Office of the Information & Privacy Commissioner for British Columbia

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Order F19-15

MINISTRY OF ATTORNEY GENERAL

Lisa Siew
Adjudicator

March 28, 2019

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Summary: An applicant requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), from the Ministry of Attorney General (Ministry) to records related to her and her employment for a specified time period. The Ministry withheld information in the records on the basis ss. 13(1), 15(1)(g) and/or s. 22(1) of FIPPA applied. The adjudicator found that s. 13(1) did not apply to the records since the information did not qualify as advice or recommendations, but the Ministry was authorized to withhold some information under s. 15(1)(g) as it was related to or used in the exercise of prosecutorial discretion. The adjudicator also determined that disclosing some of the information in dispute would unreasonably invade third party personal privacy and the Ministry was required to withhold it under s. 22(1). Lastly, the adjudicator found the Ministry did not fulfill its obligations under s. 22(5) to provide the applicant with a summary of personal information supplied in confidence about the applicant in a particular record and ordered it to do so.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 4(2), 6(1), 13(1), 15(1)(g), 22(1), 22(2)(e)(f), 22(3)(a)(d)(h) and 22(5).

INTRODUCTION

[1] An applicant was employed as crown counsel with the British Columbia Prosecution Service (formerly the Criminal Justice Branch) of the Ministry of Attorney General (Ministry) at a specific regional office. She requested the Ministry provide access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to a variety of records related to her and her employment for a specified time period. She expressly requested correspondence about her and a workplace review report.

[2] The Ministry provided the applicant with some records, but withheld some information in those records under ss. 13, 14, 15, 17 and 22 of FIPPA. The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision. Mediation failed to resolve the issues in dispute and the applicant requested the matters proceed to inquiry.

[3] During the inquiry, the Ministry reconsidered its severing of the records. It provided the applicant with a newly severed copy of the records, and is now only refusing access to information under s. 13 (advice or recommendations), s. 15(1)(g) (exercise of prosecutorial discretion) and s. 22(1) (unreasonable invasion of third party privacy) of FIPPA.

ISSUES

[4] The issues I must decide in this inquiry are as follows:

1. Is the Ministry authorized to refuse to disclose the information in dispute under ss. 15(1)(g) or 13 of FIPPA?

2. Is the Ministry required to refuse to disclose the information in dispute under s. 22(1) of FIPPA?

[5] Under s. 57(1) of FIPPA, the burden is on the Ministry to prove the applicant has no right of access to all or part of the records in dispute under ss. 15(1)(g) or 13 of FIPPA. However, where access to information has been refused under s. 22(1) of FIPPA, s. 57(2) places the burden on the applicant to prove that disclosure of the information would not be an unreasonable invasion of a third party's personal privacy.

PRELIMINARY MATTERS

Adequacy of Ministry's search for records

[6] The applicant's inquiry submission includes facts and arguments on the adequacy of the Ministry's search for records. Under s. 6(1) of FIPPA, public bodies are required to conduct an adequate search for records upon receiving an access request. This issue was not set out in the notice of inquiry or the OIPC investigator's fact report as a matter for consideration in this inquiry. Instead, the investigator's fact report says "the applicant complained that she did not receive a complete response to her request. The OIPC asked the applicant to first take her complaint to the public body. The applicant did not return to the OIPC with her complaint."

[7] Where an applicant complains that a public body has not performed a duty under FIPPA, the OIPC requires the complainant to first provide the public body

an opportunity to respond and attempt to resolve the complaint prior to making a complaint to the OIPC. Once the OIPC has accepted a complaint, they are usually investigated and resolved by a case review officer or investigator and not at a formal inquiry.[1]

[8] The Ministry submits that its duty to conduct an adequate search for records under s. 6(1) of FIPPA should not be added as an issue at this late stage. It notes that the applicant was informed of the proper OIPC process to deal with this complaint, but she did not bring the matter back to the OIPC for review.[2] The Ministry says "it was incumbent on the applicant to raise this issue for a second time with the OIPC prior to the beginning of the formal inquiry, or at the beginning of the formal inquiry." The Ministry argues that "the integrity and effectiveness of the mediation and inquiry process is undermined if parties attempt to introduce new issues at the inquiry stage, when the issues have already been crystallized for inquiry purposes."[3]

[9] I decline to add the issue of the adequacy of the Ministry's search to the scope of 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 she should be permitted to do so now. As a result, I will not consider the adequacy of the Ministry's search for records as part of this inquiry. However, the applicant was informed as to how s. 6(1) complaints are typically reviewed by the OIPC and she has the option of pursuing her complaint through that process.

Records not within date range of applicant's access request

[10] The Ministry withheld several emails on the basis these records are not responsive to the applicant's request.[4] The emails are dated August to May 2006. The Ministry refers to s. 3 of FIPPA and says these emails "are not responsive because they fall outside the timeline identified by the Applicant's request."[5] The Ministry explains that these emails were not included in the original package of records provided to the applicant, but were inadvertently included as part of the revised package given to the applicant.

[11] First, it is important to correct any misconception that may arise from the Ministry's reliance on s. 3 as a basis to withhold these emails. Section 3 of FIPPA identifies categories of records that are excluded from and not subject to disclosure under FIPPA. The Ministry did not identify which provision of s. 3 it

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[1] Order F18-11, 2018 BCIPC 14 at para. 6. See also Decision F08-02, 2008 CanLII 1647 at para. 38, quoted in Ministry's submission dated November 13, 2018 at para. 5.
[2] Ministry's submission dated November 13, 2018 at para. 5.
[3] *Ibid* at para. 3.
[4] Records located at pp. 177-180.
[5] Ministry's submission dated September 11, 2018 at para. 18.

believes applies and it is not obvious based on my review of these emails. Instead, it is evident to me that FIPPA applies to them.

[12] However, I am satisfied that these particular emails are not in dispute in this inquiry because they are not responsive to the applicant's access request. She requested records for the period of November 2007 to December 6, 2016, thus the 2006 emails clearly fall outside the scope of the access request. As a result, I find the 2006 emails are not at issue in this inquiry and I will make no determination about the Ministry's decision to refuse to disclose them to the applicant. I note, however, that the applicant is free to submit another access request to the Ministry for these records if she so wishes.

