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Order F18-47

PROVINCIAL HEALTH SERVICES AUTHORITY

Chelsea Lott
Adjudicator

November 14, 2018

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Summary: An applicant requested that the BC Emergency Health Services (EHS) disclose records and audio recordings related to his calls to 911. EHS disclosed audio recordings and an event chronology, but it withheld the names of its employees in the event chronology under s. 22 (unreasonable invasion of personal privacy) of FIPPA. Disclosing the employee names in the event chronology would also identify the employees in the audio recordings. The adjudicator found that identifying the EHS employees in the audio recordings was an unreasonable invasion of their privacy; therefore, EHS was required to withhold the employee names in the event chronology under s. 22.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22, 22(3)(d) and 22(4)(e).

INTRODUCTION

[1] British Columbia Emergency Health Services (EHS) runs the province's emergency dispatch services through 911. The applicant requested that EHS disclose any recordings, transcripts and written notes related to 911 calls he made after his elderly mother suffered a fall. He also asked for the names of the three dispatchers he spoke with. In response, EHS disclosed audio recordings of the calls and an event chronology, but it withheld the employee names in the event chronology under s. 22 (unreasonable invasion of personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review EHS' decision to withhold the employee names. Mediation did not resolve the matter and the applicant requested an inquiry.

[3] EHS is not itself a public body under FIPPA. Rather, EHS is a program of the Provincial Health Services Authority, which is the actual public body subject to this order.¹ However, the parties have only referred to EHS in their submissions. For simplicity, I have referred to EHS as the public body in my reasons.

ISSUE

[4] The sole issue in this inquiry is whether EHS is required to withhold its employees' names under s. 22 of FIPPA. The applicant has the burden of proving that disclosing the names would not be an unreasonable invasion of third party personal privacy.²

THE RECORDS

[5] The record in dispute, an event chronology, is a four page table which details EHS' handling of the applicant's 911 calls. Each entry in the table includes the date and time of the activity, the first and last name of the employee involved, and a description of the employee's activity or the employee's notes about the emergency. For example, the first description is "Pre-hospital call answered" along with some internal codes. EHS has withheld all of the employee names in the event chronology.

[6] EHS has also disclosed in their entirety, five audio clips of the 911 calls. The first two are between a care worker and dispatchers. The remaining three are between the applicant and three different dispatchers.

DISCUSSION

Background

[7] I will provide some details of the 911 calls as they are relevant to my s. 22 analysis. Initially, a care worker called 911 on behalf of the applicant's mother because she had fallen. Paramedics attended, but the applicant's mother refused treatment. Almost four hours later, the applicant found his mother and called 911 asking for an ambulance. The applicant became frustrated by the dispatcher's questions and asked for the dispatcher's name. The dispatcher refused and the applicant asked to speak to his supervisor. The dispatcher refused to transfer

¹ Order F17-27, 2017 BCIPC 29 at para. 4. The Provincial Health Services Authority is designated as a public body in Schedule 2 of FIPPA.

² Section 57(2) of FIPPA.

him. The applicant said he would be filing a complaint and “going public.” The applicant then said he would take his mother to the hospital and hung up.

[8] A few minutes later, the applicant called again, and spoke to a different dispatcher. He became frustrated with the dispatcher and again asked for the dispatcher’s name. When the dispatcher refused, he requested, and was transferred to, a supervisor. The applicant asked the supervisor her name, but she also refused to provide it to him, citing personal safety reasons. The applicant told the supervisor that the other dispatchers were rude, ignorant and condescending and said he would escalate the matter. The applicant then answered the supervisor’s questions about the emergency and the call ended when the supervisor confirmed that an ambulance was on the way.

Section 22 – third party personal privacy

[9] Section 22 requires public bodies to refuse to disclose personal information if its disclosure would be an unreasonable invasion of a third party’s personal privacy. The approach to applying s. 22 is well established.³ I have adopted the same approach.

