



OFFICE OF THE
INFORMATION & PRIVACY
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Order F16-52

OFFICE OF THE PREMIER

Carol Whittome
Adjudicator

December 23, 2016

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Summary: An applicant requested records relating to a personal vacation of the Premier of British Columbia. The Office of the Premier withheld records and information under s. 15 (disclosure harmful to law enforcement), s. 16 (disclosure harmful to intergovernmental relations or negotiations), s. 19 (disclosure harmful to individual or public safety) and s. 22 (disclosure harmful to personal privacy). The adjudicator determined that the Premier's Office was authorized or required to refuse to disclose some of the withheld information under ss. 15, 16 and 22, and did not have to consider s. 19. The Premier's Office was ordered to disclose the remaining information to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 15, 16, 19 and 22; Schedule 1 definitions of "personal information" and "contact information"; Schedule 2.

Authorities Considered: B.C.: Order F10-37, 2010 BCIPC 55 (CanLII); Decision F07-03, 2007 CanLII 30393 (BC IPC); Decision F08-02, 2008 CanLII 1645 (BC IPC); Order F14-12, 2014 BCIPC 15 (CanLII); Order 03-08, 2003 CanLII 49172 (BC IPC); Order F11-12, 2011 BCIPC 15 (CanLII); Order 02-19, 2002 CanLII 42444 (BC IPC); Order 331-1999, 1999 CanLII 4253 (BC IPC); Order 01-53, 2001 CanLII 21607; Order F05-18, 2005 CanLII 24734; Order 00-53, 2000 CanLII 14418 (BC IPC); Order F16-38, 2016 BCIPC 42.

Authorities Considered: ON: Reconsideration Order PO-2175-R, 2003 CanLII 53926 (ON IPC).

Cases Considered: *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 and *British Columbia (Minister of*

Citizens' Services v. British Columbia (Information and Privacy Commissioner), 2012 BCSC 875.

INTRODUCTION

[1] This inquiry is about a journalist's request for records relating to a personal vacation of the Premier of British Columbia (the "Premier"). The Office of the Premier (the "Premier's Office") disclosed responsive records to the applicant after severing information from them under s. 15 (disclosure harmful to law enforcement), s. 16(1)(a) (disclosure harmful to intergovernmental relations), s. 16(1)(b) (reveal information received in confidence), s. 17 (disclosure harmful to the financial or economic interests of a public body), s. 19 (disclosure harmful to individual or public safety) and s. 22 (disclosure harmful to personal privacy).

[2] The applicant requested that the Office of the Information and Privacy Commissioner ("OIPC") review the Premier's Office decision to sever information from the records. Mediation did not resolve the issues and the applicant requested to proceed to a written inquiry.

[3] The Notice of Inquiry stated that s. 17 is an issue in this inquiry. However, during the inquiry process, the Premier's Office released further information previously withheld under s. 17 and subsequently confirmed that s. 17 is no longer at issue in this inquiry.¹

[4] During this inquiry, the Premier's Office requested leave to extend its application of s. 16(1)(b) to some of the information that it was already withholding pursuant to ss. 15, 19 and 22. Leave was granted.²

ISSUES

[5] The issues to be decided in this inquiry are as follows:

1. Is the Premier's Office authorized to refuse to disclose the information at issue under ss. 15, 16 and 19 of FIPPA?
2. Is the Premier's Office required to refuse to disclose the information at issue under s. 22 of FIPPA?

¹ Premier's Office's reply submissions at para. 17.

² I note that parties should, where possible, make any preliminary applications well in advance of the inquiry submission process, as this maintains the integrity of the mediation and inquiry processes and is conducive to a fair, efficient and timely resolution of the matter. See Order F08-02, 2008 CanLII 1647 (BC IPC), paras. 28 to 30, for a discussion about the mediation and inquiry process in relation to raising new issues during the inquiry process.

[6] Section 57 of FIPPA states the burden of proof at inquiry. The Premier's Office has the burden of proving that the applicant has no right of access to the information it is refusing to disclose under ss. 15, 16 and 19. However, the applicant must prove that disclosure of any personal information in the requested records would not be an unreasonable invasion of third party personal privacy under s. 22.

DISCUSSION

Background

[7] The Premier's Office assists the Premier in overseeing and leading the government as a whole. It is responsible for managing the day-to-day operations of the Premier, coordinating cross-government communications and developing strategic government objectives.³

[8] The Premier's Office also liaises with the Premier's security personnel in order to coordinate security arrangements.⁴ There is a special RCMP detachment assigned to protect the Premier (the "Protection Detail"). The Protection Detail provides personal security to the Premier under the same guidelines that govern the delivery of operational policing services in the provincial and municipal policing contracts, meaning that the internal management of the Protection Detail remains under RCMP and federal government control.⁵

[9] In 2013, the Premier was planning to take a personal vacation to Kenya in connection with a non-governmental organization called "ME to WE," which coordinates "volunteer adventure experiences."⁶ The Premier announced this trip during her 2013 year-end interview with the Canadian Press wire service, where she stated that she would travel to Kenya with her son to participate in a school construction project.⁷ Shortly after this announcement, the Premier cancelled the trip, citing "private reasons."⁸

[10] The applicant requested records relating to the planned vacation, including the names and titles of people accompanying the Premier on the trip.

