



OFFICE OF THE
INFORMATION & PRIVACY
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Order F17-27

BC EMERGENCY HEALTH SERVICES

Caitlin Lemiski
Adjudicator

May 10, 2017

CanLII Cite: 2017 BCIPC 29
Quicklaw Cite: [2017] B.C.I.P.C.D. No. 29

Summary: The applicant requested copies of a survey conducted by a co-worker and any related records. The public body located a survey cover letter, survey questions, the survey responses, and the names of the individuals who completed the survey. The public body disclosed some of the survey questions and responses to the applicant and withheld the rest under s. 22 of FIPPA (disclosure harmful to personal privacy). The public body also located a related workplace investigation report and withheld it in its entirety under ss. 22 and 14 (solicitor client privilege). The adjudicator confirmed the public body's ss. 14 and 22 decisions regarding some of the information. However, the adjudicator found that the public body was not required to refuse to disclose some information under s. 22 and ordered the public body to disclose that information to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 14 and 22(1).

Authorities Considered: BC: Order No. 111-1996 1996 CanLII 373 (BC IPC); Order 00-53, 2000 CanLII 14418 (BC IPC); Order 01-07, 2001 CanLII 21561 (BC IPC); Order 01-15, 2001 CanLII 21569 (BC IPC); Order 01-19, 2001 CanLII 21573 (BC IPC); Order 01-37, 2001 CanLII 21591 (BC IPC); Order 02-56, 2002 CanLII 42493 (BC IPC); Order F06-11, 2006 CanLII 25571 (BC IPC); Order F12-08, 2012 BCIPC 12 (CanLII); Order F13-09, 2013 BCIPC 10 (CanLII); Order F14-41, 2014 BCIPC 44 (CanLII); Order F15-36, 2015 BCIPC 39 (CanLII); Order F16 01, 2016 BCIPC 1 (CanLII); Order F16-20, 2016 BCIPC 22 (CanLII); Order F17-05, 2017 BCIPC 06 (CanLII); F16-36, 2015 BCIPC 39 (CanLII); Order 01-12, 2001 CanLII 21566 (BC IPC); Order F17-01 2017 BCIPC 1.

Cases Considered: *College of Physicians and Surgeons of British Columbia v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 (CanLII); *Architectural Institute of B.C. v. Information and Privacy Commissioner for B.C.*, 2004 BCSC 217 (CanLII); *R. v. B.*, 1995 CanLII 2007 (BC SC); *Slansky v. Canada (Attorney General)*, 2013 FCA 199 (CanLII).

INTRODUCTION

[1] This inquiry concerns an applicant's request for copies of a survey conducted by a co-worker and any related records from the Provincial Health Services Authority (PHSA).¹ In response to the applicant's request, PHSA advised the applicant that it located an investigation report (Investigation Report) with nine appendices, one of which is the survey responses, which contain the questions and the names of the individuals who completed the survey.² The Investigation Report was prepared by a lawyer (Investigating Lawyer) who was hired to conduct a workplace investigation. PHSA is withholding the entire Investigation Report under ss. 14 (solicitor client privilege) and 22 (disclosure harmful to personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).³

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review PHSA's decision. Investigation and mediation did not resolve the matter and the applicant requested it proceed to inquiry.

ISSUES

[3] The issues before me are as follows:

1. Is PHSA authorized by s. 14 of FIPPA to refuse access to the information?
2. Is PHSA required by s. 22(1) of FIPPA to refuse access to the information?

Under s. 57(1) of FIPPA, PHSA has the burden of proof to establish that s. 14 authorizes it to withhold the requested information. However, s. 57(2) of FIPPA places the burden on the applicant to establish that disclosure of personal information would not be an unreasonable invasion of third party personal privacy under s. 22 of FIPPA.

¹ Detailed information about the origins of the survey questions and why they were distributed are contained in an investigation report that is one of the records in dispute at this inquiry, therefore I am limited in what I can say about it.

² PHSA's submission, para. 1(g). PHSA has already disclosed the fact that the survey and the cover letter are part of the Investigation Report and that the information, for which it claims solicitor client privilege, includes the survey and the cover letter.

³ PHSA's submission, para. 21.