Personal information

[10] Only “personal information” may be withheld under s. 22. FIPPA defines “personal information” as recorded information about an identifiable individual other than contact information.⁴ Information is about an identifiable individual when it is reasonably capable of identifying an individual, either alone or when combined with other available sources of information.⁵

[11] “Contact information” is defined as “information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”⁶

[12] The employees’ names are clearly their “personal information.” In addition, the names are not “contact information” in the context in which they appear, namely, EHS’ internal records.

[13] It is also necessary to consider the effect of disclosing the dispatchers’ names on the audio recordings. The audio recordings by themselves do not disclose the identity of the dispatchers. Therefore, at least to the applicant, the audio recordings are not about identifiable individuals. However, if the

³ See for example Order 01-53, 2001 CanLII 21607 (BCIPC) at paras. 22-24.

⁴ See Schedule 1 of FIPPA.

⁵ Order F18-11, 2018 BCIPC 14 at para. 32.

⁶ See Schedule 1 of FIPPA.

employees' names in the event chronology are disclosed, then the applicant could use the event chronology to identify the dispatchers in each audio recording.⁷ The audio clips are date and time-stamped, so it is easy to match the date and time of the phone calls to the timeline in the event chronology.

[14] As a result, disclosing the names in the event chronology would turn the audio recordings into audio recordings about identifiable individuals. Thus, disclosing the dispatchers' names would also disclose, to the applicant, personal information about the dispatchers contained in the audio recordings. Therefore, in addition to disclosure of the names in the event chronology, I must consider whether identifying the dispatchers in the audio recordings would be an unreasonable invasion of their privacy under s. 22. This is in essence a question about whether disclosing personal information in the audio recordings is an unreasonable invasion of privacy.

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

[15] The next step in a s. 22 analysis is to consider whether the information falls into any of the categories listed in s. 22(4). If it does, then disclosure would not be an unreasonable invasion of personal privacy and the information may not be withheld under s. 22. If none of categories in s. 22(4) apply, then I must consider whether the information falls into any of the categories listed in s. 22(3). If it does, then disclosing the information is presumed to be an unreasonable invasion of personal privacy.

[16] Sections 22(4)(e) and 22(3)(d) are the only relevant provisions in this case. Section 22(4)(e) states that disclosure of personal information about a public body employee's "position, functions or remuneration" is not an unreasonable invasion of a third party's personal privacy. However, s. 22(3)(d) states that disclosing personal information that relates to a third party's "employment, occupational or educational history" is presumed to be an unreasonable invasion of a third party's personal privacy. Thus, information about a public employee's position or job functions is treated very differently than information about the employee's employment history.⁸

[17] In Order F08-04, the adjudicator commented on the purpose of the two sections:

These different categories of information relate to the competing principles of FIPPA, namely, the objectives of ensuring transparency of public bodies and appropriately protecting the privacy of individuals, including those employed by public bodies.⁹

⁷ Called the 'mosaic effect' see Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 44–46.

⁸ Order F12-12, 2012 BCIPC 17 at para. 25.

⁹ 2008 CanLII 13322 (BC IPC) at para. 21.

[18] EHS argues that disclosing the employees' names is a presumed invasion of their personal privacy under s. 22(3)(d) and that s. 22(4)(e) does not apply. The applicant asserts that the dispatchers are taxpayer-funded employees who were acting in the normal course of daily business. He argues that public accountability requires their names be disclosed.