DISCUSSION

Background

[13] The applicant was employed as crown counsel at a specific regional office for a number of years.[6] During her time at this location, the office experienced a number of workplace and personnel issues, including interpersonal conflicts amongst its employees.[7]

[14] Eventually, the BC Public Service Agency conducted a workplace review and issued a report (the Report). The review was requested by Ministry management and the intent of the review was to formulate a strategy to improve the workplace environment in that office.[8]

[15] In her submission, the applicant describes several workplace incidents she was personally involved in or which she witnessed. Most of the applicant's concerns are about how she was treated at this office.[9] The applicant explains that as a result of her experience at this office, she has a number of unanswered questions, which is why she sought access to the Report and to records about herself.[10]

Records in dispute

[16] The majority of the information in dispute is in individual emails and email chains. The Ministry also withheld some parts of a newsletter and the entire Report.[11] The Ministry generally describes the withheld information as related to

[6] The applicant no longer works at this location and was transferred to another office.
[7] Affidavit of Deputy Regional Crown Counsel at para. 6.
[8] *Ibid* at para. 15.
[9] Applicant's submission at paras. 12, 14, 29, 30, 40, 50, and 53.
[10] Applicant's submission at paras. 17 and 55.
[11] Newsletter located at pp. 218-219 of the records and Report found at pp. 283-296.

ongoing workplace issues, management of personnel and other human resources related matters.[12]

Section 15(1)(g) – prosecutorial discretion

[17] Section 15(1)(g) authorizes a public body to refuse to disclose information that could reasonably be expected to reveal any information relating to or used in the exercise of prosecutorial discretion.

[18] Schedule 1 of FIPPA defines the term "exercise of prosecutorial discretion" to mean "the exercise by Crown counsel, or by a special prosecutor, of a duty or power under the *Crown Counsel Act,* including the duty or power

(i) to approve or not to approve a prosecution,
(ii) to stay a proceeding,
(iii) to prepare for a hearing or trial,
(iv) to conduct a hearing or trial,
(v) to take a position on sentence, and
(vi) to initiate an appeal."

[19] The Ministry relied on s. 15(1)(g) to withhold information from a number of emails, where crown counsel or Ministry staff are referring to or discussing case files or details.[13] I am satisfied that s. 15(1)(g) applies to most of the information withheld by the Ministry in the relevant emails. This information consists of names of accused, witnesses or judges and court dates, case numbers, details of offences and cases, and reveals some suggestions and decisions on how to proceed with a file. It is clear to me that this information relates to the preparation or conduct of a hearing, trial or prosecution.

[20] Sections 15(3) and 15(4) identify certain types of information that may not be withheld under s. 15(1). I have also considered whether any of the types of information under ss. 15(3) and 15(4) are present in these records and find none apply. There is no evidence before me to indicate that any of the ss. 15(3) and (4) categories are applicable. I, therefore, find s. 15(1)(g) applies to these emails and the Ministry is authorized to withhold the information at issue under that exception.

[21] However, I find that s. 15(1)(g) does not apply to information on pages 31, 217, and 241 of the records. The Ministry applied ss. 15(1)(g) to all of the information on page 241 and to some information on pages 31 and 217. I do not find any of the information withheld on page 241 could reasonably be expected to reveal any information relating to or used in the exercise of prosecutorial

[12] Ministry's submission dated September 11, 2018 at para. 16.
[13] Information located on pp. 9, 13, 14, 15, 29, 31, 33, 35, 39, 41, 46, 48, 50 (only the subject line), 60, 101, 102, 107, 121, 124, 126, 137, 161, 163, 165, 167, 168, 182, 183, 194, 195, 217, 220, 224, 228, 232, 241, 243, 251, 253, 254 and 270 of the records.

discretion. Although there is one general reference to a particular incident, none of the withheld information reveals details or information related to the duty or power to approve or not to approve a prosecution, to stay a proceeding, to prepare or conduct a hearing or trial, to take a position on sentence or to initiate an appeal.

[22] I find that this same reasoning applies to the information withheld in the subject line of the email located on page 217 and to a portion of the information withheld in the body of an email located on page 31. The withheld information on page 217 is a general description of a file and a small amount of the information withheld on page 31 only reveals some general comments related to work on a file. None of this information reveals any particular identifying details of a file or case.

[23] I note that the Ministry relied on both s. 15(1)(g) and s. 22(1) to withhold most of the same information in the emails. Given my conclusion regarding the application of s. 15(1)(g), the only information that I also need to consider under s. 22 is on pages 241, 217 and 31 of the records. I will consider this information along with the other information withheld under s. 22 after considering the information withheld by the Ministry under s. 13.

Section 13 - advice or recommendations

[24] The Ministry relies on s. 13(1) to withhold information from several emails/email chains.[14] Section 13(1) authorizes the head of a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body or a minister. Previous OIPC orders recognize that s. 13(1) protects "a public body's internal decision-making and policy-making processes, in particular while the public body is considering a given issue, by encouraging the free and frank flow of advice and recommendations."[15]

[25] To determine whether s. 13(1) applies, I must first decide if disclosure of the withheld information would reveal advice or recommendations developed by or for a public body or a minister. Numerous orders and court decisions have considered the interpretation and meaning of "advice" and "recommendations" under s. 13(1) and similar exceptions in other Canadian jurisdictions.[16]

[26] I adopt the principles identified in those cases for the purposes of this inquiry and have considered them in determining whether s. 13(1) applies to the

[14] Records located at pp. 12, 48, 49 (s. 13 was not listed in the table of records as an exemption for this record; however, s. 13 was noted on the record itself), 60, and 228.
[15] Order 01-15, 2001 CanLII 21569 at para. 22.
[16] See for example: *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665; Order 02-38, 2002 CanLII 42472; Order F17-19, 2017 BCIPC 20; Review Report 18-02, 2018 NSOIPC 2 at para. 14.

information at issue. I note, in particular, the following principles from some of those decisions:

- The exception is intended to protect a public body's deliberative or evaluative process.[17]

- A public body is authorized to refuse access to information under s. 13(1), not only when the information itself directly reveals advice or recommendations, but also when disclosure of the information would enable an individual to draw accurate inferences about any advice or recommendations.[18]

- Recommendations include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised, and can be express or inferred.[19]

- Advice includes an opinion that involves exercising judgement and skill to weigh the significance of matters of fact, including expert opinion on matters of fact on which a public body must make a decision for future action.[20]

- Providing "advice" involves an evaluative analysis of information.[21] The Supreme Court of Canada in *John Doe v. Ontario (Finance)* found that "advice" includes a public servant's view of policy options to be considered by a decision maker.[22]

- Section 13(1) extends to factual or background information that is a necessary and integrated part of the advice, "otherwise disclosure of the facts that have been assembled would allow an accurate inference to be drawn as to advice or recommendations developed by or for the public body."[23] This includes factual information compiled and selected by an expert, using his or her expertise, judgment and skill for the purpose of

