



OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
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Order F19-13

CITY OF VANCOUVER

Chelsea Lott
Adjudicator

March 25, 2019

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Quicklaw Cite: [2019] BCIPCD No. 15

Summary: The applicant requested accident reports from the City of Vancouver involving youth at municipal recreational facilities. The applicant was only interested in certain information from the accident reports. The adjudicator determined that the information at issue in the inquiry was limited to a few categories of information in the accident reports, specifically age of the injured, the description and cause of injury and the treatment provided. Ultimately, the adjudicator found that the City was not required under s. 22(1) to withhold this information because it did not qualify as “personal information” in this case.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 22.

INTRODUCTION

[1] The applicant requested statistical information from the City of Vancouver (Vancouver) regarding accidents involving children 12 years old or younger at Vancouver fitness centers and ice rinks over a five year period. Vancouver initially responded saying it was unable to provide any statistics. After a back-and-forth between the applicant and Vancouver, the applicant settled on requesting all accident reports, not limited by age, over a two year period. In response, Vancouver advised that it would withhold all of the accident reports under s. 22 (disclosure harmful to third party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant complained to the Office of the Information and Privacy Commissioner (OIPC) about Vancouver’s decision. Mediation did not resolve

the dispute between the applicant and Vancouver and the applicant requested an inquiry. Vancouver then wrote to the applicant and the OIPC saying it had withdrawn its initial response to the access request and issued a fee estimate instead. Vancouver stated that it required the applicant to pay the fee before Vancouver would locate, retrieve and produce the records responsive to his access request.¹

[3] Vancouver applied to the OIPC asking it to exercise its discretion under s. 56 to not hold an inquiry. Vancouver argued that any decision would be moot because Vancouver had not collected all of the responsive records and Vancouver would not collect the records until the fees had been paid. Alternatively, Vancouver requested that the OIPC adjourn the inquiry while the parties resolve the matter of Vancouver's fees. The OIPC dismissed Vancouver's s. 56 application and its request for an adjournment.² The OIPC also ordered Vancouver to provide a copy of all records in dispute to the OIPC along with its initial inquiry submission.

Preliminary matter

[4] In his submissions, the applicant complains that Vancouver failed to assist him with his access request as required under s. 6(1) of FIPPA. He also alleges that Vancouver's fees were an attempt to defraud him and asks the OIPC to investigate.

[5] These issues were not included in the OIPC's notice of inquiry or investigator's fact report as matters to be determined at this inquiry. Past OIPC orders and decisions have said parties may raise new issues at the inquiry stage only if permitted to do so. The applicant did not seek permission to add this issue to the inquiry or explain why he should be permitted to do so now. Further, the applicant has an open complaint file assigned to an OIPC investigator regarding Vancouver's handling of his access request.³ As a result, I will not consider these issues as part of this inquiry.

ISSUE

[6] The issue to be decided is whether Vancouver is required to refuse to disclose third party personal information under s. 22 of FIPPA.

[7] The applicant has the burden of proving that disclosing any personal information contained in the records would not be an unreasonable invasion

¹ March 6, 2018 letter.

² August 23, 2018 Letter/Decision.

³ OIPC File No. F18-77061.

of third party personal privacy under s. 22; however, Vancouver has the initial burden of proving that the information in the records is personal information.⁴

DISCUSSION

Information in dispute

[8] Vancouver has provided 482 pages of accident reports. Most of the reports are one page in length, but a small number have an additional page of handwritten notes attached. There are two different styles or formats of report but they both contain the same type of information.⁵ Both versions contain a number of fields for the first aid attendant to handwrite notes or answer questions. The fields which are relevant to this inquiry are the following:⁶

- 1) Facility name/location.
- 2) Date and time of accident.
- 3) Name, age, gender, date of birth and address and phone number of the patient.
- 4) Name of parents/guardian.
- 5) A description of the injury.
- 6) The cause of the injury.
- 7) The treatment provided.
- 8) A sketch of where the accident occurred.
- 9) Witness name, address, and phone number.
- 10) The identity of the staff who attended.
- 11) Name of staff who wrote report and the date it was written.
- 12) Additional comments.