[19] The name and title of a public body employee is normally the type of information that would fall within s. 22(4)(e). Information about public body employees carrying out the duties and responsibilities of their position would also normally fall under s. 22(4)(e). However, the context in which the information appears determines whether or not it falls under s. 22(4)(e) or s. 22(3)(d).¹⁰

[20] In Order 01-53, Commissioner Loukidelis found that a third party's name and title, normally captured by s. 22(4)(e), were in that case part of the third party's employment history under s. 22(3)(d).¹¹ His finding was based on the fact the information appeared in the context of a workplace investigation:

The third party's name and other identifying information is covered by s. 22(3)(d) only because that information appears in the context of a workplace investigation. This is not to say that, in the ordinary course, the name or other identifying information of a public body officer, employee or member is covered by s. 22(3)(d). Moreover, even in cases such as this, where the identifying information is covered by s. 22(3)(d), 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 falls into s. 22(4)(e). I refer here to objective, factual statements about what the third party she did or said in the normal course of discharging her or his job duties, but not qualitative assessments or evaluations of such actions....¹²

[21] EHS draws parallels to Order F12-12 which considered the application of s. 22 to video footage of a corrections officer in the normal course of her duties. The adjudicator held that the facial image of the corrections officer was subject to s. 22(3)(d) and had to be withheld, but the balance of the recording of her activities was subject to s. 22(4)(e).¹³

[22] Order F15-42, which also involved video footage of public body employees, expanded on what was said in Order F12-12.¹⁴ In Order F15-42, the adjudicator held that disclosure of video and audio recordings of employees were

¹⁰ Order F10-21, 2010 BCIPC 32 at para. 22.

¹¹ Order 01-53, *supra* note 4.

¹² *Ibid* at para. 17.

¹³ Order F12-12, *supra* note 9, was a reconsideration of Order F08-13, 2008 CanLII 41151 (BC IPC) as ordered by *British Columbia (Ministry of Public Safety and Solicitor General) v Stelmack*, 2011 BCSC 1244.

¹⁴ 2015 BCIPC 45 at para. 36.

presumed to be an unreasonable invasion of their privacy under s. 22(3)(d) because they revealed how the employees did their jobs. He disagreed with the finding in Order F12-12 that severing the third parties' faces would bring the recordings within s. 22(4)(e). The adjudicator also commented on the difference between audio or video recordings and written records for the purpose of s. 22:

In the context of s. 22(4)(e) and 22(3)(d) of FIPPA, the distinction between video and audio recordings compared to written records may be relevant. In my view, audio and video footage about an employee is more likely to be "about" that specific employee, their actions and how they do their job compared to a written record created in the course of an employee's ordinary functions, tasks and activities. This is due in large part to the additional amount of detail that is contained in video footage compared to written records....¹⁵

[23] Turning to the present case, as previously discussed, although the audio recordings have been disclosed, they are not, at least to the applicant, about *identifiable* individuals. The voices on the audio recording could be of any one of EHS' dispatchers. However, if EHS is required to disclose the dispatchers' names, the applicant will be able to connect particular employees to the information revealed in the recordings.

[24] I am satisfied, based on what I can hear in the audio recordings, that disclosing the dispatchers' names is presumed to be an unreasonable invasion of their privacy under s. 22(3)(d). From listening to the audio recordings, one can make reasonable inferences about the dispatchers' gender, native language and age. The dispatchers' tone on the phone calls reveals their emotional state. In addition, the audio recordings provide qualitative details about how each particular employee did his or her job on that day.

[25] In addition, the calls reveal the applicant's criticism of the dispatchers. The applicant is clearly exasperated with the dispatchers in the recordings. He states that he would "escalate" the matter and intended to make complaints about their handling of his calls. The applicant in fact later made a formal complaint to EHS.¹⁶

[26] The applicant's condemnation of the dispatchers is the personal information of those dispatchers.¹⁷ It is plainly not objective information about those employees' job duties in the normal course of work-related activities within s. 22(4)(e). Rather, the applicant's qualitative assessment of the dispatchers' job performance, even though it comes from a member of the public and not the dispatchers' employer, is a part of the dispatchers' employment history under s. 22(3)(d).

¹⁵ *Ibid* at para. 34.

¹⁶ Executive Director's affidavit at para. 31.

¹⁷ It is also the applicant's personal information.