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[17] *John Doe v. Ontario (Finance)*, 2014 SCC 36 (CanLII) at para. 51; *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 at para. 52; and Order 02-38, 2002 CanLII 42472 (BCIPC) at paras. 122 and 127; and *Ontario (Finance) (Re),* 2015 CanLII 15989 (ON IPC) at para. 27.
[18] Order 02-38, 2002 CanLII 42472 (BCIPC) at para. 135. See also Order F17-19, 2017 BCIPC 20 at para. 19.
[19] *John Doe v. Ontario (Finance)*, 2014 SCC 36 (CanLII) at paras. 23-24.
[20] *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665 at para. 113.
[21] *Ontario (Finance) (Re),* 2015 CanLII 15989 (ON IPC) at para. 27.
[22] *John Doe v. Ontario (Finance)*, 2014 SCC 36 (CanLII) at para. 26.
[23] *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 at para. 53.

providing explanations necessary to the deliberative process of a public body.[24]

[27] If I find s. 13(1) applies, I will then consider if any of the categories listed in ss. 13(2) or (3) applies. Sections 13(2) and (3) identify certain types of records and information that may not be withheld under s. 13(1), such as factual material under s. 13(2)(a) and information in a record that has been in existence for 10 or more years under s. 13(3).

Parties' position on s. 13

[28] The Ministry submits that the information it has withheld under s. 13(1) consists of advice that Ministry employees at the office provided to management on human resource issues, including how those issues should be addressed.[25] The Ministry says this information qualifies as "advice because public servants exercised their judgment and weighed matters of fact to form an opinion about existing circumstances and recommend a course of future action for the Ministry."[26] Further, the Ministry submits that it is evident from the records that none of the withheld information falls under s. 13(2) or has been in existence for more than 10 years so that s. 13(3) applies.

[29] The applicant did not provide submissions regarding s. 13.

Analysis and findings on s. 13

[30] I have reviewed the information withheld under s. 13(1) and do not find it would reveal advice or recommendations developed by or for a public body or a minister, for the following reasons:

- *Page 12*: This record is an email chain between Ministry employees and management. The Ministry withheld the entire record. The information consists of one email participant discussing administrative matters and one person providing factual information. None of this information is advice or recommendations from a Ministry employee to a decision maker, nor could any advice or recommendations be inferred from this information.

- *Page 48*: This record is an email chain where the Ministry withheld information from one email under s. 13(1). The withheld information is the email writer's instructions to another employee and information related to those instructions and also personal opinion on a matter. The opinion is

[24] *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at para. 94.
[25] Ministry's submission dated September 11, 2018 at para. 24.
[26] *Ibid*.

not given as part of the deliberative process, but personal commentary on an item. There is no exercise of skill or judgment to weigh the significance of matters of fact, nor is it an evaluative analysis of information.

- *Page 49*: This record consists of an initial email and then a reply email between a Ministry employee and a manager. The initial email consists of the manager giving the employee some information, along with some personal commentary. The email recipient provides a reply comment. None of this information is advice or recommendations from a Ministry employee to a decision maker, nor could any advice or recommendations be inferred from this information.

- *Page 60*: The Ministry is withholding one email in this two email chain. The withheld information consists of the sender giving instructions to the recipient on a matter and contains no advice or recommendations nor can anyone accurately infer any advice or recommendations.

- *Page 228*: This record is an email chain and the withheld information consists of the writer's personal views and opinions about an event, which includes some factual details and recollection. There is no advice or recommendations for a future course of action on an issue or a decision, nor is it apparent how any advice or recommendations can be accurately inferred from the withheld information.

[31] For the reasons given, I find the information withheld under s. 13(1) does not qualify as advice or recommendations, nor would it reveal any such information. Considering my findings, I do not need to consider whether ss. 13(2) or (3) applies.

[32] I conclude the Ministry is not authorized to withhold the information at issue under s. 13(1). However, the Ministry has also applied s. 22 to all of the same information withheld under s. 13(1). I will, therefore, consider this information under s. 22, along with the information I found could not be withheld under s. 15(1)(g).

Section 22 –harm to third party personal privacy

[33] Section 22(1) of FIPPA provides that a public body must refuse to disclose personal information the disclosure of which would unreasonably invade a third party's personal privacy. Previous OIPC orders have considered the application of s. 22 and I will apply the same approach in this inquiry.[27]

[27] See Order F17-39, 2017 BCIPC 43 at paras. 71-138; Order F16-36, 2016 BCIPC 40; Order F14-41, 2014 BCIPC 44 at para. 10.

[34] The Ministry relied on s. 22 of FIPPA to withhold information in the emails, the newsletter, the Report and the information on pages 241, 217 and 31 of the records that I found could not be withheld under s. 15(1)(g). I will discuss and consider the Ministry's submissions in my analysis, which includes an affidavit from the Deputy Regional Crown Counsel who is familiar with some of the events.

[35] The applicant only made specific submissions regarding s. 22(2) and I will also discuss her submissions in my analysis.

Personal information

[36] The first step in any s. 22 analysis is to determine if the information is personal information. "Personal information" is defined as "recorded information about an identifiable individual other than contact information."[28] Information is about an identifiable individual when it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.[29]

[37] 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."[30]

i. Information that qualifies as "personal information"

a) Emails and newsletter

[38] I find some of the information the Ministry is withholding in the emails and in the newsletter under s. 22 is the personal information of several third parties. This information consists of names, personal email addresses, comments or personal details about identifiable individuals.

[39] Some of the withheld information in the emails reveals a third party's name in combination with their opinions and observations about the applicant and her actions. The Ministry says that this information, therefore, consists of both the applicant's personal information and that of a third party. The Ministry does not identify where this information is located in the records.

[40] I agree in this case that some of the information is both the applicant's personal information since it is about her and the personal information of the third parties since it is their opinion or comments about the applicant. However, an

[28] See Schedule 1 of FIPPA for this definition.
[29] Order F16-36, 2016 BCIPC 40 at para. 17.
[30] See Schedule 1 of FIPPA for this definition.

individual's opinions and comments are their personal information only to the extent that the information reveals or identifies that individual as the opinion holder.[31] In Order F14-47, the adjudicator stated that "an individual's opinion about another individual can constitute the former's personal information to the extent that he or she is revealed as the one who provided the opinion."[32]

[41] The applicant does not know the identity of the third parties who expressed the opinions in the emails because the Ministry withheld their names and email addresses from the emails, along with their opinions. Therefore, the question is whether disclosing the opinion or comments on their own would reveal the third parties' identities. If so, then the opinions would be the third party's personal information.