[9] The description of the injury, cause of the injury and treatment provided are all in narrative form. They are quite general, being only a few words. In all of the reports, Vancouver has made a decision to disclose the facility location, the date and time of the accident, a sketch of the location of the accident, the identity of the staff who attended, the name of staff member who prepared the report and the date the report was completed. As a result, this information is not in dispute.

[10] In his submissions, the applicant says that the “only information [he requires] from the Accident Reports is some means to determine accident rates for those under 13 years, whether that accident took place in a fitness centre or an ice rink, and if possible without being so specific as to make it ‘personal

⁴ FIPPA, ss. 57(1) and (2); Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 9–11.

⁵ For contrast see pp. 1 and 321.

⁶ The reports also contain fields for vital signs and yes/no questions regarding medical treatment.

information’ some indication of injury severity.”⁷ The applicant also states that he wants to know the age or year and month of birth of the youths.

[11] Vancouver’s response to the access request includes a number of reports which indicate that the injured person was older than 13. Given the applicant is only seeking information about accidents involving those 13 and under, I have limited my analysis and decision to accident reports which indicate that the injured person was 13 years or under, or where there is no recorded age on the accident report.⁸

[12] I will also limit my analysis and decision to the information in the fields which the applicant says he seeks: age or date of birth (month and year only), description of the injury, cause of the injury and treatment provided.⁹ I have concluded that the City’s decision to refuse him access to the balance of the information in the reports is not in dispute so I will not consider it any further.¹⁰

[13] In summary, the information in dispute is as follows:

- a) the patron’s age or the patron’s month and year of birth when no age is listed;
- b) the narrative description of the injury;
- c) the narrative description of the cause of the injury;
- d) the narrative description of the treatment provided;

for injured patrons who are under 13 years of age and for injured patrons where the patron’s age is not discernible.

[14] For clarity, the information in dispute does not include any individual names, school names or phone numbers which are incidentally written in some of the fields that contain the information the applicant seeks.¹¹

Section 22 – third party personal privacy

[15] 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.

⁷ Applicant submission at para. 29.

⁸ I have identified these records in an appendix to my order titled Appendix A.

⁹ In one version, the fields are described as “suspected injury” “suspected cause” “treatment” in the other version, the fields are “chief complaint” “cause/history of injury” “first aid provided”.

¹⁰ For example, first name of the patient, first aid provider, or supervisor, or the name of the patient’s school and in one instance a personal phone number at pp. 41, 93, 398 of the records.

¹¹ See examples at pp. 41, 93 and 398 of the records.

Personal information

[16] Only “personal information” may be withheld under s. 22. FIPPA defines “personal information” as recorded information about an identifiable individual other than contact information.¹² 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.¹³ “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.”¹⁴

The parties’ positions

[17] Vancouver relies on the “mosaic effect” to establish that the information it has withheld qualifies as “personal information” under s. 22. The mosaic effect refers to circumstances where the disputed information, if disclosed, can be linked with other available sources of information to yield additional meaningful information.¹⁵

[18] Previous orders have found that a public body can only rely on the mosaic effect where the evidence establishes a reasonable expectation that the disputed information can be used to identify third parties; it is not sufficient that there is only some risk that an individual will be identified.¹⁶

[19] Vancouver argues that seemingly non-personal information, such as the cause of injury and treatment could lead to the disclosure of personal information when combined with other information. Vancouver cites the principle that disclosure to the applicant is disclosure to the world.¹⁷ Vancouver argues that the applicant or other users of the facility could identify the individuals referred to in the accident reports when combined with the information it has decided to disclose, i.e. the facility/location, date and time of the accident.

[20] As mentioned above, the applicant says he is not seeking any identifying information. He believes that the type of information he has requested can be disclosed without identifying individuals.

¹² FIPPA, Schedule 1.

¹³ Order F18-11, 2018 BCIPC 14 at para. 32.

¹⁴ FIPPA, Schedule 1.

¹⁵ Order F10-29, 2010 BCIPC 41 at para. 35.

