order F05-35, Adjudicator Francis held that in the context of a workplace investigation, employees' and managers' comments or complaints about each other's workplace attitudes or behaviour do not fall within s. 22(3)(g).[21]

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[18] Order 01-53, 2001 CanLII 21607 (BC IPC) at para. 35.
[19] See for example Order F16-12, 2016 BCIPC 14 (CanLII) at para. 28.
[20] Health Authority initial submissions at para. 26.
[21] Order F05-30, 2005 CanLII 32547 (BC IPC) at paras. 41-42.

[35] In my view, something more formal than comments provided in an interview setting is required to invoke s. 22(3)(g). For example, in Order F16-01, Adjudicator Raaflaub held that s. 22(3)(g) applied to grades students assigned to their classmates in a group negotiation exercise.[22] I am not persuaded that s. 22(3)(g) applies to any information other than the licensing officer's findings about the employees.

Section 22(3)(h)

[36] The purpose of s. 22(3)(h) is to protect the identity of someone who provided, in confidence, the type of information described in s. 22(3)(g).[23] Although I held that the licensing officer's findings about the day care staff came within s. 22(3)(g), I find that that information does not fall within s. 22(3)(h) because the licensing officer's identity is not confidential and has been disclosed to the applicant.

Summary section 22(3)

[37] To summarize, I have found that all of the withheld information is subject to one or more of the presumptions provided for in s. 22(3). Section 22(3)(b) applies to all of the withheld information except for the day care's application for an exemption at pp. 71 to 73. The presumption under s. 22(3)(d) applies to a significant amount of the withheld information, including that on pp. 71 to 73. Withheld information which relates to one of the employee's medical leave as well as information about a child's psychological condition come within the presumption under s. 22(3)(a). Lastly, s. 22(3)(g) applies to the investigator's findings about staff members.

Relevant circumstances

[38] The final step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those listed in s. 22(2). The presumptions under s. 22(3) can be rebutted if a consideration of all relevant factors, including those in s. 22(2), indicates that disclosure would not be an unreasonable invasion of the third parties' personal privacy.

Section 22(2)(a)

[39] Neither party specifically raised s. 22(2)(a) in their submissions, although I have considered its application. Section 22(2)(a) requires consideration of whether disclosure is desirable for the purpose of subjecting a public body to

[22] Order F16-01, 2016 BCIPC 1 (CanLII) at para. 20.
[23] Order F05-30, 2005 CanLII 32547 (BC IPC) at para. 42.

public scrutiny. The presumption applies where the disclosure of third party personal information would foster accountability of a public body.[24]

[40] There is no question that the Health Authority's Licensing Program plays an important role for the public in ensuring day cares are operated safely. Insofar as there is a public interest in knowing how the Health Authority conducted its investigation and its findings, this type of information has been disclosed to the applicant. The day care is not a public body under FIPPA and the withheld information more properly relates to the accountability of the day care, not the Health Authority, something which s. 22(2)(a) is not intended to address.[25]

Section 22(2)(b)

[41] Section 22(2)(b) requires a public body to consider whether "the disclosure is likely to promote public health and safety or to promote the protection of the environment." Again, neither party raised s. 22(2)(b), however I have considered its application. Having reviewed the withheld information, I do not consider its disclosure would promote public health and safety. I also note, the day care closed shortly after the incident and so I am satisfied that there is no public safety issue.

Section 22(2)(c)

[42] The applicant argues that s. 22(2)(c) applies because the withheld information is relevant to a fair determination of his rights. He further argues that this circumstance overrides any presumptions under s. 22(3). The Health Authority concedes that s. 22(2)(c) is a relevant factor, but stresses that the many other circumstances present in this inquiry weigh in favour of a finding that disclosure of the withheld personal information would be an unreasonable invasion of personal privacy.[26]

[43] Previous orders have held that s. 22(2)(c) only applies if all of the following circumstances are met:

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.

[24] Order F05-18, 2005 CanLII 24734 (BC IPC) at para. 49.
[25] *Ibid*
[26] The Health Authority initially vigorously disputed s. 22(2)(c)'s application in this case, however after consideration of Order F16-36, 2016 BCIPC 40 (CanLII), which was issued after the close of submissions, the Health Authority argued Order F16-36 was distinguishable and placed emphasis the presumptions under s. 22(3).