[42] I find that the applicant could identify several third parties based on their opinions and comments, even though the names of the third parties have been withheld.[33] My conclusion is based on the fact that the third party's comments and opinions contain information that is fact specific or relates to incidents and interactions involving the applicant so that the applicant will be able to ascertain who provided the opinion.

[43] There are also several instances where the Ministry has withheld some employees' names, job titles, government email addresses, work addresses or phone numbers.[34] Most of this information is found in the sender and recipient fields and the signature block of the emails. This type of information is generally considered contact information; however, whether information will be considered "contact information" will depend on the context.[35] In the context of this case, I find that this information is not contact information because disclosing such details would reveal which employees were communicating with each other about a particular workplace conflict.

b) The Report

[44] I also find there is information being withheld in the Report that when combined with other available sources of information could identify some individuals so it is third party personal information. The Ministry explains that the office employs a relatively small number of lawyers and staff; therefore, individuals working in the justice system and with the regional office where the events took place could use the information in the Report along with their own

[31] For a similar conclusion, see Order F17-01, 2017 BCIPC 1 at para. 48.
[32] Order F14-47, 2014 BCIPC 51 at para. 14.
[33] Based on my review of the records, I could only find this type of information at pp. 1 (repeated on p. 277), 7-8 (repeated on p. 275-276), 13, 48, 58, 223-224, 225, 228, 230, 232-233, 234-235, 236, 241-242 and 243 of the records.
[34] Pages 1, 2, 5, 6, 7, 12, 13, 14, 16, 48, 49, 50, 51, 52, 53-54, 55, 57, 58, 59, 60, 220-222, 223, 225, 228, 230, 232-233, 234-235, 236, 238-240, 243, 244, 275, 277 of the records.
[35] Order F08-03, 2008 CanLII 13321at para. 82; Order F14-45, 2014 BCIPC 48 at para. 41.

personal knowledge of the office to identify with relative accuracy the unnamed individuals referenced in the Report.[36]

[45] In Order F05-30, the adjudicator found that "aggregate comments and opinions about, or references to, specified individuals or to small groups of people, such as the 'leadership'" are about known and identifiable individuals.[37] Similarly, the information in the Report consists of opinions about a relatively small group and discusses some unnamed individuals in that group. I find that it may be possible for someone with knowledge of the office and its employees to identify some of the unnamed individuals in the Report.

[46] Therefore, while the Report does not expressly identify these Ministry employees by name, I accept that certain individuals could be known to, and identified by, the applicant and others considering the size of the office, the community and some of the descriptive information in the Report.[38] As a result, some of the opinions and comments expressed in the Report are third party personal information.

ii. Information that is not "personal information"

[47] I find that the employee's names, titles, work email address and their office addresses in the email chains on pages 12 and 50 of the records is contact information rather than personal information.[39] This information appears in emails where Ministry employees are communicating about mundane workplace activities and duties. Considering the context, this information is being exchanged in these emails to enable the individuals to contact and communicate with each other at work for business purposes.[40] I, therefore, find this information qualifies as contact information and cannot be withheld under s. 22.

[48] There is also information in the emails which is not personal information because it does not identify an individual nor is it about an identifiable individual. This information consists of comments made by some identified email writers which are not about an identifiable person[41] and includes the small amount of information on pages 217 and 31 of the records that I found could not be withheld under s. 15(1)(g).[42]

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[36] Ministry's submission dated September 11, 2018 at para. 55.
[37] Order F05-30, 2005 CanLII 32547 at para. 35.
[38] Ministry's submission dated September 11, 2018 at para. 55.
[39] Except for the last email in the chain on page 12.
[40] For a similar conclusion, see Order F17-01, 2017 BCIPC 1 at para. 49 and Order F05-31, 2005 CanLII 39585 at para. 26.
[41] This information is located at pp. 73 and 120 of the records.
[42] I also note that the small amount of information on p. 31 was disclosed by the Ministry elsewhere in the records.

[49] There is also non-personal or non-identifiable information in the Report. For example, the cover page contains non-personal information such as the title of the report and the section headings only reveal general themes or topics. As well, the information in the table of contents broadly describes the various sections of the Report and does not reveal any personal information. There is also information in the executive summary that discusses the purpose and structure of the Report and the workplace review process. None of this information is about an identifiable individual.

[50] The Report also contains a summary of the comments, views and opinions about workplace issues expressed by people generally referred to as "staff" or a similar broad, role-based description. I find this information is not personal information because the comments and opinions are described as the collective views of a larger group. This finding is consistent with past OIPC orders which have found that aggregate comments, views or opinions of or about groups of people are not personal information because the people in question are not identifiable.[43]

[51] For clarity, I have highlighted in blue the information which I found is not personal information in a copy of the records that I am providing to the Ministry with this order. There were no other FIPPA exceptions applied to this information. I conclude the Ministry cannot withhold this information under s. 22(1) and it must be disclosed to the applicant.

Section 22(4) – disclosure not unreasonable

[52] The second step in the s. 22 analysis is to determine if the personal information falls into any of the types of information or circumstances listed in s. 22(4). If it does, then the disclosure of the personal information is deemed not to be an unreasonable invasion of a third party's personal privacy and the information should be disclosed.

[53] The Ministry submits that s. 22(4) does not apply to the withheld information. The applicant does not provide any submissions on s. 22(4).

[54] I have considered s. 22(4)(e) which states 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. I do not find the information being withheld falls under s. 22(4)(e) since it does not consist of factual or objective information about an employee's position, function or duties as past orders have applied s. 22(4)(e).[44]

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[43] Order F05-30, 2005 CanLII 32547 at para. 36. Order F17-51, 2017 BCIPC 56 at para. 14.
[44] Order F17-03, 2017 BCIPC 3 at paras. 45 and 48. Order 01-53, 2001 CanLII 21607 at para. 40.

[55] I have also considered the other types of information and factors listed under s. 22(4) and find that none apply to the withheld information.

Section 22(3) – presumptions in favour of withholding

[56] The third step in the s. 22 analysis is to determine whether any of the presumptions in s. 22(3) apply. Section 22(3) creates a rebuttable presumption that the disclosure of personal information of certain kinds or in certain circumstances would be an unreasonable invasion of third party personal privacy.[45]

[57] The Ministry submits that disclosing the information at issue is presumed to be an unreasonable invasion of third party privacy because some of it relates to medical, psychiatric or psychological history under s. 22(3)(a), employment history under s. 22(3)(d) or a personal evaluation supplied by a third party in confidence under s. 22(3)(h).

i. Medical, psychiatric or psychological history - s. 22(3)(a)

[58] Section 22(3)(a) states 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 a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation. The Ministry did not identify where this information is located in the records.