DISCUSSION

Background

[4] The applicant works for the BC Ambulance Service,⁴ which PHSA oversees through BC Emergency Health Services (BCEHS). BCEHS retained the Investigating Lawyer to investigate a workplace incident at BC Ambulance Service and produce the Investigation Report. PHSA submitted evidence, on an *in camera* basis, to the OIPC about the matter that was investigated, as well as the outcome of that investigation. Given the *in camera* nature of this evidence, I am somewhat limited in what I can say about it.

[5] The survey that the applicant requested was undertaken by one of her co-workers along with a cover letter that explains why the co-worker is soliciting input. The survey was not done on behalf of her employer, the PHSA. The survey asks respondents (i.e., co-workers) for their views regarding “how management has addressed the harassment and bullying situation” and for their personal feelings and experiences related to harassment and bullying in the workplace. The survey responses contain the questions, the respondents’ names, and the respondents’ opinions about their workplace and some of their co-workers. For ease of reference, from this point forward I will refer to this information as the “Survey”.

Information in dispute

[6] The records at issue in this inquiry are the Investigation Report and its nine appendices. The appendices include the Survey and the cover letter. PHSA is withholding the Investigation Report⁵ and its appendices in their entirety under ss. 14 and 22.

[7] The records also include a second, standalone copy of the Survey and the cover letter.⁶ PHSA is withholding parts of those records under s. 22.

Section 14 – Is the Investigation Report subject to solicitor client privilege?

[8] Section 14 of FIPPA is a discretionary exception to the general rule of access in FIPPA. Section 14 provides that a public body may refuse to disclose information that is subject to solicitor client privilege.

⁴ Applicant’s submission, p. 1.

⁵ When I use the term “Investigation Report” I mean the Investigation Report plus its nine appendices.

⁶ PHSA located this standalone copy of the Survey and cover letter during the inquiry.

[9] Section 14 includes both types of solicitor client privilege found at common law: legal advice privilege and litigation privilege.⁷ PHSA is claiming legal advice privilege over the Investigation Report. The test for whether legal advice privilege applies is well-established by the courts and is as follows:

1. There must be a communication, whether oral or written;
2. the communication must be confidential;
3. the communication must be between a client (or agent) and a legal adviser; and
4. the communication must be directly related to the seeking, formulating, or giving of legal advice.

If these four criteria are satisfied then the communications (and papers relating to them) are privileged.⁸

Parties' submissions

[10] The applicant submits that it is her right to know the contents of the Survey.⁹ The applicant makes no submissions about s. 14.

[11] PHSA submits that the Investigation Report is subject to legal advice privilege because it asked the Investigating Lawyer to investigate a matter and to provide confidential legal advice.¹⁰ PHSA provides affidavit evidence from the Investigating Lawyer who says that she told the individuals she interviewed that she was acting as legal counsel for PHSA and that she asked them to keep their interviews with her confidential.¹¹

Communication between client and lawyer

[12] A communication must be between a client (or the client's agent) and a lawyer in order to be privileged. PHSA submits that the Investigation Report is a confidential communication between the Investigating Lawyer, acting in her

⁷ *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665, para. 26.

⁸ *R. v. B.*, 1995 CanLII 2007 (BC SC) at para. 22, cited in, e.g., Order F16-20, 2016 BCIPC 22 (CanLII) at para. 20.

⁹ The applicant made submissions about the Survey but did not make any submissions about the Investigation Report itself or the other appendices. However, para. 7 of the Investigator's Fact Report states that the entirety of the Investigation Report is at issue.

¹⁰ PHSA's submission at paras. 111-112.

¹¹ Affidavit of the Investigating Lawyer, at paras. 9 and 10.

capacity as a legal adviser, and PHSA.¹² The Investigation Report contains the Investigating Lawyer's legal analysis and findings of fact. It also includes summaries and quotes of interviews the Investigating Lawyer conducted with PHSA employees and others. I have reviewed the Investigation Report and I am satisfied that it is, in its entirety, a communication between PHSA, as client, and the Investigating Lawyer, as PHSA's legal adviser.