³ McPhee affidavit, para. 11.

⁴ McPhee affidavit, para. 2.

⁵ RCMP Member's affidavit, para. 3 (affiant name withheld as per *in camera* decision). Note that the Premier's Office provided an affidavit from an RCMP member and Corporal in the RCMP Premier's Protection Detail in support of its submissions to the OIPC. The RCMP is not a party in this inquiry and did not make any submissions on its own behalf.

⁶ McPhee affidavit, para. 4.

⁷ Applicant's submissions, para. 5.

⁸ Applicant's submissions, para. 6.

Records

[11] The records that are at issue in this inquiry are email exchanges, a draft trip itinerary and a letter from the Canadian High Commission to the Premier's Office.

[12] The following is the information withheld from those records:

- travel arrangements (*i.e.*, information about the administrative aspect of organizing the vacation, such as plane ticket information, a draft travel itinerary and general travel plans) (“Travel Arrangement information”);
- security arrangements (*i.e.*, information about the administrative aspect of organizing the security for the Premier during her planned vacation) (“Security Arrangement information”);
- Protection Detail members' personal information (*i.e.*, names and other identifying information) (“Protection Detail identification information”);
- diplomats' cell phone numbers;
- the entire contents of a letter from the Canadian High Commissioner to the Premier;
- public body employees' private contact information; and
- emails from private individuals to the Premier regarding the vacation.

Disclosure Harmful to Law Enforcement (s. 15)

[13] The Premier's Office is relying on ss. 15(1)(a), (c), (f) and (l) to withhold Security Arrangement information, as well Protection Detail identification information. The relevant parts of s. 15 state:

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

(a) harm a law enforcement matter,

...

(c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,

...

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

...

(l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

[14] The meaning of the term “law enforcement” is relevant in considering ss. 15(1)(a), (c) and (f), since this term is in each of these provisions. “Law enforcement” is defined in Schedule 1 of FIPPA as follows:

“law enforcement” means

- (a) policing, including criminal intelligence operations,
- (b) investigations that lead or could lead to a penalty or sanctions being imposed, or
- (c) proceedings that lead or could lead to a penalty or sanction being imposed;

[15] The standard of proof that applies to s. 15 of FIPPA is set out by the Supreme Court of Canada in *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, which said the following about the standard of proof for exceptions that use the language “reasonably be expected to harm:”

This Court in *Merck Frosst* adopted the “reasonable expectation of probable harm” formulation and it should be used wherever the “could reasonably be expected to” language is used in access to information statutes. As the Court in *Merck Frosst* emphasized, the statute tries to mark out a middle ground between that which is probable and that which is merely possible. An institution must provide evidence “well beyond” or “considerably above” a mere possibility of harm in order to reach that middle ground... This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and “inherent probabilities or improbabilities or the seriousness of the allegations or consequences”: *Merck Frosst*, at para. 94, citing *F.H. v. McDougall*, 2008 SCC 53 (CanLII), [2008] 3 S.C.R. 41, at para. 40.⁹

[16] In Order F07-15, former Commissioner Loukidelis outlined the evidentiary requirements to establish a reasonable expectation of harm:

...there must be a confident and objective evidentiary basis for concluding that disclosure of the information could reasonably be expected to result in harm... Referring to language used by the Supreme Court of Canada in an access to information case, I have said ‘there must be a clear and direct connection between disclosure of specific information and the harm that is alleged’.¹⁰

[17] Further, in *British Columbia (Minister of Citizens’ Services) v. British Columbia (Information and Privacy Commissioner)*, Bracken, J. confirmed that it is the release of the information itself that must give rise to a reasonable expectation of harm, and that the burden rests with the public body to establish that the disclosure of the information in question could result in the identified harm.¹¹

⁹ 2014 SCC 31, para. 54.

¹⁰ Order F14-12, 2014 BCIPC 15 (CanLII), para. 15.

¹¹ 2012 BCSC 875, para. 43.

[18] I will apply the above approach to determine if the Premier's Office has met its burden in applying s. 15 to the severed information.

[19] The Premier's Office submits that the Protection Detail identification information is properly withheld under s. 15(1)(a), (c), (f) and (l), whereas the Security Arrangement information is properly withheld under s. 15(1)(f) and (l). Given that the Premier's Office submits that all of the information withheld under s. 15 may be withheld under s. 15(1)(f), I will address s. 15(1)(f) first.