[59] From my review of the records, I could only locate a few instances where the withheld information relates to the medical, psychiatric or psychological history of a third party. It is where a third party provides a small amount of information on their psychiatric or psychological history or provides information on another third party's medical history or condition.[46] Therefore, the disclosure of this information is presumed to be an unreasonable invasion of third party privacy under s. 22(3)(a).

ii. Employment history - s. 22(3)(d)

[60] Under s. 22(3)(d), 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 a third party's employment, occupational or educational history. Previous OIPC orders have found that the term "employment history" under s. 22(3)(d) includes descriptive information about an employee's workplace behavior or actions in the context of a workplace complaint investigation or

[45] *B.C. Teachers' Federation, Nanaimo District Teachers' Association et al. v. Information and Privacy Commissioner (B.C.) et al*., 2006 BCSC 131 (CanLII) at para. 45.
[46] Page 8 of the records (this information is repeated on p. 275) and p. 52 (this information is repeated on p. 53).

disciplinary matter.[47] It also consists of an individual's current or past work history including leave transactions and their work experience and qualifications.[48]

[61] Except for one example, the Ministry did not explain which information relates to a third party's employment history.[49] I have considered the Ministry's example, but it is unclear what specific record or information the Ministry is referring to or how s. 22(3)(d) applies. There is insufficient explanation from the Ministry as to how most of the withheld information in the records qualifies as "employment history" as previous orders have interpreted this term under s. 22(3)(d). However, based on my review of the records, there is information in an email and in the staffing newsletter which qualifies as a third party's employment history.

a) Email

[62] Only one of the emails contains a third party's employment history. This information is found at page 57 of the records and reveals information related to a discussion and critique of a third party's behavior and actions in relation to a workplace complaint.

[63] As for the rest of the emails, I find most of the information withheld from them reveals a third party's opinions and comments about the applicant and her workplace behaviour. I, therefore, conclude that this information is about the applicant's employment history and not a third party's employment history as intended under s. 22(3)(d). Therefore, aside from the information on page 57, I am not satisfied that s. 22(3)(d) applies to the withheld information in the emails.

b) Staffing newsletter

[64] There is information in a staffing newsletter addressed to work colleagues which reveals personnel changes for a specific region, where a number of third parties are identified by name, position and work location, along with some past employment information.[50] Except for a small amount of information, I find that s. 22(3)(d) applies to this information since it reveals several third parties' work histories.

[65] The information in the letter identifies the third parties' previous and future positions and roles, along with some other employment information such as absences and work experience. I find all of this information qualifies as their employment history since it is about the third parties and their past or current employment and work. However, I do not find that s. 22(3)(d) applies to the

[47] Order 01-53, 2001 CanLII 21607 at para. 32.
[48] Order F17-02, 2017 BCIPC 2 at paras. 19-21 and Order F14-22, 2014 BCIPC 25 at para. 63.
[49] Ministry's submission dated September 11, 2018 at para. 45.
[50] Pages 218-219 of the records.

information withheld at the bottom of p. 219 of the records. This information identifies a few third parties by name, but it does not reveal anything specific about their new position or a previous position.

iii. Personal evaluation - s. 22(3)(h)

[66] Section 22(3)(h) presumes disclosure to be an unreasonable invasion of third party privacy where the applicant could reasonably be expected to know the identity of a third party who provided a personal recommendation or evaluation, character reference or a personnel evaluation in confidence. The purpose of s. 22(3)(h) is to protect the identity of a third party who has provided evaluative or similar material, in confidence, about an individual. It has generally been found to apply in the context of a formal workplace investigation or in human resources matters.[51]

[67] The Ministry submits that s. 22(3)(h) applies only on the basis there are personal evaluations of the applicant and it refers to pages 7-8 and 52 of the records as examples.[52] It says the personal evaluations are also the third parties' personal opinions about the applicant; therefore, it is the personal information of both the applicant and the third party and should not be disclosed.

[68] The Ministry did not claim that any of the withheld information qualified as a personal recommendation, character reference or a personnel evaluation under s. 22(3)(h). Based on my review of the disputed information, I would agree that the only issue under s. 22(3)(h) in this case is whether the disputed information qualifies as a "personal evaluation" for the purposes of s. 22(3)(h).

[69] Previous OIPC orders have found s. 22(3)(h) applies to formal performance reviews, job or academic references, evaluative comments or views by an investigator regarding a workplace complaint investigation.[53] However, s. 22(3)(h) does not apply to an employee's allegations about a fellow employee, employee comments or complaints about workplace attitudes and behaviour, or employee feedback and opinions about other employees on workplace issues.[54]

[70] I find some of the information in dispute does not consist of evaluative material nor is it clear that the third party's opinions were given in the context of a formal workplace investigation. Some of the information in dispute only reveals factual statements and observations by several third parties about the applicant

[51] Order F10-08, 2010 BCIPC 12 at para. 33.
[52] Ministry's submission dated September 11, 2018 at paras. 46-48.
[53] Order F06-11, 2006 CanLII 25571 at para. 53; Order F05-30, 2005 CanLII 32547 at paras. 41 and 42; Order 01-07, 2001 CanLII 21561 at para. 21.
[54] Order F06-11, 2006 CanLII 25571 at paras. 52-54; Order 01-07, 2001 CanLII 21561 at paras. 21-22, Order F05-30, 2005 CanLII 32547 at paras. 41 and 42; Order F10-08, 2010 BCIPC 12 at paras. 33-35.

and her actions or other workplace matters.[55] I have considered the examples provided by the Ministry (pages 7-8 and 52 of the records) and even though this information conveys a third party's view of the applicant and her workplace behaviour, it does not qualify as a "personal evaluation" as past orders have interpreted this term under s. 22(3).[56] Instead, this information is more properly characterized as a third party's feedback, personal opinions or complaints about the applicant and workplace matters which, as previously noted, does not qualify as a personal evaluation under s. 22(3)(h).

[71] The Deputy Regional Crown Counsel provides *in camera* evidence about some of the emails; however, his explanation does not support a finding that these emails were the type of personal evaluations of the applicant that s. 22(3)(h) protects. Instead, he identifies another purpose for these emails which I am unable to discuss because it was provided *in camera*, but his explanation and evidence does not persuade me that s. 22(3)(h) applies.[57]

[72] I have considered the records and information in dispute and it is clear that several third parties provided information or comments about the applicant and her workplace behaviour.[58] It is also apparent that there were informal discussions with the applicant about some workplace issues.[59] However, in order for information to be considered a personal evaluation for the purposes of s. 22(3)(h), there must be a *formal* evaluation of an individual's performance.[60] In this case, it is not apparent, and the Ministry does not sufficiently explain, that what some individuals said about the applicant and their interactions with her were made in the context of a formal evaluation of the applicant.