Section 22(2) – relevant circumstances

[27] The next step in a 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). It is at this step, after considering all relevant circumstances, that any presumptions under s. 22(3) may be rebutted.

[28] I have considered the following circumstances described in s. 22(2):

- (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,
- (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,
- (c) the personal information is relevant to a fair determination of the applicant's rights,
- ...
- (e) the third party will be exposed unfairly to financial or other harm,
- (f) the personal information has been supplied in confidence,

Public scrutiny of a public body – s. 22(2)(a)

[29] Section 22(2)(a) supports disclosure where it is desirable for the purpose of subjecting the activities of a public body to public scrutiny. The purpose of s. 22(2)(a) is to foster accountability of a public body.¹⁸

[30] The applicant makes arguments about why EHS needs to be held accountable for the 911 calls. The applicant alleges that EHS refused to send the appropriate resources to aid his mother. He further alleges that EHS dispatchers were hostile and fell below professional standards. He asserts that EHS staff have withheld their names to avoid “prosecution, disciplinary actions, and potential termination...”¹⁹ He suggests that withholding the identities of the staff he dealt with prevents EHS from learning from its alleged mistakes.

[31] EHS says that the records do not reveal anything requiring public scrutiny.

[32] The purpose of s. 22(2)(a) is to make *public bodies* more accountable and not individual employees. In my view, the event chronology and audio recordings are sufficient to subject the activities of EHS to scrutiny for the purpose of s. 22(2)(a). These records show what was said and done in response to the applicant’s 911 calls. Publicly disclosing the names of specific employees will not enhance EHS’ accountability or aid in public scrutiny. Therefore, I find that s. 22(2)(a) does not apply.

¹⁸ Order F05-18, 2005 CanLII 24734 (BC IPC) at para. 49.

¹⁹ Applicant’s submission at para. 2.

Promoting public health and safety – s. 22(2)(b)

[33] Section 22(2)(b) requires a public body to consider whether disclosure would be likely to promote public health and safety. The applicant argues in essence, that the 911 dispatchers were negligent in handling his mother's emergency and that the paramedics should have treated her at their first attendance. If disclosing the dispatchers' identities assisted in illuminating what happened and why, I would be inclined to find that s. 22(2)(b) applied.²⁰ However, the audio recordings and event chronology already provide a full picture of the dispatchers' handling of the applicant's calls. I can see no basis on which disclosing the dispatchers' names would promote health and safety. Therefore, I find that s. 22(2)(b) does not weigh in favour of disclosure.

Fair determination of applicant's rights – s. 22(2)(c)

[34] Section 22(2)(c) supports disclosure where the information is relevant to a fair determination of the applicant's rights. The rights at issue must be legal rights drawn from common law or statute as opposed to a right based on only moral or ethical grounds.²¹ Section 22(2)(c) only applies to the applicant's legal rights and not those of any others, including his mother.

[35] Although the applicant describes himself as a "victim" in his submission, he does not suggest that any of his legal rights were infringed by the 911 calls. Rather, his quarrel is about the competency of the dispatchers and the failure of the paramedics to initially treat his mother. I therefore find that s. 22(2)(c) is not a factor favouring disclosure.

Financial or other harm to third party – s. 22(2)(e)

[36] EHS argues that disclosing the employees' names could unfairly expose them to harm within the meaning of s. 22(2)(e). Section 22(2)(e) addresses whether disclosure would expose a third party "unfairly to financial or other harm." "Other harm" has been interpreted as serious mental distress, anguish or harassment.²²

[37] EHS' evidence is that its dispatchers are commonly subjected to shouting and aggressive behaviour from callers. One dispatcher is off work for stress, related in part to dealing with difficult callers. Another dispatcher was subjected to threats on social media about a call when an event chronology identifying the dispatcher was disclosed. One of the dispatchers who spoke with the applicant says that he/she is concerned that if his/her name is released, unhappy callers

²⁰ See Order F10-36, 2010 BCIPC 54 at para. 27.