Harm under s. 15(1)(f) (endangerment to life or physical safety)

[20] The Premier's Office submits that disclosure of information in dispute could endanger the life or physical safety of the Premier, members of the Protection Detail and the general public.¹²

[21] The Premier's Office submits that, by virtue of her public role as the leader of BC, the Premier faces significantly greater security threats than private citizens or other members of government.¹³ It states that these threats occur on an ongoing basis and are often made through social media. The Premier's Office also explains that threats are made by members of the public who are angry at the government or who wish to cause a disruption.¹⁴ It adds that there are also violent or unlawful protests at the Premier's constituency office, some of which are not publicly reported.¹⁵

[22] The Premier's Office states that it has a policy of not disclosing any details of security arrangements, including Protection Detail identification information, in order to protect the Premier and those around her.¹⁶ It states that this policy was recommended and supported by the RCMP, and the RCMP Member's affidavit supports this.¹⁷ According to the Premier's Office, an RCMP contact in Ottawa specifically requested that the Premier's Office withhold information on pages 10 and 12 for reasons of public safety.¹⁸

[23] The Premier's Office describes the Protection Detail members' job duties as including "discreet protection", "covert policing" and "incognito surveillance."¹⁹

¹² Premier's Office submissions, para. 5.22; RCMP Member's affidavit, para. 19.

¹³ Premier's Office submissions, para. 5.06; RCMP Member's affidavit, para. 4.

¹⁴ Premier's Office submissions, para. 5.20; RCMP Member's affidavit, para. 4.

¹⁵ RCMP Member's affidavit, para. 4.

¹⁶ Premier's Office submissions, paras. 5.21 and 5.30; McPhee affidavit, para. 15; RCMP Member's affidavit, para. 9.

¹⁷ Premier's Office submissions, para. 5.21; McPhee affidavit, paras. 7 and 15; RCMP Member's affidavit, paras. 8, 9 and 10.

¹⁸ Premier's Office submissions, para. 5.30; Elbahir affidavit, para. 7.

¹⁹ Premier's Office submissions, paras. 5.08 and 5.11; and RCMP Member's affidavit, paras. 17 and 18.

[24] According to the Premier's Office, and supported by the RCMP Member's affidavit, members of the Protection Detail will be more vulnerable to attacks if they are publicly identified. Once the Protection Detail is attacked, it will be unable to protect the Premier and those around her.²⁰

[25] According to the Premier's Office, the disclosure of even a small amount of information about the Premier's security arrangements would paint a "comprehensive picture" of the Premier's security system over time when combined with publicly available information.²¹

[26] The applicant says that members of the Protection Detail do not do their job "in secret," as they accompany the Premier to public events.²² The Applicant also submits that the harm outlined by the Premier's Office is speculative and that the Premier's Office provides no evidence of any risk or threat to any government official, elected or appointed, in British Columbia.²³

[27] The applicant provides no evidence to support his assertion that members of the Protection Detail do not do their job anonymously. The Premier's Office and RCMP, on the other hand, provide affidavit evidence that the Protection Detail names and other identifying information are kept confidential. They explain that the Protection Detail performs anonymous activities, such as plainclothes observation or covert threat investigation. While I agree with the applicant that the Protection Detail members conduct some of their job duties in public, in the sense that they accompany the Premier to public events, the materials before me do not establish that their identities are known to the general public. Further, in my view, it is clear that there is a security risk associated with being the Premier and with being a member of her Protection Detail. I am satisfied by the submissions and evidence provided that the duties involved in being a member of the Protection Detail require a certain degree of anonymity.

[28] Based on the evidence and the submissions, I am satisfied that there is a clear and direct connection between disclosure of the Protection Detail identification information and the risk of harm to the Premier and those around her, including Protection Detail members. I therefore find that disclosure of the Protection Detail identity information could reasonably be expected to endanger the Premier and those around her, including Protection Detail members, so it may be withheld under s. 15(1)(f).

[29] The balance of the withheld information is the Security Arrangement information. Essentially, it involves the administrative or clerical detail of arranging security for a head of government when traveling abroad. It does not describe any

²⁰ Premier's Office submissions, para. 5.08; RCMP Member's affidavit, para. 12.

²¹ Premier's Office submissions, para. 5.22.

²² Applicant's response, para. 42.

²³ Applicant's response, para. 41.

specific security arrangements, either made or contemplated. There is simply no evidentiary basis in the materials before me to connect disclosure of the particular withheld information with the harm the Premier's Office anticipates, so the information may not be withheld under s. 15(1)(f).

[30] In summary, I find that the Premier's Office has established that it may refuse to disclose the Protection Detail identification information under s. 15(1)(f).²⁴ However, I find that s. 15(1)(f) does not apply to the balance of the information, which is the Security Arrangement information, and the Premier's Office may not refuse to disclose it under this exception.

Harm under s. 15(1)(l) (security of any property or system)

[31] The Premier's Office is also withholding the Security Arrangement information under s. 15(1)(l). Section 15(1)(l) states that a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to "harm the security of any property or system, including a building, a vehicle, a computer system or a communications system."

