



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
*for British Columbia*

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Order F17-25

## CITY OF VANCOUVER

Chelsea Lott  
Adjudicator

May 9, 2017

CanLII Cite: 2017 BCIPC 26  
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**Summary:** A third party objected to the City's decision to disclose the third party's name and the amount of severance she received from the City on the basis that s. 22 (harm to personal privacy) applied. The adjudicator held that the information came within s. 22(4)(e), and therefore could not be withheld under s. 22.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, ss. 22, 22(4)(e).

**Authorities Considered: B.C.:** Investigation Report F16-02, 2016 BCIPC 36; Order 01-53, 2001 CanLII 21607 (BC IPC); Order F09-15, 2009 CanLII 58553 (BC IPC); Order F11-33, 2011 BCIPC 41 (CanLII); Order No. 46-1995, [1995] BCIPCD No 19 (BC IPC).

## INTRODUCTION

[1] An applicant requested that the City of Vancouver (the City) provide a list of former employees who received severance pay in a certain year, as well as the amounts of their severance pay. The City notified the third parties whose personal information was contained in the responsive record pursuant to s. 23 of the *Freedom of Information and Protection of Privacy Act* (FIPPA). One of the notified third parties objected to the disclosure on the basis that it would be an unreasonable invasion of her personal privacy to disclose her information (s. 22). However, the City determined that s. 22 did not apply to the information and decided to give the applicant access to the information.

[2] The third party disagreed with the City's decision and requested a review by the Office of the Information and Privacy Commissioner (OIPC). Mediation failed to resolve the matter and the third party requested an inquiry. The applicant was provided notice and invited to participate in the inquiry pursuant to s. 54(b). The applicant, the City, and the third party all provided submissions.

[3] This Order is issued concurrently with Orders F17-24 and F17-26. All three Orders arise from requests for review of the City's decision to disclose severance information, but by different third parties. The Orders relate to the same record, and involve the same applicant. Section 22 is the only exception at issue in the Orders. Given the overlap in issues, arguments and evidence in the three inquiries, much of what has been written in this order is repetitive of the other two Orders.

## **ISSUE**

[4] The issue to be decided in this inquiry is whether the City is required under s. 22 of FIPPA to refuse to disclose the third party's personal information. Section 57 of FIPPA places the burden on the applicant to prove that disclosure of personal information contained in the record would not unreasonably invade third party personal privacy under s. 22.

## **DISCUSSION**

### ***Information in Dispute***

[5] The information in dispute is contained in a table which lists the names of several former employees and the amount of severance they received. The table has been disclosed to the applicant except for information about three individuals. The information about one of those individuals is at issue in this inquiry.

### ***Preliminary Matter***

[6] In his initial submissions, the applicant argues that s. 25 of FIPPA applies to the information. This appears to be the first time that the applicant has raised s. 25 as an issue, because it is not listed in the fact report or the notice of inquiry as being in issue. Although s. 25 was raised late and without the OIPC's prior consent, I will consider it because it is a simple matter to address as it plainly does not apply. Further, I do not require submissions from the other parties in order to dispose of it.

#### *Section 25(1)(b) – Clearly in the public interest*

[7] Although he does not specify whether s. 25(1)(a) or (b) applies to the information, there is simply no arguable case that s. 25(1)(a) has any application. Section 25(a) addresses information about harm to the environment or health

and safety. Severance pay is not captured in this category of information. Accordingly, I will only address s. 25(1)(b).

[8] Section 25(1)(b) requires a public body to disclose information without delay if it is “clearly in the public interest.” As former Commissioner Denham said in Investigation Report F16-02:

There must be an issue of objectively material, even significant, public importance, and in many cases it will have been the subject of public discussion. It is useful here to recall that, as I said in the Mount Polley Report, disclosure must be plainly and obviously required based on a disinterested, reasonable, assessment of the circumstances.<sup>1</sup>

[9] I will repeat the applicant’s brief argument on the application of s. 25(1)(b):

The public interest provision in the FIPPA supersedes the provisions cited by the third party.

Government employees are subject to disclosure legislation, and have full knowledge of this when they enter into employment agreements. The claim that “*the release of the information has the potential to unfairly expose me to great personal harm*” is not supported by precedent. It’s actually in fairness to the public that the information be released. It is the public, who, after all, are providing the taxes to fund their positions. The private sector generates the wealth that governments take to pay the salaries of their workers. FOI legislation provides a series of checks and balances to government.<sup>2</sup>

[italics in original]

[10] I accept that there is a general public interest in how tax dollars are spent. However, the reasons for invoking s. 25(1)(b) must be of sufficient gravity to warrant overriding all other provisions of FIPPA, including the exceptions found in Part 2 of FIPPA. In addition, the information must be disclosed “without delay” by the public body. A general interest in how a public body spends money, without more, does not meet the high threshold for disclosure under s. 25(1)(b). There is no evidence that the City’s severance payments to former employees is the subject of public discussion or that it is of public importance, beyond general interest. This is not to say that s. 25(1)(b) could never apply to a particular severance payment, however the applicant’s suggestion that there is a blanket requirement for disclosure without delay of severance payments to public employees is untenable. The public’s general right to information about public expenditures is provided for by s. 4 of FIPPA,<sup>3</sup> rather than by s. 25(1)(b).