[73] For the reasons given, I conclude that s. 22(3)(h) does not apply. I have also considered whether any other section 22(3) presumptions may apply and find none that would apply to the personal information at issue.

Section 22(2) – relevant circumstances

[74] The final step in the s. 22 analysis is to consider the impact of disclosing the personal information at issue in light of all relevant circumstances, including those listed under s. 22(2). It is at this stage of the analysis that the presumptions I found to apply under ss. 22(3)(a) and (d) may be rebutted.

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[55] For example, information found at pp. 1, 6, 7, 12, 13, 48, 49, 53, 58, 59, 220, 223-224, 232, 234-235 and 241-242 of the records.
[56] Order 01-53, 2001 CanLII 21607 at paras. 42-47.
[57] Affidavit of Deputy Regional Crown Counsel at paras. 10-11.
[58] Ministry's submission dated September 11, 2018 at paras. 46-50. Information located in the records at pp. 1 (repeated on p. 277), 2, 5, 6, 7-8 (repeated on p. 275-276), 12 (last email in the chain), 13, 14-15 (repeated on p. 238-239), 16 (repeated on p. 240), 36, 48, 49, 51, 52, 53-54, 57, 58, 59, 60, 220-222, 223-224, 225, 228, 230, 232-233, 234-235, 236, 241-242, 243 and 244.
[59] For example, record located at pp. 223-224.
[60] Order 01-07, 2001 CanLII 21561 at paras. 21-22.

[75] The Ministry submits that ss. 22(2)(e) and (f) are relevant circumstances that weigh against disclosure.

i. Section 22(2)(e) – unfairly exposing the third party to harm

[76] 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 or other harm. The Ministry submits that s. 22(2)(e) is relevant because "other harm" would flow from the disclosure of the information withheld under s. 22.[61]

[77] The Deputy Regional Crown Counsel says releasing the emails would harm the relationships between employees and "would be detrimental to the proper administration" of any files involving the applicant and employees from her previous office.[62] He notes that the applicant has to interact with her previous coworkers for court appearances. The Deputy Regional Crown Counsel believes that disclosing the withheld information to the applicant, especially the Report, would reignite conflict in the workplace.[63]

[78] The applicant disputes the Ministry's allegations about how she would respond if the withheld information was disclosed to her and how she would interact with her previous work colleagues. She notes that she has since encountered staff from this particular office and nothing has happened. The applicant says she feels "unfairly judged especially after working in two other Crown offices without incident" and "it is unclear exactly what the employer is concerned about" in terms of her behaviour and reactions.[64] To address the Ministry's concerns, the applicant says any criticisms about her in the Report can be provided to her anonymously.[65]

[79] Based on the materials before me, I am not persuaded that disclosing the personal information at issue will unfairly expose a third party to harm. Previous OIPC orders have held that "other harm" for the purposes of s. 22(2)(e) consists of "serious mental distress or anguish or harassment."[66] There is insufficient explanation or evidence for me to conclude that disclosing the withheld information will unfairly expose a third party to this kind of harm.

[80] If disclosed, some of the third parties' comments about the applicant in some emails may result in embarrassment to these third parties considering the tone of their comments; however, this type of discomfort does not amount to the type of harm contemplated under s. 22(2)(e). Further, the emails are mostly about the applicant and I am not satisfied that disclosing this information to the

[61] Ministry's submission dated November 18, 2018 at para. 14.
[62] Affidavit of Deputy Regional Crown Counsel at paras. 12-14.
[63] *Ibid* at para. 18.
[64] Applicant's submission at paras. 56 and 58.
[65] *Ibid* at para. 58.
[66] Order F15-29, 2015 BCIPC 32 at para. 33.

applicant would result in the applicant harassing or retaliating against her former coworkers. I am unable to say more without disclosing the information in dispute, but my conclusion is based on information in the Report about the workplace environment.

[81] The Ministry also says a general summary of the Report and its recommendations was discussed with all employees, including the applicant.[67] There is no indication that this discussion resulted in a third party being exposed unfairly to harm or that it caused further conflict amongst the office's employees. More importantly, contrary to the applicant's beliefs, I find there are no specific criticisms about the applicant within the Report.

[82] I have also considered the fact that there are some critical comments in the Report about other unnamed individuals. I find that disclosing these comments would not unfairly expose any third parties to harm since it is not possible to tell who made the comments. Further, even if the unnamed individuals figured out the critical comments are about them, there is nothing to suggest that comments of this type would cause them harm under s. 22(2)(e).

[83] For the reasons given, I am not satisfied that providing a fuller disclosure of the Report to the applicant, or any of the emails, would reignite old conflicts, let alone, expose any third parties to the type or level of harm s. 22(2)(e) addresses.

ii. Section 22(2)(f) – supplied in confidence

[84] The Ministry submits that a relevant factor weighing against disclosure is the fact that information in the emails and in the Report were provided in confidence.[68]

a) The emails

[85] The Ministry says all of the emails were sent with the expectation they would be kept confidential. It claims that "providing an employer with information about a co-worker's alleged misconduct is generally something that is done in confidence."[69] The Deputy Regional Crown counsel references and provides an *in camera* description of a particular group of emails. He deposes that these emails were sent in confidence to some crown counsel who fulfill a managerial role in the office.[70]

[86] The Ministry's evidence satisfies me that some of the information in dispute was supplied in confidence. Based on my review of the records, there are

[67] Affidavit of Deputy Regional Crown Counsel at para. 21.
[68] Ministry's submission dated September 11, 2018 at para. 50.
[69] *Ibid*.
[70] Affidavit of Deputy Regional Crown Counsel at paras. 9-11.

some emails where a co-worker is providing information to Ministry management or to another employee about another co-worker's workplace conduct or workplace issues.[71] These emails fall into two groups: (i) emails with comments or opinions, and (ii) emails forwarding information with minimal comment.

[87] The personal information in the first group of emails consists of personal comments and opinions from a third party about workplace matters related to the applicant. There are no explicit statements of confidentiality, but given the personal comments and views expressed in these emails, I find it reasonable to conclude that these employees expected their views and opinions to remain confidential.

[88] The personal information in the second group of emails consists of the identities of the Ministry employees who passed along information to management with either little to no opinion. I previously found that this information is the personal information of these third parties since it reveals their activities within a particular workplace context. From the context and content of the emails, I am persuaded that these employees expected their reporting of a co-worker's alleged misconduct to be kept in confidence.

[89] I also find that s. 22(2)(f) applies to some information found in the email located at page 57 of the records. The sender explicitly tells the recipient to keep certain information confidential.