[32] The Premier's Office makes the following submissions:

... The RCMP's Premier's Protection Detail uses certain systems to protect her [the Premier's] security, whose components includes particular law enforcement techniques and procedures. Disclosing the security-related information withheld under s. 15 (and in some cases under s. 19 as well) would compromise this system and render the Premier more vulnerable to the threats that face her, as explained throughout the RCMP Affidavit.²⁵

[33] The Premier's Office refers to the RCMP Member's affidavit, which it says supports this conclusion.²⁶ The part of the RCMP Member's affidavit that pertains to the Security Arrangement information states the following:

If the information regarding the security arrangements for the Premier's contemplated trip to Kenya were to be publicly disclosed, harm to law enforcement on an international scale could be expected to result. Such disclosure would give members of the public access to normally confidential information about the systems used to protect heads of government who travel abroad.

[34] To summarize, the Premier's Office submits that the system at issue in this case is the security system, components of which include particular law

²⁴ This pertains to information withheld on pp. 5 (email recipient at bottom); 10 (redaction at top); 14 (email sender at top and phone number at middle); 29 (subsection of table); and 30 (copy of passport).

²⁵ Premier's Office submissions, para. 5.29.

²⁶ RCMP Member's affidavit, paras. 17 to 21.

enforcement techniques and procedures. The applicant does not make any submissions about s. 15(1)(l).

[35] The word “system” is not defined in FIPPA. The examples outlined in s. 15(1)(l) include a “computer system” or a “communications system;” however, the definition of the term “system” is not limited to these examples, as the section uses the word “including.”

[36] The English Oxford dictionary defines the word “system” as follows:

1. A set of things working together as parts of a mechanism or an interconnecting network; a complex whole.
2. A set of principles or procedures according to which something is done; an organized scheme or method.²⁷

[37] In my view, a series of clear security principles or procedures could comprise a security “system” under s. 15(1)(l). However, I am not persuaded by the evidence before me that the withheld information here constitute components of a security system. As noted above, the Security Arrangement information withheld under s. 15(1)(l) pertains to general measures taken to make security arrangements for the Premier’s vacation. It involves the administrative or clerical detail of arranging security for a head of government when traveling abroad. It does not describe any specific security arrangements, either made or contemplated.

[38] Therefore, while the information may be connected to the security system in the sense that it involves security arrangements, I am not persuaded that the actual withheld information in this case includes any set of principles or procedures that could work together as an organized scheme or parts of a complex whole, such as to form a “system.”

[39] However, even if I accept that the components do form part of a “system,” the withheld information is not, in my view, information that could be used to harm the security system, and the Premier’s Office has not explained how it could result in such harm. In other words, the Premier’s Office has not adduced sufficient evidence to establish a clear and direct connection between disclosure of the information and the anticipated harm to a security system. I therefore find that s. 15(1)(l) does not apply to the withheld information.

[40] In summary, I find that the Premier’s Office is authorized to withhold the Protection Detail identification information pursuant to s. 15(1)(f), but it is not authorized to withhold any other information pursuant to s. 15(1)(f) or (l). For clarity,

²⁷ *Oxford English Dictionary*, online: <https://en.oxforddictionaries.com>.

I have highlighted the information that may not be withheld under s. 15(1)(f) in a copy of the records that will be sent to the Premier's Office with this Order.

Disclosure Harmful to Relations or Received in Confidence (s. 16)

[41] The Premier's Office is withholding a small amount of Travel Arrangement information and Security Arrangement information, as well as diplomat cell phone numbers under s. 16(1)(a)(iv) and (b), which state:

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

(a) harm the conduct by the government of British Columbia of relations between that government and any of the following or their agencies:

(i) the government of Canada ...;

...

(iv) the government of a foreign state;

...

(b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies....

(2) Moreover, the head of a public body must not disclose information referred to in subsection (1) without the consent of

(a) the Attorney General, for law enforcement information, or....

Harm under s. 16(1)(a)(iv) (harm relations with a foreign state)

[42] The Premier's Office is withholding a small amount Travel Arrangement information under Section 16(1)(a). This is a harms-based exemption with the same standard of proof that I set out above under s. 15. The Premier's Office must establish that disclosure of the withheld information could be reasonably expected to result in harm.

[43] The Premier's Office submits that it is withholding a short passage under s. 16(1)(a)(iv) "in an effort to avoid harm to BC government relations with Kenya."²⁸ Further, the Director of Operations for the Premier's Office states that, based on his reading of the email and understanding of the circumstances, he believes that "if this comment was released it would be misconstrued in a way that could be detrimental to government relations."²⁹

²⁸ Premier's Office submissions, para. 5.47, regarding an excerpt at p. 21 of the records.

²⁹ McPhee affidavit, para. 18.

[44] The applicant submits that the disclosure of the withheld information “would not dissuade any of the parties from fulfilling their duties in future, even if the premier decides one day to attempt another trip to Kenya.”³⁰

[45] The Premier’s Office explains neither how the Travel Arrangement information could be misconstrued nor how such misinterpretation could reasonably be expected to harm government relations. To be clear, this is not Security Arrangement information, but rather it is Travel Arrangement information related to the timing of obtaining a Visa for the planned vacation.³¹

[46] It is not apparent to me based on my review of the information in dispute, and the parties’ submissions and evidence, how disclosure of the withheld excerpt could reasonably be expected to harm the BC government’s relations with the Republic of Kenya. Therefore, I find that the Premier’s Office is not authorized to withhold this information under s. 16(1)(a)(iv).