<sup>1</sup> Investigation Report F16-02, 2016 BCIPC 36 at p. 36.

<sup>2</sup> Applicant submissions.

<sup>3</sup> S. 4(1) states in part: A person who makes a request under section 5 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant...

***Disclosure Harmful to Personal Privacy – s. 22****Sections 23 and 24*

[11] Before turning to my analysis of s. 22, I wish to address the third party's argument on the application of ss. 23 and 24. The third party suggests that because the City provided her notice of its decision to disclose her personal information under ss. 23 and 24, it proves that the information is excepted from disclosure under s. 22 of FIPPA. The City responds by asserting that no inferences should be drawn from the provision of notice to third parties.

[12] Section 23(1) of FIPPA provides that, where a public body intends to give access to a record that it has reason to believe may contain information protected under s. 22 (or s. 21), the public body must give notice to the affected third party. Upon receipt of a s. 23 third party notice, the third party may consent to the release of the information or may make representations to the public body as to why the information should not be disclosed. Where a public body then decides to give access to the record, s. 24 provides that a public body must communicate its decision to the third party and inform the third party of the right to have its decision reviewed by the OIPC.

[13] When a public body provides notice to a third party, it is not an admission that the information is subject to ss. 21 or 22. The purpose of ss. 23 and 24 is to provide a mechanism to ensure procedural fairness for third parties affected by a public body's FIPPA decision. It also helps to inform a public body's decision making process, by ensuring it has all relevant information on which to make a decision. Accordingly, I am not persuaded by the third party's argument regarding ss. 23 and 24.

[14] I turn now to consider the application of s. 22 to the information. Numerous orders have considered the application of s. 22 and I will apply those same principles here.<sup>4</sup>

*Personal Information*

[15] The first step in applying s. 22 is to determine whether the requested information is "personal information" as that term is defined in FIPPA. FIPPA defines personal information as, "recorded information about an identifiable individual other than contact information." Contact information is defined as, "information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual."<sup>5</sup> The information at issue in this case is about the third party, an identifiable individual, and is plainly not contact information. No one disputes that

<sup>4</sup> For example, Order 01-53, 2001 CanLII 21607 (BC IPC) at p. 7.

<sup>5</sup> See Schedule 1 of FIPPA for these definitions.

it is personal information. Therefore, I find it to be personal information within FIPPA.

*Section 22(4)*

[16] 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). If it does, then disclosure would not be an unreasonable invasion of personal privacy. The applicant and City argue that s. 22(4)(e) applies to the personal information at issue. That subsection states:

22(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if ... (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

[17] Several past orders have held that severance pay is encompassed within the meaning of “remuneration” in s. 22(4)(e).<sup>6</sup> There is no dispute between the parties that the dollar figure in issue was a severance payment to the third party. Accordingly, I find the third party’s name and severance amount are subject to s. 22(4)(e) and that it would not be an unreasonable invasion of privacy to release the information.

[18] The third party argues that ss. 22(3)(f), 22(2)(e) and 22(2)(h) weigh against disclosure of her personal information in this case. More specifically, she submits that disclosure of the information would:

unfairly expose me to financial harm, damage to my reputation, and cast doubt on my creditworthiness which has the potential to jeopardize any and all current and future employment and business transactions.<sup>7</sup>

[19] However, it is not necessary for me to consider the third party’s argument on these points. That is because, when s. 22(4) applies, the information cannot be withheld under s. 22, despite the application of any considerations contained in ss. 22(3) and/or (2).<sup>8</sup> Therefore, the City must not refuse to disclose the information to the applicant under s. 22(1).

## **CONCLUSION**

[20] For the reasons provided above, and pursuant to s. 58(2) of FIPPA, I confirm the City’s decision to disclose the third party’s personal information. As the City has not yet disclosed the third party’s information, I require the City to give the applicant access to this information by June 21, 2017 concurrently with

<sup>6</sup> See: Order F09-15, 2009 CanLII 58553 (BC IPC), Order F11-33, 2011 BCIPC 41 (CanLII), Order No. 46-1995, [1995] BCIPCD No 19 (BC IPC).

<sup>7</sup> Third Party submissions at para. 6.

<sup>8</sup> Order F11-33, 2011 BCIPC 41 (CanLII) at para. 12.

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the information in Orders F17-24 and F17-26. The City must copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the record.

May 9, 2017

**ORIGINAL SIGNED BY**

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Chelsea Lott, Adjudicator

OIPC File No.: F15-62976