[90] However, the Ministry has not explained why, and it is not apparent to me, that any of the other emails in dispute were supplied in confidence. In particular, some of the emails are not addressed or sent to another person, but consists of a third party's comments and notes of certain events involving the applicant.[72] There is insufficient explanation or evidence that this information was provided to anyone, let alone that it was provided in confidence.

b) The Report

[91] As for the Report, the Ministry says the employees participated in the workplace review on the understanding that their comments and opinions would be received in confidence.[73] The Deputy Regional Crown Counsel explains that "employees were advised that in order to allow them to speak freely and without fear of repercussions, the [Report] would remain completely confidential and would not be released."[74] He notes that this understanding of confidentiality was

[71] I find these emails are located at pp. 1 (repeated on p. 277), 2 (repeated on p. 244), 5, 6, 7-8 (repeated on pp. 275-276), 12 (last email in chain), 13, 14-16 (repeated on pp. 238-240), 36, 48, 51-54, 55, 58, 59, 220-222 and 241-242.
[72] Records located at pp. 223-224, 225, 228, 230, 232-233, 234-235, 236 and 243.
[73] Ministry's submission dated September 11, 2018 at para. 57.
[74] Affidavit of Deputy Regional Crown Counsel at paras. 16-17.

verbally reinforced to employees before they participated in the workplace review.

[92] The applicant claims that the Report was read by two crown counsel who work at a different location.[75] Although she does not explicitly say so, I understand the applicant to be challenging the confidentiality of the Report given it was allegedly shared with others. The Deputy Regional Crown Counsel identifies several individuals who have read the report and deposes that he is unaware of the Report being reviewed or shared with individuals who were not involved in the workplace review or the applicant's access request.

[93] I am satisfied that some of the personal information in the Report was supplied in confidence by Ministry employees. I accept that these employees provided their comments and opinions in confidence based on the Ministry's evidence and considering there are explicit statements or indicators in the Report about confidentiality or a concern for confidentiality.

[94] I have considered the applicant's comments. However, there is insufficient evidence for me to conclude that the Report was inappropriately or widely shared with unauthorized individuals. Even if there was such evidence, I am unable to conclude that the employees who participated in the workplace review expected their opinions and observations to be shared without their knowledge or permission. Without more, I find the possibility that there might have been an inappropriate disclosure of the Report does not negate a third party's original expectation of confidentiality for the purposes of s. 22(2)(f). As a result, I find s. 22(2)(f) is a factor weighing against disclosure of some third party personal information in the Report.

iii. Other circumstance - applicant's knowledge of the personal information

[95] Previous OIPC orders have said the fact that an applicant is aware of, can easily infer, or already knows the third party personal information in dispute is a relevant circumstance in favour of disclosure.[76] From my review of the records, it is clear that the applicant knows or could accurately infer the content of some of the withheld information.

[96] For instance, the Ministry has withheld the personal information of several third parties, such as their names, comments or personal contact information, in a number of emails which were written or received by the applicant.[77] There is also a small amount of information withheld in an email at page 46 of the records that was disclosed by the Ministry elsewhere in the records. Further, the

[75] Applicant's submission at para. 59.
[76] Order F18-19, 2018 BCIPC 22 at para. 74.
[77] Records located at pp. 2-4, 9, 36, 48, 51 (only initial email, also repeated on p.52 and 54), 92, 107-108, 226, 229, 244-246, 251, 253 and 263.

Ministry's submissions disclose who requested the Report and who prepared it even though this information was withheld on the title page and executive summary of the Report.[78] Therefore, all of this information is already known to the applicant.

[97] I conclude the fact that the applicant already knows or is familiar with some of the specific content of the withheld information weighs in favour of disclosure of that specific information since it would not be an unreasonable invasion of third party personal privacy to disclose information already known to the applicant.

iv. Other circumstance - applicant's personal information

[98] Another factor that supports disclosure is that some of the withheld information is the personal information of the applicant. Previous OIPC orders have stated that it would only be in rare circumstances where disclosure to an applicant of their own personal information would be an unreasonable invasion of a third party's personal privacy.[79]

v. Other circumstance - sensitivity of the information

[99] Previous OIPC orders have considered the sensitivity of the personal information at issue and where the sensitivity of the information is high (i.e. medical or other intimate information), withholding the information should be favoured.[80]

[100] Some of the withheld information reveals conversations between third parties about topics related to the applicant or other workplace matters. This information is not about sensitive or intimate matters which is a factor that weighs in favour of disclosing this information.[81]

Conclusion on s. 22

[101] To summarize, I find only some of the information being withheld under s. 22 qualifies as "personal information." I conclude that s. 22(4) does not apply to any of this personal information. I find that the presumptions under ss. 22(3)(a) and (d) applies to some of the personal information in the emails since it consists of a third party's medical, psychiatric or psychological history or relates to a third party's employment history. There were no presumptions applicable to the other withheld information, in particular, I do not find that s. 22(3)(h) applies since the

[78] Affidavit of Deputy Regional Crown Counsel at paras. 15 and 17 and Exhibit "A". The title page is located on page 278 of the records and the executive summary is located on page 280.
[79] Order F14-47, 2014 BCIPC 51 at para. 36, citing Order F10-10, 2010 BCIPC 17 at para. 37 and Order F06-11, 2006 CanLII 25571 at para. 77.
[80] Order F16-52, 2016 BCIPC 58 at para. 87.
[81] Records located at pp. 49, 50, 53 (last two emails), 55 (except for body of last email) and 60.

information in dispute could not reasonably be expected to reveal the content of a personal evaluation supplied by a third party in confidence.

i. Information subject to a s. 22(3) presumption

[102] I find that the s. 22(3)(d) presumption is rebutted for the newsletter located at pages 218-219 of the records. As previously noted, the newsletter announces staffing news for the region. I find the presumption under s. 22(3)(d) is rebutted for the information withheld in this letter since it was distributed to the entire region. There is no indication of a concern for privacy in releasing this information to other work colleagues. I, therefore, find that it would not be an unreasonable invasion of third party personal privacy to disclose this information to the applicant.

[103] However, I find that the ss. 22(3)(a) and (d) presumptions are not rebutted for the balance of the information. I have considered whether there were any factors that weighed in favour of disclosing this information to the applicant and found none. All of this information consists of the personal information of a third party and does not include any of the applicant's own personal information.[82] It is also not apparent to me that the applicant already is aware of, or can easily infer, this third party personal information. Therefore, the Ministry is required to refuse to disclose this information under s. 22(1) of FIPPA.

ii. Information not subject to a s. 22(3) presumption

[104] I find disclosing some of the information that is not subject to a presumption would be an unreasonable invasion of third party personal privacy because it was supplied in confidence and there are no factors that favour disclosing this information to the applicant.