Harm under s. 16(1)(b) (information received in confidence)

[47] The Premier’s Office is withholding the cell phone numbers for the High Commissioner for Canada in Kenya and several of his staff members under s. 16(1)(b).³² It is also withholding some Security Arrangement information it says it received in confidence from the RCMP.³³ Some of this withheld information is the same Security Arrangement Information that I found could not be withheld under s. 15.

[48] Former Commissioner Loukidelis established a two-part test for the application of s. 16(1)(b) in Order 02-19.³⁴ The public body must show that the information was received in confidence and that it was received from a “government, council or organization” listed in s. 16(1)(a) or one of “their agencies.” The meaning of the phrase “received in confidence” was considered in Order No. 331-1999, where former Commissioner Loukidelis said there must be an implicit or explicit agreement or understanding of confidentiality on the part of both those supplying and receiving the information.³⁵ He also set out several relevant circumstances that public bodies should consider in determining if information “was received in confidence.”³⁶

³⁰ Applicant’s submissions, para. 70.

³¹ Records at p. 21. This information has already been disclosed to the applicant.

³² Pages 10 and 12 of the records.

³³ Premier’s Office submissions, para. 5.48. As noted above, the Premier’s Office is applying s. 16(1)(b) to the Protection Detail’s identification information. However, as I have already found that the Premier’s Office is authorized to withhold this information under s. 15(1)(f), I do not have to consider the application of s. 16 to this information.

³⁴ Order 02-19, 2002 CanLII 42444 (BC IPC), para. 18.

³⁵ Order 331-1999, 1999 CanLII 4253 (BC IPC), section 3.5.

³⁶ Order 331-1999, 1999 CanLII 4253 (BC IPC), section 3.5.

[49] Regarding the cell phone numbers, it is evident from the records that the government of Canada provided these directly to the Premier's Office, so that element of the test is met. As to whether they were received in confidence, the Premier's Office attests that the information it receives from the Federal government is presumed to be confidential when it is not publicly available, which is the case with these cell phone numbers.³⁷ The applicant does not make any submissions regarding this point.

[50] I have reviewed the evidence in this case and find it establishes the following: the cell phone numbers are not publicly available; the numbers were emailed directly to the Premier's Office to enable communication with the High Commission; the records were prepared for a purpose that would not be expected to lead to public disclosure in the ordinary course; the information appears to have been provided voluntarily; and keeping the numbers confidential is consistent with the past practice of the Premier's Office. All of these circumstances satisfy me that the Premier's Office received the cell phone numbers "in confidence."

[51] Therefore, I find that the cell phone numbers of diplomatic officials constitute confidential information received from the Federal Government, and therefore the Premier's Office is authorized to withhold this information under s. 16(1)(b) of FIPPA.

[52] With regards to the Security Arrangement information, the Premier's Office states that this information, which consists of three words severed from an email, was received in confidence from the RCMP. It submits that this information concerns law enforcement matters and, as such, disclosure requires the consent of the Attorney General pursuant to s. 16(2)(a).³⁸ The affidavit evidence states that the Premier's Office has a policy of non-disclosure regarding any RCMP information relating to the Premier's security.³⁹ As well, the Director of Operations in the Premier's Office states:

I consulted with the Corporal of the Premier's Protection Detail of the RCMP to confirm that the RCMP information – i.e., communications between the Premier's Office and the RCMP or names or other recorded information about RCMP officers – within the records should not be disclosed and my understanding that the information was confidential was confirmed.⁴⁰

[53] The applicant does not make any submissions on s. 16(1)(b).

[54] It is clear from the records that this Security Arrangement information (*i.e.*, the three severed words from pp. 10 and 12 (duplicate)) was provided to the

³⁷ Elbahir affidavit, para. 9.

³⁸ Premier's Office submissions, para. 5.48.

³⁹ McPhee affidavit, para. 20; RCMP Member's affidavit, paras. 9 and 10.

⁴⁰ McPhee affidavit, paras. 21.

Premier's Office by the RCMP. Previous OIPC orders have established that the RCMP is an agency of the Government of Canada for the purposes of s. 16(1)(b).⁴¹ Therefore, the remaining question is whether the Premier's Office received this information from the RCMP "in confidence."

[55] In my view, the evidence supports my finding that the Security Arrangement information was received in confidence. The information was voluntarily supplied, and the record was not prepared for a purpose that would be expected to lead to disclosure in the ordinary course of business, as it contained security related information for the Premier's vacation. Furthermore, the affidavit evidence indicates that the Premier's Office and RCMP have a mutual policy regarding confidentiality of security related information involving the Premier's protection. Both the RCMP and Premier's Office have provided affidavit evidence regarding the expectation of confidentiality with this type of sensitive information and indicate that keeping this information confidential has been the past practice.

[56] Therefore, I find that the Premier's Office is authorized to refuse to disclose this Security Arrangement information to the applicant pursuant to s. 16(1)(b).