Confidential communication

[13] PHSA submits that the Investigation Report was treated confidentially and was only discussed among a few individuals.¹³ PHSA provides affidavit evidence from the Investigating Lawyer, and she states that she only gave a copy of the Investigation Report to the then-Executive Director for Human Resources for BCEHS (Executive Director) and that she only discussed it with the Executive Director and with the Acting Director of Human Resources Consulting Services for BCEHS.¹⁴

[14] Based on the Investigating Lawyer's evidence and the fact that each page of the Investigation Report is marked "confidential", I find that the Investigation Report is a confidential written communication.

Communication related to seeking or providing legal advice

[15] In regards to the fourth part of the test, for the following reasons, I have decided that the entire contents of the Investigation Report are related to the seeking, formulating, or giving of legal advice.

[16] Courts have established that the terms under which a client retains a lawyer, while not conclusive, will have a bearing on whether the information the lawyer produces is subject to solicitor client privilege.¹⁵ In the present case, I do not have a copy of the retainer before me, but the Investigating Lawyer deposed that she discussed the terms of her retainer with the Executive Director and was asked to conduct an investigation and to provide legal advice. The Investigating Lawyer further deposed: "[The Executive Director] instructed me to conduct a fulsome confidential and privileged investigation in order to establish the factual foundation for the legal advice that I was to provide."¹⁶ Based on the Investigating Lawyer's sworn evidence and the Investigation Report itself, which contains extensive reference to case law as well as the Investigating Lawyer's legal

¹² PHSA's submission at paras. 103-106.

¹³ PHSA's submission at para. 106.

¹⁴ Investigating Lawyer's affidavit at paras. 18-19.

¹⁵ *Slansky v. Canada (Attorney General)*, 2013 FCA 199 (CanLII), [2013] F.C.J. No. 996, at para. 94, citing with approval *Gower v. Tolko Manitoba Inc.*, 2001 MBCA 11 (CanLII), 196 D.L.R. (4th) 716, at para. 40.

¹⁶ Affidavit of the Investigating Lawyer, at para. 6.

analysis,¹⁷ I am satisfied that PHSA retained the Investigating Lawyer to provide a report that included legal advice.

Summary of findings on s. 14

[17] In summary, I find that PHSA is entitled to claim legal advice privilege over the Investigation Report and all of its appendices, which includes a copy of the Survey and cover letter.

[18] I will now consider if PHSA is required to continue to withhold parts of the standalone copy of the Survey and the cover letter under s. 22. From this point forward, when I use the term “Survey”, I am referring to the standalone copy of the survey responses (which include the questions and the respondents’ names).

SECTION 22

Unreasonable invasion of personal privacy (s. 22)

[19] PHSA has already disclosed parts of the survey questions and responses. It is withholding the rest of the survey questions, responses, and all of the names of the survey respondents under s. 22.

[20] Section 22(1) requires a public body to withhold personal information if disclosure would constitute an unreasonable invasion of a third party’s personal privacy. PHSA is withholding some information in the Survey and in the cover letter under s. 22(1).

[21] Section 22 is mandatory; therefore, a public body must withhold any information to which the section applies. For this reason, I have considered all of the provisions of s. 22 throughout my analysis, even if both parties have not necessarily made submissions about them.¹⁸

[22] The approach to s. 22 has been established in previous orders.¹⁹ The first step is to determine whether any of the disputed information is “personal information.” Schedule 1 of FIPPA states that personal information “means recorded information about an identifiable individual other than contact information.” Schedule 1 of FIPPA states that contact information means “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.”

¹⁷ At pp. 19-26 of the Investigation Report.

¹⁸ The same approach has been taken in previous orders. See for example, Order F17-05, 2017 BCIPC 06 at para. 18.

¹⁹ See for example, Order F13-09, 2013 BCIPC 10 (CanLII) at para. 18 and Order F12-08, 2012 BCIPC 12 (CanLII) at para. 12.

[23] PHSA submits that all of the information it withheld under s. 22 is personal information,²⁰ including information about the applicant, the survey respondents, other individuals that are named or described in the survey questions and responses, and the individual who distributed the survey questions and cover letter, whom I will refer to from this point forward as the survey originator.

[24] The applicant submits she may need the Survey and the cover letter to obtain a restraining order to protect herself and her family.²¹ Her submission does not directly refer to FIPPA or to s. 22.