3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question.
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.[27]

Legal right

[44] In this case, the identity of the employees involved in the accident clearly relates to a legal right to seek damages in a civil lawsuit for negligence. The withheld information also includes evidence which would be relevant to such a proceeding.[28]

Proceeding contemplated

[45] The Health Authority submits that the suggestion that the six year old applicant is contemplating a proceeding is "speculative at best."[29] However, I find that litigation is contemplated.[30] From my review of the applicant's materials, it is evident that a potential lawsuit is the reason why the applicant is seeking the information that is at issue.[31] The applicant's father deposes that he wants to do whatever is necessary to preserve information about the accident and to locate employees in case the applicant wishes to pursue a lawsuit upon turning 19-years-old.[32] Moreover, the applicant's submissions explicitly state that a civil lawsuit is anticipated "for a future date when the long-term effect of his injuries becomes known or when he reaches the age of majority."[33] Based on the foregoing, I find that a proceeding is contemplated within the meaning of part two of the test.

Bearing on, or significance for, determination of right

[46] The applicant's submissions and evidence make clear that the purpose he seeks the withheld information is to identify potential defendants. In addition, he seeks to preserve evidence presumably by contacting the third parties to interview them about the accident and circumstances leading to the accident. The identities of potential defendants and witnesses as well as evidence

[27] Order 01-07, 2001 CanLII 21561 (BC IPC) at para. 31 citing Ontario Order P-651, [1994] OIPC No. 104.
[28] For example, findings of contravention of the CCALA and Regulation could be evidence of negligence of those individuals: *Ryan v. Victoria (City*), 1999 CanLII 706 (SCC) at para. 29.
[29] Health Authority June 1, 2016 submissions at p. 1.
[30] See Order F16-36, 2016 BCIPC 40 (CanLII) at paras. 43-50 for a discussion of the OIPC's interpretation of "contemplated."
[31] I also note that previous orders have also held that the applicant's pursuit of information through an inquiry could be evidence that a proceeding was contemplated. See: Order F15-50, 2015 BC IPC 53 (CanLII) at para. 24.
[32] Affidavit of J Park at para. 12.
[33] Applicant's initial submissions at p. 7.

regarding the accident clearly have a bearing on or significance for the applicant's legal rights in a future civil lawsuit.

Necessary in order to prepare for the proceeding or to ensure a fair hearing

[47] Lastly, I find that the identities of the staff, including their names and contact information are necessary in order to prepare for the proceeding or to ensure a fair hearing. Although the applicant could obtain this information were he to commence litigation, Adjudicator Alexander clarified in Order F16-36 that part four of the test does not turn exclusively on an applicant's ability to obtain the information by other means such as the litigation discovery process.[34]

[48] The applicant will need to know the identities of day care staff in order to determine the proper parties and potential witnesses. Their contact information is necessary to help locate those staff in an effort to preserve evidence. However, I am not persuaded that the remainder of the withheld information meets the fourth part of the test as it is not necessary to prepare for the proceeding or to ensure a fair hearing.

[49] For the above reasons, I find that s. 22(2)(c) is a relevant circumstance in favour of disclosing the names and contact information of the day care staff involved in the accident but not for any of the other information in dispute.

Weight of s. 22(2)(c)

[50] In considering the weight to give s. 22(2)(c), I note the applicant will likely be able to receive this personal information as part of civil proceedings pursuant to the *Supreme Court Civil Rules*.[35] Proceedings are commonly commenced against an identifiable person fictitiously named John Doe whose proper name is not actually known. This can be rectified by amendment or court application once the proper name is ascertained.[36] Although this may require an additional step in the litigation, I do not consider it to be greatly prejudicial to the applicant.

[51] I have also considered the importance of preserving evidence. The applicant has until he is 21-years old (approximately 15 more years) to commence a lawsuit.[37] Although the applicant's litigation guardian is not precluded from commencing litigation presently, the applicant has submitted evidence which indicates that his physicians believe it is too early to know the long-term impact of the accident on the applicant's life or how the injuries will affect him when he starts a growth spurt.[38] I infer from this evidence that it could

[34] Order F16-36, 2016 BCIPC 40 (CanLII) at paras. 54–63.
[35] Rule 7-1 provides for document production from parties and non-parties.
[36] *Sperling v. Queen of Nanaimo (the),* 2014 BCSC 326 (CanLII).
[37] Section 7 of the *Limitation Act,* RSBC 1996, c 266 postpones the applicant's 2-year limitation period in this case from running until he turns 19-years-old.
[38] Affidavit of J Park at para. 9.

be years until the applicant is able to meaningfully quantify any damages from his injuries. Accordingly, the aim of preserving evidence is important in the present case, as memories fade with time and witnesses or potential parties may become increasingly difficult to locate.