Disclosure Harmful to Individual or Public Safety (s. 19)

[57] The Premier's Office is applying s. 19 to the Protection Detail's identification information. However, as I have already found that the Premier's Office is authorized to withhold this information under s. 15(1)(f), I do not have to consider the application of s. 19 to this information.

Disclosure Harmful to Personal Privacy (s. 22)

[58] Numerous orders have considered the application of s. 22, and I will apply those same principles in my analysis.⁴²

[59] I have already determined that some of the information withheld under s. 22 (specifically, the Protection Detail identification information) is information that the Premier's Office is authorized to withhold under s. 15. Therefore, I am not considering it under s. 22. The remaining withheld information pertains to Travel Arrangement information, contents of the letter from the Canadian High Commissioner to the Premier, public body employees' private contact information, and private individuals' contact information contained in emails sent to the Premier.

Personal Information

[60] The first step in any s. 22 analysis is to determine if the information is personal information. "Personal information" is defined as "recorded information

⁴¹ Order 02-19, 2002 CanLII 42444 (BC IPC), paras. 55 – 58.

⁴² See, for example, Order 01-53, 2001 CanLII 21607, p. 7.

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.”⁴³

[61] Based on my review of the records, I find that most of the information withheld under s. 22 is personal information. It is information about the Premier, government officials and private citizens who corresponded with the Premier.

[62] However, there is some information that I find is not personal information. For instance, the information withheld from the flight itinerary is general information about the refund policy for cancelled tickets and the Visa requirements for travelling to the Republic of Kenya.⁴⁴ It is not about any identifiable individual, so s. 22 does not apply to this information.

[63] The withheld information also includes the Canadian High Commissioner’s office and email addresses, as well as the Premier’s Office address, all of which are contained in a letter from the Canadian High Commissioner to the Premier.⁴⁵ The records also contain the name, address and other contact information for the travel agency who booked the airline tickets.⁴⁶ I find that this information is contact information because it is information to enable an individual to be contacted at their place of business. Therefore, s. 22 does not apply to this contact information.

Section 22(4)

[64] The second 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). If it does, then disclosure would not be an unreasonable invasion of personal privacy.

[65] The Premier’s Office submits that none of the subsections in s. 22(4) apply to the personal information in this case.⁴⁷ The applicant submits that s. 22(4)(e), (f) and (h) apply, but he does not articulate his submissions beyond this assertion.⁴⁸

[66] Section 22(4)(e), (f) and (h) are as follows:

(4) A disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy if

...

⁴³ See Schedule 1 of FIPPA for these definitions.

⁴⁴ Records at p. 7.

⁴⁵ Records at p. 33.

⁴⁶ Records at p. 6.

⁴⁷ Premier’s Office submissions, para. 5.58.

⁴⁸ Applicant’s submissions, paras. 78 – 92.

- (e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff,
- (f) the disclosure reveals financial and other details of a contract to supply goods or services to a public body,
...
- (h) the information is about expenses incurred by the third party while travelling at the expense of a public body,
...

[67] Section 22(4)(e) concerns information about the third party's position, functions or remuneration. In this case, some of the withheld information does relate to work performed in the course of an individual's position.⁴⁹ Past orders have said that s. 22(4)(e) applies to the following:

... any third-party identifying information that in some way relates to the third party's job duties in the normal course of work-related activities.... I refer here to objective, factual statements about what the third party did or said in the normal course of discharging her or his job duties, but not qualitative assessments or evaluations of such actions.⁵⁰

[68] The aspect of the withheld information in this case relating to a statement made in the normal course of discharging a public body employee's job duties does not contain any assessments or evaluations of anyone else. The withheld information is similar to the two sentences preceding it, which the Premier's Office disclosed in full. Therefore, I find that the public body is not authorized to withhold this statement pursuant to s. 22(1).

[69] I also find that ss. 22(4)(f) and (h) do not apply to any of the withheld information, as it does not pertain to contracts or expenses. I also find that no other parts of s. 22(4) are relevant here.

Presumptions – Section 22(3)

[70] The third step in a s. 22 analysis 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. However, such presumptions are rebuttable.

⁴⁹ Records, p. 21. Note: This is the same information as I discussed above, under s. 16(1)(a)(iv), where I found that there was no evidence to conclude that the statement could be misconstrued in a way that could be detrimental to government relations.

⁵⁰ See, for example, Order 01-53, 2001 CanLII 21607 (BC IPC), para. 40.

[71] The Premier’s Office submits that none of the subsections in s. 22(3) apply to the personal information in this case.⁵¹ I agree with this, and the applicant did not make any submissions asserting otherwise.