¹⁶ Order F10-29, 2010 BCIPC 41 at para. 35; Order 01-01, 2001 CanLII 21555 (BC IPC) at para. 45–46; Order F09-21, 2009 CanLII 63565 (BC IPC) at para. 29.

¹⁷ Order 01-01, *ibid* at para. 39; Order F18-14, 2018 BCIPC 17 at para. 42.

Analysis and findings

[21] In my view, there is no reasonable expectation that the applicant or other third parties could identify the people named in the accident reports if the information the applicant seeks is disclosed.

[22] The records are dated, covering the period from October 2012 to October 2014. The likelihood that the individuals in these records will be identifiable has diminished with the passage of time as memories have faded. The majority of the accidents are extremely minor and the descriptions of the accidents and injuries are fairly general, using only a few words to describe each of the injury, cause and treatment. Many of the accident reports are similar, involving falls on ice which caused minor cuts. The lack of details makes it less likely that third parties could identify the patients named in the records.

[23] In addition, the reports were written by staff, making it more difficult for third parties (other than staff) to recognize the patient by the staff member's description of injuries etc. There is also no evidence before me to support a finding that staff members could likely identify the subjects of the accident reports from the disputed information.

[24] Vancouver relies on Orders F09-21 and 03-41 in support of its argument that the reports contain personal information.¹⁸ In both cases, the disputed information grouped individuals into small clusters making the likelihood of identification by peers or colleagues much more likely. Order F09-21 involved data held by the Ministry of Education about students' demographics and test results. The data included the students' school and grade level, which substantially narrowed down the possible individuals in small schools. Order 03-41 concerned a media request for access to records relating to incident reports from licensed adult community care facilities. The facilities all had 10 residents or less.

[25] In the present case, the accidents all occurred at public facilities in Vancouver and the disputed information pertains to patrons not employees. Thus, the pool of possible individuals whose personal information is contained in the reports is large and the risk of re-identification small.

[26] The only information in dispute in the reports is the information the applicant seeks, specifically the age or month and year of birth of each injured child under 13, as well as the cause, treatment and narrative description of the child's injury. In my opinion, there is no reasonable expectation that disclosure of these categories of information, when combined with the information which Vancouver has decided to disclose, will identify the subjects of the accident

¹⁸ Order F09-21, 2009 CanLII 63565 (BC IPC) and Order 03-41, 2003 CanLII 49220 (BC IPC).

reports. As a result, I find that the disputed information is not personal information and, therefore, s. 22 does not apply to it.

CONCLUSION

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

Vancouver is not required or authorized by s. 22 to refuse to disclose the information in dispute contained in the records listed in Appendix A. For clarity, the information in dispute is

- a) The patron's age or the patron's month and year of birth where no age is listed.
- b) The narrative description of the injury.
- c) The narrative description of the cause of the injury.
- d) The narrative description of the treatment provided.

[28] I require Vancouver to give the applicant access to the information in dispute by May 8, 2019. Vancouver must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records.

March 25, 2019

ORIGINAL SIGNED BY

Chelsea Lott, Adjudicator

OIPC File No.: F17-70190

Appendix A

Pages: 1, 2, 12, 14, 18, 23, 24, 27, 33, 36 - 39, 41, 44 - 46, 57 - 60, 62, 63, 67, 72, 75, 77, 78, 81, 90, 92, 93, 95, 96, 98, 99, 103, 109, 112, 113, 115, 120, 121, 127, 130, 147 - 155, 158 - 160, 162 - 164, 166, 167, 171 - 185, 187, 188, 190 - 192, 194 - 198, 201, 202, 209, 210, 212 - 215, 217, 219, 222, 227, 228, 231, 233, 235 - 237, 239, 241, 242, 245 - 247, 248 and 249 (duplicates), 250, 251, 252, 253, 256, 262, 263, 264, 265, 278, 281, 321, 325 - 328, 336, 338, 341, 342, 344 - 347, 356, 362, 365, 373, 379 - 381, 383, 385 - 388, 390, 392, 395 - 398 (duplicate of 386), 401, 405, 410, 413 - 415, 420, 423, 424, 426, 428, 429, 431, 434, 439, 442, 446, 451, 455, 457, 462, 466 - 468, 470, 473, 475, 480.