²¹ Numerous orders have set out the requirements for s. 22(2)(c) to apply. See for example Order F16-46, 2016 BCIPC 51 at para. 43.

²² Order 01-37, 2001 CanLII 21591 (BC IPC) at para. 42.

would search out and contact the dispatcher in the future. The dispatcher says that this would cause him/her “heightened anxiety, concern and stress in performing my work duties both during work shifts and in my personal time.”²³ EHS has also submitted statistics about the number of times employees, including paramedics, have accessed crisis counselling and stress relief services.

[38] Dispatchers undoubtedly deal with difficult and stressful matters and I am not surprised that a number have accessed crisis counselling. However, EHS has not drawn a sufficient connection between disclosure of the personal information in this case and harm under s. 22(2)(e).

[39] It is evident from the applicant’s 911 calls and his inquiry submission that he is very upset by how EHS handled the calls. I also accept that the dispatcher who submitted evidence in the present case has a genuine concern that disgruntled callers might harass him in the future. However, based on the applicant’s conduct I am not persuaded that the applicant is likely to threaten or harass the dispatchers. The applicant has filed a formal complaint against the dispatchers with EHS, but that seems to me like a reasonable step to take to resolve the matter. The applicant’s access request is also a reasonable action in the circumstances. In my judgment, the applicant’s actions to date do not suggest that he is likely to expose the individual dispatchers to harm.

[40] EHS relies on Order F12-12, where s. 22(2)(e) was found to apply based on evidence of a history of threats and harassment towards a correctional officer who had PTSD. The correctional officer’s evidence in that case was compelling, having suffered severe assaults and being advised of a plot to kill her. In my view, this order does not support EHS’ arguments.

[41] In summary, the evidence is not enough to conclude that if their names are disclosed these dispatchers would be unfairly exposed to the type of harm s. 22(2)(e) means, namely serious distress, anguish or harassment. I find that s. 22(2)(e) is not a relevant factor.

Supplied in confidence – s. 22(2)(f)

[42] I have also considered s. 22(2)(f) which weighs against disclosure where the personal information was supplied in confidence. EHS says that following the incident in which a dispatcher’s name was disclosed in an event chronology, there was an “outpouring” of requests from EHS employees urging EHS to take all steps necessary to protect them from abusive, threatening callers.²⁴ In addition, one of the dispatcher’s who spoke with the applicant, says that he/she

²³ Dispatcher affidavit at para. 6.

²⁴ Executive Director’s affidavit at para. 26.

expects his/her name would be kept confidential when there are freedom of information requests.²⁵

[43] In my view, it would be unusual that there would be an objective expectation or understanding between a public body and its employees, that employee names would be kept confidential. In the ordinary course, s. 22(4)(e) requires public bodies to disclose their employees' names. The fact that all of the calls are recorded,²⁶ and therefore subject to access requests, suggests that employees' identities are not objectively kept confidential by EHS. In addition, employees' names are not sensitive information, such that I could infer that they were supplied confidentially. Based on the evidence before me, I am not persuaded that s. 22(2)(f) applies in this case.

Section 22 – conclusion

[44] The employees' names are third party personal information. I have found that disclosing the names is presumed to be an unreasonable invasion of the employees' privacy as it relates to their employment history under s. 22(3)(d). I have determined that there are no circumstances under s. 22(2) weighing in favour of disclosing the employees' names. Therefore, I find that the presumption against disclosure under s. 22(3)(d) has not been rebutted. I conclude that EHS is required to withhold the employees' names under s. 22.

CONCLUSION

[45] For the reasons given above, under s. 58 of FIPPA, the Provincial Health Services Authority is required to refuse to disclose the information it has withheld under s. 22.

November 14, 2018

ORIGINAL SIGNED BY

Chelsea Lott, Adjudicator

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²⁵ Dispatcher affidavit at para. 2.

²⁶ *Ibid* at para. 21.