Relevant circumstances – Section 22(2)

[72] The next 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). Both parties submit that s. 22(2)(a) is relevant in this case, and I also find that s. 22(2)(f) is relevant. Those sections state as follows:

- (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
 - (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,
 - ...
 - (f) the personal information has been supplied in confidence,

Section 22(2)(a)

[73] Section 22(2)(a) is relevant where “the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny.” The rationale for s. 22(2)(a) is that subjecting the activities of a public body to public scrutiny may support disclosure of third party personal information where disclosure of the information would foster the accountability of a public body.⁵² As well, where there is some personal use of publicly-funded resources, public scrutiny may be desirable.⁵³

[74] The Premier’s Office submits that disclosure of the personal information would not be desirable for the purpose of subjecting the activities of the government to public scrutiny under s. 22(2)(a), as the withheld information concerns a “personal trip that was in her private capacity and never taken.”⁵⁴

[75] The applicant does not make any specific submissions regarding s. 22(2). However, based on his general submissions, it appears that he takes the position that s. 22(2)(a) applies. He says the BC government has provided grants to “ME to WE” and its parent company, suggesting that this was not merely a personal

⁵¹ Premier’s Office submissions, para. 5.60.

⁵² Order F05-18, 2005 CanLII 24734.

⁵³ Order F13-13, 2013 BCIPC 16 (CanLII), para. 24.

⁵⁴ Premier’s Office submissions, para. 5.62.

vacation but also involved a political, public element.⁵⁵ In particular, the applicant notes that some of the email communications “indicate a great deal of work [was done] by BC and federal public servants to help accommodate [the trip].”⁵⁶

[76] From the evidence before me, including the records, I find that there were some public elements to the planned trip. I will refer to this in more detail, below, where I discuss the sensitivity of the information. However, after reviewing the records, there is no actual information severed under s. 22 that, if disclosed, would be likely to foster the accountability of the Premier’s Office. The information would not reveal anything substantive about the activities of the government or the amount of public resources used.

[77] In these circumstances, I find that s. 22(2)(a) does not weigh in favour of disclosure of the personal information.

Section 22(2)(f)

[78] Section 22(2)(f) applies to personal information that has been supplied in confidence. Neither of the parties made any specific submissions based on s. 22(2)(f), but I find that this is a relevant consideration regarding the personal contact information of public body employees, as well as the emails sent to the Premier from private citizens, expressing their personal views about her planned vacation.

[79] Regarding the personal cell phone number and personal email address of two public body employees, I find that, in the circumstances of this case, these were likely provided in confidence. In my view, the employees would not have anticipated that this personal information would be disclosed to the public, even pursuant to an access to information request.

[80] The content of the emails sent by private citizens have been disclosed with the exception of the individual names and personal email addresses. In circumstances where a private citizen sends an email to the provincial government to express their personal views on government policy or actions, it is my view that individuals provide their personal contact information in confidence. [81] In other words, those individuals would not anticipate that an email they sent to the Premier expressing their personal opinions would be made public in full, even due to an access for information request. In particular, an individual would not expect that their personal email address and name (or any other identifying information) would be publicly disclosed in these circumstances. Therefore, I find that individuals would expect that this information would remain confidential and not be disclosed to the general public.

⁵⁵ Applicant’s submissions, paras. 27 – 35.

⁵⁶ Applicant’s submissions, para. 15.

[82] Based on my review of the materials before me, I find that the personal contact information of public body employees, and the identity and email addresses of members of the public who sent emails to the Premier, were supplied in confidence. This weighs in favour of withholding the information.

Publicly available information

[83] The factors enumerated in s. 22(2) are not exhaustive and the legislation directs me to consider “all the relevant circumstances” in each situation.

[84] The fact that personal information is known to the applicant or to the public may be a consideration favouring disclosure.⁵⁷ In this situation, it appears that some of the severed information has already been made available to the public.

[85] As noted above, the Premier announced her trip to Kenya during a 2013 year-end interview with the Canadian Press wire service, where she stated that she would travel to Kenya over the December holidays with her son to participate in a school construction project. Much of the information about her vacation was apparently public knowledge according to various news articles that the applicant provided in this inquiry.⁵⁸ Further, other severed information, such as the Premier’s middle name, is publicly available.⁵⁹

[86] Therefore, I find that some of the information is publicly available and that this weighs in favour of its disclosure.

Sensitivity of the information

[87] I also find it is relevant to consider the sensitivity of the personal information in question.⁶⁰ Where the sensitivity of the information is high (*i.e.*, medical or other intimate information), withholding the information should be favoured.

[88] In my view, details of a personal vacation should generally be considered sensitive in nature, as this is information about what an individual does in their private time away from the workplace. Most public body employees or representatives would not expect that any information about their personal vacations would be publicly disclosed. This is particularly the case about specific details about where they went, what activities they engaged in and the people they met during their personal vacation.

[89] However, in this case, though the Premier’s Office has repeatedly categorized the trip as personal, it did have public elements, including: the

⁵⁷ Order 00-53, 2000 CanLII 14418 (BC IPC), section 3.4.

⁵⁸ Applicant’s submissions, paras. 5, 6, 28, 30, 32 and 34.

⁵⁹ *Ibid*; see also Wikipedia, online: Christy Clark <https://en.wikipedia.org/wiki/Christy_Clark>.

⁶⁰ See Order F16-38, 2016 BCIPC 42, para. 136.