[25] I have reviewed the disputed information and the parties' submissions, and I find that all the information PHSA withheld from the Survey and the cover letter is "personal information." Although some information in the cover letter may appear to be contact information, such as an employee's name or job title, I find that because of the context in which it appears, it is personal information.

[26] The personal information also includes information about individuals who are identified only as "managers" or "management" but who I am satisfied are nonetheless identifiable, because of the context in which the information about them appears.

[27] Further, some of the personal information in the cover letter and the Survey are third parties' opinions of other individuals and their actions. Thus it is the personal information of both.

Section 22(4)(e) and s. 22(3)(d)

[28] The second step in this analysis is to decide if any of the factors in s. 22(4) apply. If so, disclosure of the personal information is deemed not to be an unreasonable invasion of third party personal privacy. The third step is to decide if disclosure of the personal information is presumed to be an unreasonable invasion of personal privacy because one or more of the factors listed in s. 22(3) apply.

[29] PHSA submits that no provision of s. 22(4) applies to the disputed information, and in particular, s. 22(4)(e) does not apply.²² PHSA submits that instead of s. 22(4)(e), s. 22(3)(d) applies to the disputed information.²³

²⁰ PHSA's submission at paras. 31-32.

²¹ Applicant's submission at p. 1.

²² PHSA's submission at para. 41.

²³ PHSA's submissions at paras. 46-49. PHSA's references to the "Survey" include the survey questions, the survey responses, the names of the individuals who completed the survey, and the cover letter (see PHSA's submission at para. 16 referring to Tab 7 of the Investigation Report as being "the Survey").

[30] Section 22(4)(e) provides that a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body. Section 22(3)(d) says that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information "relates to employment, occupational or educational history." Several OIPC orders have noted the tension between s. 22(4)(e) and s. 22(3)(d).²⁴ As a result, these two sections are frequently considered contemporaneously, and that is what I have done here.

[31] Section 22(3)(d) presumes that disclosing personal information that relates to a third party's employment or occupational history is a presumed invasion of that individual's privacy. Previous orders have held that s. 22(3)(d) applies to "information about a person's work history, leave transactions, disciplinary action taken, reasons for leaving a job and comments about an individual's workplace actions or behaviour in the context of a workplace complaint or discipline investigation."²⁵ Section 22(4)(e) has been found to apply to employment contracts and to job descriptions.²⁶

[32] PHSA submits that s. 22(3)(d) applies to the Survey because the disputed information contains information supplied by third parties about workplace behaviors and actions and because it contains employment history information about the survey respondents and other third parties.²⁷

[33] I find that none of the circumstances in s. 22(4) apply to the Survey or the cover letter. They do not contain information that is about the position, functions or remuneration of third parties as employees of the public body within the meaning of s. 22(4)(e). I also find that s. 22(3)(d) does not apply to the Survey or the cover letter. The information was not created in the context of a formal workplace complaint or discipline investigation, and no individual's work is being assessed or evaluated in a qualitative way by someone acting under authorization from their employer.²⁸ It is merely what co-workers had to say about each other.

Other presumptions against disclosure – s. 22(3)(g)

[34] PHSA submits that s. 22(3)(g) is also relevant in these circumstances.²⁹ Section 22(3)(g) provides a presumption against disclosure where the personal

²⁴ Order F14-41, 2014 BCIPC 44 (CanLII) at para. 36.

²⁵ Order 02-56, 2002 CanLII 42493 (BC IPC) at para. 71, referring to Order 00-53, 2000 CanLII 14418 (BC IPC). Order 02-56 was upheld on judicial review. See *Architectural Institute of B.C. v. Information and Privacy Commissioner for B.C.*, 2004 BCSC 217 (CanLII).

²⁶ Order 02-56 *ibid* at para. 72.

²⁷ PHSA's submission at para. 48.

²⁸ A similar conclusion was reached in Order F17-01 2017 BCIPC 1 at para. 81 regarding information about what two public body employees said and did in their employment capacity.

²⁹ PHSA's submission at para. 50.

information “consists of personal recommendations or evaluations, character references or personnel evaluations about the third party.”