[52] However, I find this consideration is tempered by the fact that evidence of what occurred has already been preserved in written format in the investigation records, albeit perhaps not all of the evidence which the applicant would seek to preserve. Further, the Health Authority has disclosed the names of the day care license holder, the school principal and the day care manager.[39] Contact information for these people has been disclosed in the records as well, including a web site for the school where the day care was located. Although the day care closed after the accident, there is no evidence to suggest the school where the day care operated also closed. Given the positions of these three individuals, they would probably be able to provide much of the information the applicant seeks.

[53] Given these factors, I conclude the applicant could be prejudiced if he is unable to obtain the identifying information of the staff involved in the accident, both for preserving evidence and for identifying potential defendants and witnesses. However, I am not persuaded that s. 22(2)(c) carries significant weight in this case for the reasons discussed.

Section 22(2)(f)

[54] Pursuant to s. 22(2)(f), whether a third party's personal information was supplied in confidence is a relevant circumstance. The Health Authority has provided evidence that the licensing officer advised interviewees that their identity would remain confidential unless the outcome of the investigation resulted in legal action that required disclosure by lawful means.[40] Although the licensing officer advised the interview participants that a "legal action" was required to disclose their identities - this type of assurance does not override the provisions of FIPPA.[41] Nevertheless, I find the assurance of confidentiality is a relevant circumstance which favours withholding the personal information of the third parties.[42]

Section 22(2)(e) and (h)

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

[39] At pp. 2, 14, 20, 30 of the records.
[40] Affidavit of Faulkner at para. 3 and affidavit of Kinney at para. 3.
[41] Order 01-53, 2001 CanLII 21607 (BC IPC) at para. 25.
[42] Order F05-32, 2005 CanLII 39586 (BC IPC) at para. 19.

party's reputation. The Health Authority submits these sections are not relevant because it is unaware of evidence of possible financial or reputational harm to the third parties. It further says that the risk of any such harm being "unfair" is remote given that any findings against the employees would be made in a judicial process with all of the procedural rights that entails.

[56] I agree with the Health Authority that s. 22(2)(e) is not relevant to this case. However, recent orders of this office have held that negative evaluations or allegations of a third party's workplace conduct, as well as information about workplace discipline comes within s. 22(2)(h).[43] Given the character of some of the withheld information, namely the licensing officer's findings regarding the staff as well as the negative evaluations provided by co-workers, I find that s. 22(2)(h) is a circumstance which favours withholding this type of personal information.

The applicant's connection to the information

[57] Neither party specifically raises the applicant's connection with the third party information as a circumstance, but I have considered it. Order 01-19 involved a widow's request for WorksafeBC investigation records about her husband's death. It is apparent former Commissioner Loukidelis considered the applicant's connection to the witnesses favoured disclosure. The Commissioner held that disclosure of the names and occupations of witnesses was not an unreasonable invasion of their personal privacy:

> [47] I do not find, however, that disclosure of the witnesses' names and occupations, in this case, would be an unreasonable invasion of their personal privacy. They were the applicant's late husband's co-workers. The material before me indicates she knows them and it is possible she already knows their occupations. Even if she does not, I do not find that disclosing this information constitutes an unreasonable invasion of their personal privacy in this case.[44]

[58] In my view, the applicant's connection to the personal information is an important relevant factor to consider in this case. Understandably given his age, the applicant is unable to recall the third parties involved or to effectively communicate the particulars of the accident.[45] The applicant nevertheless has a strong connection with the third party personal information regarding the accident. One or more of the third parties were the applicant's teachers. Further, a number of the third parties played a role in the circumstances leading to the accident as well as caring for him immediately afterwards. The applicant's connection to the third party personal information contained in the records is a factor which favours disclosure in this case.

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[43] See: Order F16-33, 2016 BCIPC 37 (CanLII) at para. 35; Order F16-19, 2016 BCIPC 21 (CanLII) at para. 32; Order F15-54 2015 BCIPC 57 (CanLII) at para. 22.
[44] Order 01-19, 2001 CanLII 21573 (BC IPC) at para. 47.
[45] Applicant initial submissions at para. 18.

Legitimate interest

[59] Another relevant circumstance in this case is the fact that the applicant has, in my view, a legitimate interest in knowing the identity of the staff who were caring for him and were involved in his accident. In this case, the injuries suffered by the applicant are quite serious and as he matures, he will inevitably want to know more about what happened to him and who was involved. Therefore, I find that he has a legitimate interest in the names of the day care staff who were involved in the accident as well as any information related to the accident including the circumstances leading to the accident. Previous orders have also found that having a "legitimate interest" in the third party personal information is a circumstance that weighs in favour of disclosure in situations that involve a serious accident.[46]

Previous disclosure

[60] After the accident, the applicants' parents met with the principal of the school. The principal told the parents the names of several teachers who were working at the time of the accident.[47] The records also indicate that staff member(s) attended the hospital. One staff member spoke with the applicant's mother and asked her if she wanted to know what happened.[48] It is clear that at the time of the accident and immediately afterwards, the principal and some staff considered it appropriate to disclose their identities and information about the accident. It would be difficult to imagine a school refusing to do so where a child in their care was injured. I consider this to be a circumstance which weighs in favour of disclosure of the identities of third parties involved in the accident.