Premier's public announcements and subsequent press articles about the vacation; previous interaction between the Premier and the ME to WE organization in her capacity as the Premier; and the communication written on Canadian High Commission letterhead from the Canadian High Commissioner directly to the Premier and sent to the Premier's Office. As well, the Premier's Office has already disclosed a significant amount of the records to the applicant, despite its contention that this was purely a personal vacation. In my view, all of these factors indicate that the Premier and the Premier's Office did not view her trip as an entirely private endeavour. In light of these factors and the evidence in front of me, I find that there were some public elements to the planned trip, which, in my view, reduces the sensitivity of the information at issue.

[90] Furthermore, given this was a planned vacation that was never taken and the information is now three years old, I find that this also reduces the sensitivity of the personal information at issue.

[91] For the reasons above, I find that most of the personal information at issue in these records is not sensitive in nature and this weighs in favour of disclosure.

Conclusion – Section 22(1)

[92] I have found that most of the information withheld under s. 22 is "personal information" and that ss. 22(4) and (3) do not apply to it. I have also found that there are three relevant circumstances to consider under s. 22(2): the first is that some of the personal information is publicly available; the second is that some of the information was provided in confidence; and the third is that most of the personal information is not sensitive in nature.⁶¹

[93] In light of the above factors, I find that it would not be an unreasonable invasion of third party privacy to disclose most of the Travel Arrangement information withheld under s. 22, such as the dates the Premier planned to travel, as well as her general travel plans. Again, some of this information was already made public and none of it is sensitive in nature, particularly since there were public elements to the trip, the information is over three years old and the trip was never actually taken. Therefore, I find this type of information was not required to be withheld under s. 22(1).⁶²

[94] As well, the Premier's middle name is public knowledge; therefore, it would not be an unreasonable invasion of privacy to disclose this information to the applicant.⁶³

⁶¹ As noted above, I do not find that s. 22(2)(a) (public scrutiny) is a factor weighing in favour or against disclosure in these circumstances.

⁶² Records at pp. 4, 6, 7, 9, 15 – 19, 20 and 29.

⁶³ Records at pp. 6, 15 and 20.

[95] The Premier's Office is also not required to withhold the contents of the letter to the Premier's Office from the Canadian High Commissioner.⁶⁴ Although the letter does mention the personal nature of the vacation, the letter is clearly official communications to the Premier from the Canadian High Commissioner and was not written or received in a personal capacity. In particular, the letter is from the Canadian High Commissioner, written on High Commissioner letterhead, to the Premier's Office and was sent directly from the Canadian High Commissioner to the Premier. This information is not otherwise exempted by any of the other sections I have analyzed and it should be disclosed to the applicant.

[96] However, there is some specific, detailed flight and travel itinerary information that I find to be personal information that the Premier's Office is required to withhold.⁶⁵ Much of this personal information, though not particularly sensitive, I find on balance would be an unreasonable invasion of the Premier's privacy. In determining this, I place more weight on the evidence that, for the most part, this was a personal vacation and the information at issue pertains to specific, detailed flight information and travel itinerary (including information about travel to locations that does not appear to have been publicly disclosed to media).

[97] There is also personal contact information that I find the Premier's Office is required to withhold under s. 22, including a personal cell phone and personal email address of two public body employees.⁶⁶ I find that this information was received in confidence and it would be an unreasonable invasion of privacy to disclose it.

[98] Similarly, I find that the name and email addresses of the citizens who emailed the Premier about her vacation were provided in confidence and its disclosure would constitute an unreasonable invasion of privacy.⁶⁷ Therefore, I find that the Premier's Office is required to withhold this personal information.

[99] In summary, I find that the Premier's Office is required to withhold only some of the severed information under s. 22(1). Disclosing the balance of the information I have highlighted in a copy of the records that will be sent to the Premier's Office along with this decision does not, in my view, constitute an unreasonable invasion of third party personal privacy in these circumstances, as it is not sensitive in nature, was not supplied in confidence and/or is publicly available.

⁶⁴ Records at p. 33. Note: there is a small amount of the High Commissioner's personal information that I find the Premier's Office is authorized to withhold under s. 22(1).

⁶⁵ Records at p. 6, 7, 8, 15, 16 and 25 – 28.

⁶⁶ Records at pp. 5 and 6.

⁶⁷ Records at pp. 1 and 2.

CONCLUSION

[100] For the reasons given above, under s. 58 of FIPPA, I order that the Premier's Office is:

- a) authorized to refuse to disclose the withheld information for which they have claimed the exception under s. 15 of FIPPA, excluding the information set out in paragraph d), below;
- b) authorized to refuse to disclose the information for which they have claimed the exception under s. 16 of FIPPA, excluding the information set out in paragraph d), below;
- c) required to refuse to disclose information under s. 22 of FIPPA for which they have claimed the exception, excluding the information set out in paragraph d), below; and
- d) required to give the applicant access to the information I have highlighted in the excerpted pages of the records that will be sent to the Premier's Office along with this decision, by **Wednesday, February 8, 2017**, pursuant to s. 59 of FIPPA. The Premier's Office must copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records it provides to the applicant.

December 23, 2016

ORIGINAL SIGNED BY

Carol Whittome, Adjudicator

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