[35] Previous orders have found that s. 22(3)(g) applies to formal performance reviews, to job or academic references or to an investigator’s assessment and evaluation of an individual’s workplace performance and behaviour in the context of a complaint investigation.³⁰ It does not, however, apply to an individual’s personal opinions of, and allegations about, his or her co-workers. That is the type of information at issue here in the Survey and the cover letter.

[36] In this case, the cover letter and survey questions were not distributed, and the survey responses were not collected for, the purpose of a formal investigation or performance evaluation and are therefore not, in my view, consistent with the intent of s. 22(3)(g). I therefore find that s. 22(3)(g) does not apply to the Survey and the cover letter.

[37] There are no other s. 22(3) presumptions that are relevant in this case.

Relevant circumstances – 22(2)

[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 s. 22(2). PHSA submits that ss. 22(2)(e), 22(2)(g) and 22(2)(h) are relevant factors, and that s. 22(2)(f) is a “neutral” factor.³¹ I have also decided that s. 22(2)(c) is relevant to consider. There are no additional relevant circumstances, either in s. 22(2), or otherwise, to consider in this case.

Fair determination of rights – 22(2)(c)

[39] Section 22(2)(c) applies to “personal information that is relevant to a fair determination of the applicant’s rights.” Although neither of the parties directly raised s. 22(2)(c), I have considered it because s. 22 is mandatory and in this case, the applicant submits that she believes it is her “right” to have the personal information in the Survey and the cover letter and that she may require them to obtain a restraining order to protect herself and her family against a named individual.³²

[40] Previous orders have established that the following four criteria must be met in order for s. 22(2)(c) to apply:

³⁰ Order 01-07, *ibid*, at para. 21; F06-11, 2006 CanLII 25571 (BC IPC) at para. 53; Order F05-30 2005 CanLII 32547 (BC IPC), at para. 41; Order F16-01, 2016 BCIPC 1 (CanLII), at para. 20.

³¹ PHSA’s submission at para. 63.

³² Applicant’s submission at p. 1.

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.³³

[41] In this case, the right in question is the legal right to ask a court for a restraining order. This satisfies the first part of the test. There is no proceeding under way, so the question is whether one is contemplated. The second part of the test will be met if the evidence establishes that the applicant is intently considering commencing a proceeding.³⁴ Here, the applicant provides reasons why she is considering a restraining order against a named individual. The applicant's reasons and the context in which she and that individual know each other, satisfy me that the second part of the test is met.

[42] Part three of the test in s. 22(2)(c) requires "a demonstrable nexus between the personal information that is at issue and the applicant's legal right".³⁵ Based on the survey questions and survey responses, I am satisfied that such a nexus exists, in that it provides a sense of how the individual the applicant may seek a restraining order against perceives her.

[43] Part four of the test requires that the personal information be necessary in order to prepare for the proceeding or to ensure a fair hearing. While I can see how the cover letter and the survey questions and survey responses could be relevant to the legal right, it is not evident why the applicant needs this information in order to prepare for the proceeding or to ensure a fair hearing. She does not explain. In conclusion, I find that s. 22(2)(c) is not a relevant circumstance in this case.

Exposure to harm - s. 22(2)(e)

[44] 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

³³ For example, Order F15-36, 2015 BCIPC 39 (CanLII) at para. 23.

³⁴ Order F16-36, supra at para. 50.

³⁵ F16-36, supra, at para. 52.

or other harm. Previous orders have held that “other harm” for the purposes of s. 22(2)(e) consists of “serious mental distress or anguish or harassment.”³⁶

[45] PHSA identified certain information in the Survey on an *in camera* basis³⁷ that it submits “would unfairly expose the third parties to financial or other harm.”³⁸ In this case, without further evidence or explanation, I find that the evidence does not establish that a third party will be exposed unfairly to financial or other harm. Therefore I find that s. 22(2)(e) is not a relevant circumstance.³⁹

Supplied in confidence – s. 22(2)(f)

[46] Section 22(2)(f) requires a public body to consider whether the personal information in dispute has been supplied in confidence. In this case, the survey originator told prospective respondents in the cover letter that he intended to “have full disclosure” of his “documentation” to certain named third party agencies.⁴⁰ I take this to mean that the survey respondents understood that he would disclose their names and responses. Further, the survey originator did not say in the cover letter or in the Survey that he would keep the survey respondents’ names or responses confidential.