Conclusion on s. 22(1)

[61] I have found above that one or more of the presumptions pursuant to s. 22(3) applies to all of the withheld personal information. I found that ss. 22(3)(b) and (d) applied to the majority of the withheld personal information and ss. 22(3)(a) and 22(3)(g) apply to a small amount of the withheld personal information.

[62] I have also found that there are circumstances which support withholding the third party personal information. I found the day care staff supplied personal information in confidence to the licensing officer as contemplated by s. 22(2)(f). Also, the licensing officer's findings about staff members as well as the negative evaluations provided by some staff were subject to s. 22(2)(h).

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[46] See: Order F15-30, 2015 BCIPC 33 (CanLII) at para. 100; Order F14-47, 2014 BCIPC 51 (CanLII) at para. 40; F10-37, 2010 BCIPC 55 (CanLII).
[47] Affidavit of J Park at para. 6.
[48] Although the identity of the staff was withheld, the information about the hospital visit has been disclosed.

[63] However, there are also circumstances weighing in favour of disclosing the identities of third party staff and information about the accident. Section 22(2)(c) weighs in favour of disclosing the identity and contact information of staff involved in the accident, although I did not attribute significant weight to that circumstance. The applicant's connection to the information, his legitimate interest in the information, as well as previous disclosure of information are also important relevant circumstances in favour of disclosing the identities of staff involved in the accident and information which relates to the accident.

[64] Although I have found that there are important circumstances favouring the disclosure of the identity of staff members involved in the accident, their identity information is interwoven with personal information about the staff's employment history and opinions about each other, the licensing officer's findings, as well as information about staff leave. It would not be possible to disclose the identities of staff involved in the accident without necessarily disclosing other types of personal information, for which I have found there are no circumstances which favour disclosure.

[65] Having considered all of the relevant circumstances, in my view it would be an unreasonable invasion of the staff's privacy to disclose their identities in this case. I am also not satisfied that applicant has met his burden with respect to the remainder of the withheld personal information including the names of children at the day care, and personal information that is unrelated to the accident such as staff educational and employment history. Accordingly, I find that s. 22(1) applies to most of the disputed information.

[66] There are a few exceptions to this finding. The Health Authority has withheld the number of staff who supplied certain information or opinions, or who took certain actions.[49] However, the interviews and witness statements of those staff have already been disclosed, with the identities of staff withheld. It is therefore evident from the disclosed records the numbers withheld elsewhere in the records. I find it would not unreasonably invade these third parties personal privacy to disclose those numbers.

[67] The Health Authority has also withheld references to staff by code names (in the form of an assigned letter) and some isolated words and phrases, such as personal and possessive pronouns, quantifiers and common nouns.[50] This is information about identifiable individual(s), but it does not contain meaningful information beyond what has already been disclosed in the records. Disclosure of this information would make the records more intelligible and would not unreasonably invade third parties' personal privacy.

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[49] Aggregate reference to a small group of people has, in past orders, been considered personal information because it is about a small group of identifiable individuals. See for example Order 05-30, 2005 CanLII 32547 (BC IPC) at para. 35.

[50] Describing, for example, a type of room or a spouse.

[68] Lastly, there is one name which has been withheld in the body of an email.[51] The name appears in that person's employment or professional capacity and consistent with previous orders, I find that releasing that name would not amount to an unreasonable invasion of personal privacy.[52]

[69] I have highlighted the information which I have concluded does not come within s. 22(1) in the copy of the records that I am providing to the Health Authority with this order.

CONCLUSION

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

1. The Health Authority is required to refuse to give the applicant access to the personal information that is being withheld under s. 22 of FIPPA, subject to paragraph 2 below.
2. The Health Authority is not required to refuse to disclose under s. 22 the information that I have highlighted in the copy of the records that is being sent to the Health Authority along with this decision.
3. The Health Authority must comply with this Order on or before January 4, 2017. The Health Authority must concurrently copy the OIPC's Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

November 17, 2016

ORIGINAL SIGNED BY:

Chelsea Lott, Adjudicator

OIPC File No.: F14-60001

[51] On p. 46
[52] See for example Order F10-14, 2010 BCIPC 23.