[47] Notwithstanding some of PHSA’s *in camera* evidence on this point about the extent to which the cover letter and the Survey may have actually been shared with third parties,⁴¹ I find that the Survey and the cover letter were not supplied in confidence. Therefore s. 22(2)(f) is not a relevant circumstance.

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

[48] Section 22(2)(g) requires a public body to consider whether the personal information in dispute is likely to be inaccurate or unreliable. In Order 01-19, former Commissioner Loukidelis described the purpose of s. 22(2)(g):

³⁶ Order 01-37, 2001 CanLII 21591 (BC IPC) at para. 42 and Order 01-15, 2001 CanLII 21569 (BC IPC) at para. 49.

³⁷ PHSA’s submission at para. 73. PHSA also identified parts of the Investigation Report that it submits would result in serious mental distress or anguish or harassment, at paras. 70-72 however I am not considering those parts of PHSA’s submission because I have already found that the entire Investigation Report is privileged.

³⁸ PHSA’s submission at para. 69.

³⁹ In reaching this finding, I note that PHSA offered a definition of “unfairly” it submits is contained in Schedule 1 of FIPPA. Schedule 1 does not contain a definition of that term, nor is “unfairly” defined elsewhere in FIPPA. Whether or not the harm would be unfair in this case is not material to my finding in any event, however, as I am unable to conclude that disclosing any of the information in dispute would be harmful, whether or not the exposure would be unfair.

⁴⁰ This information in the cover letter has already been disclosed to the applicant.

⁴¹ PHSA’s submission at para. 66.

It is aimed at preventing harm to individuals that can flow from the disclosure of inaccurate or unreliable information about them. For example, a public body's records may contain unfounded rumours about someone, the disclosure of which could embarrass that individual. The focus is on whether personal information of that individual is inaccurate, not whether the WCB's evidence respecting an accident is accurate or reliable....⁴²

[49] In this case, PHSA provided *in camera* evidence as to why the survey responses are likely to be inaccurate and unreliable.⁴³ Given the *in camera* nature of the evidence, I am restrained in how much detail I can provide about the contents of that evidence. However, I can say that the *in camera* evidence pertains to how the survey respondents came to know information that they used in their responses, as well as how they were selected to be invited to answer the survey questions.

[50] I find PHSA's evidence as to whether s. 22(2)(g) is a relevant circumstance to be detailed, persuasive and compelling. Based on that evidence, I have determined that although the information is an accurate and reliable reflection of what the survey respondents wrote, the content of their responses as it relates to third parties is likely to be inaccurate or unreliable. Therefore, I find that s. 22(2)(g) is a relevant circumstance in this case that weighs against disclosing the survey responses.

Unfairly damage reputation - s. 22(2)(h)

[51] Section 22(2)(h) requires a public body to consider whether disclosure of personal information may unfairly damage the reputation of any person referred to in the record requested by the applicant. It has two requirements; first the information must damage an individual's reputation. Second, the damage to an individual's reputation must be unfair.

[52] Personal information about the survey originator is in the cover letter, the survey questions, and the survey responses. Personal information about the applicant is in the survey questions and in the survey responses. Personal information about the survey respondents is contained in the survey responses. Personal information about other third parties is contained in the survey questions, the cover letter, and in the survey responses. If the disclosure of any of this information may unfairly damage the reputation of any person referred to in the Survey or in the cover letter, then s. 22(2)(h) is a relevant circumstance weighing against disclosing the information.

⁴² Order 01-19, 2001 CanLII 21573 (BC IPC) at para. 42.

⁴³ PHSA's submission at paras. 82-85.

[53] I will first consider the applicant's personal information. The applicant's personal information appears in the survey questions and the survey responses. Where there are opinions about the applicant they are both the personal information of the applicant and the opinion giver, I fail to see how disclosure of the applicant's own personal information in the form of the third parties' remarks and opinions about her could unfairly damage the reputation of the survey originator or the survey respondents. There is nothing to suggest that they did not sincerely believe in the veracity of what they wrote about her.⁴⁴ I make the same finding in the present case. In summary, it would not unfairly damage the applicant's reputation to disclose her personal information.

[54] Next I will consider whether s. 22(2)(h) applies to information about the survey respondents. The survey respondents chose to respond to the survey questions, and in doing so they chose to write things about themselves. Given that the survey originator told them that he would share their responses with others, they could have had no expectation that what they wrote would be kept confidential. For these reasons, I find that s. 22(2)(h) does not apply to information about the survey respondents.⁴⁵

[55] I am also satisfied that s. 22(2)(h) does not apply to information about the survey originator. He decided to elicit information about himself and others by distributing the cover letter and the survey questions. Therefore, any damage to his reputation from disclosing information about himself in the cover letter or the survey questions or responses would not be unfair.

[56] I am satisfied however, that s. 22(2)(h) is a relevant circumstance to consider in determining whether s. 22(1) applies to information in the Survey that is about individuals (other than the applicant) who did not participate in the Survey. This information is contained in the survey responses and in some of the survey questions. I am satisfied that these individuals were unaware that the survey originator was asking questions about them, or that the survey respondents were writing about them. The Survey is about bullying and harassment in the workplace, which are sensitive topics. Moreover, these individuals did not have the opportunity to review or challenge how they were portrayed. For these reasons, I find that s. 22(2)(h) is a relevant circumstance because disclosure may unfairly damage the reputations of these individuals if their personal information is disclosed.

⁴⁴ In Order F06-11 2006 CanLII 42572 (BC IPC) at para. 62, Adjudicator Francis also found that disclosure to an applicant of her own personal information in the form of other people's opinions about her could not cause harm to the reputation of any third party.

⁴⁵ All of the information about the survey respondents was provided by the survey respondent the information is about; they did not provide information about each other.

Does s. 22(1) apply?

[57] I have determined that s. 22(4) and s. 22(3) do not apply to the disputed information. I have determined that s. 22(2)(g) is a relevant circumstance that weighs against disclosing the survey responses because they are likely to be inaccurate or unreliable. I have also determined that s. 22(2)(h) is a relevant circumstance that weighs against disclosing personal information about individuals named or described in the Survey (other than the applicant) who did not participate in the Survey because disclosure may unfairly damage their reputations. I have determined there are no other circumstances that are relevant to consider in determining whether s. 22(1) applies.

[58] Having considered the totality of the circumstances above, I find that s. 22(1) does not apply to information about the applicant, the survey respondents, or the survey originator. However, disclosure of the balance of the personal information would be an unreasonable invasion of third party personal privacy under s. 22(1).

Severing under s. 4(2)

[59] Section 4(2) of FIPPA states that, where it is reasonable to sever excepted information from a record, an applicant has the right of access to the remainder. In this case, most of the personal information to which I find s. 22(1) does not apply is inextricably intertwined with information to which s. 22(1) does apply. For this reason, much of the information that would otherwise be disclosable must be withheld. Severing this information would not be reasonable under s. 4(2), as it would result in disclosing meaningless, misleading, or unintelligible information.⁴⁶ I have highlighted the information that must be disclosed in a copy of the relevant pages of the records that will be sent to the PHSA along with this order.⁴⁷

CONCLUSION

[60] For the reasons given above, under s. 58 of FIPPA, I order that PHSA is:

- a. authorized to refuse to disclose the information it has withheld under s. 14 of FIPPA;
- b. required to refuse to disclose the information it has withheld under s. 22 of FIPPA subject to paragraph c;

⁴⁶ A similar conclusion was reached with respect to information in dispute in Order F17-05 2017 BCIPC 6 (CanLII), see para. 78.

⁴⁷ PHSA did not paginate the standalone copy of the cover letter and Survey. I have paginated it, beginning with the cover letter, from 1-22. Information to be disclosed to the applicant is on pp. 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22.

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- c. required to give the applicant access to the information I have highlighted in the excerpted pages of the records that will be sent to PHSA along with this order; and
 - d. pursuant to s. 59 of FIPPA, PHSA must comply with this order by June 22, 2017. It must also concurrently copy the OIPC's Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records it provides to the applicant.

May 10, 2017

ORIGINAL SIGNED BY

Caitlin Lemiski, Adjudicator

OIPC File No.: F15-62880