[105] There is also a group of emails where a third party is recounting conversations or incidents involving the applicant and also providing personal opinions or comments about the applicant.[83] Therefore, these emails contain the personal information of both the applicant and the third party. The fact that the applicant is seeking her own personal information is a factor favouring disclosure of that information.[84]

[106] However, I have considered the content of this information and I am satisfied that the third party did not intend for most of this information to be shared since the emails are not addressed or sent to another person. The comments in these emails serve as a personal account or private journal of

[82] Page 8 of the records (this information is repeated on p. 275) and p. 52 (this information is repeated on p. 53) and p. 57.
[83] Records located at pp. 223-224, 225, 228, 230, 232-233, 234-235, 236 and 243.
[84] For a similar conclusion, see Order F14-47, 2014 BCIPC 51 at para. 36.

certain events involving the applicant. Therefore, considering all the circumstances and the content of this information, I conclude that disclosure of the information in these particular emails would be an unreasonable invasion of a third party's personal privacy and the Ministry is required to refuse to disclose this information under s. 22(1) of FIPPA.

[107] However, I find that disclosing the balance of the information would not unreasonably invade a third party's personal privacy. I conclude that it would not unreasonably invade a third party's personal privacy to disclose information that the applicant already knows or can easily infer.[85] I am also satisfied that disclosing non-sensitive information to the applicant would not unreasonably invade a third party's personal privacy.[86]

Is it reasonable to sever under s. 4(2)?

[108] If the information that must not be disclosed under s. 22(1) can reasonably be severed from a record, the applicant has the right to access the remainder of the record under s. 4(2) of FIPPA.

[109] The Ministry generally submits that no more information can reasonably be severed from the records as required under s. 4(2) of FIPPA.[87] It says further disclosure of the records would reveal third party personal information that must be withheld under s. 22. In particular, the Ministry claims that the personal information of any one individual in the Report is "inextricably intertwined" with the personal information of others so that disclosure of some parts would reveal third party personal information.[88]

[110] I do not agree with the Ministry's conclusion. For instance, I find it is possible to release some third party comments and opinions to the applicant, while withholding the third party's identity.[89] I am satisfied that the applicant would not be able to accurately infer who provided these opinions and comments because this information is not tied to a specific factual incident.

[111] However, my review of the other information at issue reveals that the applicant's personal information cannot be reasonably severed from the third party personal information. Even if the third parties' names are redacted, the third

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[85] This information is located at pp. 2-4, 9, 36, 46, 48, 51 (only initial email, also repeated on p.52 and 54), 92, 107-108, 226, 229, 244-246, 251, 253, 263, 278 and 280 of the records.
[86] This information is located at pp. 49, 50, 53 (last two emails), 55 (except for body of last email) and 60.
[87] Ministry's submission dated September 11, 2018 at paras. 58-59 and submission dated November 13, 2018 at para. 19.
[88] Ministry submission dated November 13, 2018 at para. 19.
[89] This information is located at pp. 51, 52 (except for a portion of the second to last email in the chain subject to s. 22(3)(a)) and 55 (except for body of last email). All of the information on pp. 51 and 52 is also repeated on p. 53-54 of the records.

party's opinions and comments in the emails discuss specific incidents or provide certain details which would allow the applicant to accurately infer the third party's identity.

[112] There is also information in the Report that reveals what some unidentified third parties said about a particular unnamed individual.[90] Based on my review of all the disputed information and the materials before me, I conclude these comments are about the applicant. However, these comments about the applicant are linked or interconnected to personal information about several third parties. In my view, it would not be possible in these cases to disclose the applicant's own personal information to her without also disclosing the third party personal information.

Summary of a record under s. 22(5)

[113] I found that there was some information about the applicant supplied in confidence in the emails and in the Report. If a summary of personal information supplied in confidence about an applicant can be prepared without revealing the identity of the third party who supplied the confidential information, s. 22(5)(a) requires the public body give that summary to the applicant.

[114] The Ministry says it has already fulfilled its obligations to provide a summary of the Report under s. 22(5) to the applicant.[91] It says the applicant was provided with a verbal briefing of the Report's recommendations.[92]

[115] I am not satisfied the Ministry has fulfilled its obligations under s. 22(5) of FIPPA. There is a difference between providing the applicant with a general summary of the Report and its recommendations versus a summary of information supplied in confidence about the applicant in the records at issue. Based on its submissions and evidence, I am not persuaded the Ministry considered whether there was personal information supplied in confidence about the applicant in the records that could be provided in a summarized form as required under s. 22(5).

[116] I previously found that, although no names were used, there was information supplied in confidence about the applicant on pages 9 and 11 of the Report. I concluded this information could not be reasonably severed under s. 4(2) because it would also disclose third party personal information. However, based on my review of this particular information, I am satisfied that a summary

[90] Information located at pp. 9 and 11 of the Report (pp. 292 and 294 of the records).
[91] Ministry's submission dated September 11, 2018 at para. 60 and submission dated November 13, 2018 at para. 20.
[92] Affidavit of Deputy Regional Crown Counsel at para. 21.

of this information can be prepared without revealing the identities of the third parties who provided this confidential information about the applicant.[93]

[117] As for the emails, there is some personal information about the applicant that some third parties confidentially supplied, specifically comments about the applicant and her actions.[94] However, I am not satisfied the Ministry could prepare a meaningful summary of this information without enabling a connection to be made between the information and an identifiable third party because of the fact-specific nature of the information and the circumstances surrounding these communications. For example, certain emails only involve a few select individuals so that disclosure could allow someone to accurately infer the identity of the third parties who supplied this information. As a result, I find the Ministry is not required to provide the applicant with a section 22(5) summary of the information confidentially supplied in the emails.

CONCLUSION

[118] For the reasons given above, under s. 58 of FIPPA, I make the following orders:

1. Subject to paragraph 4 below, I confirm in part the Ministry's decision to refuse to disclose the information withheld under s. 15(1)(g) of FIPPA.

2. The Ministry is not authorized to refuse to disclose the information withheld under s. 13(1) of FIPPA.

3. Subject to paragraph 4 below, the Ministry is required to refuse to disclose the information withheld under s. 22(1) of FIPPA.

4. The Ministry is not authorized or required under ss. 15(1)(g) or 22(1) to refuse to disclose the information highlighted in a copy of the records that will be provided to the Ministry with this order.

5. Under s. 58(3)(a), I require the Ministry to perform its duty under s. 22(5) to give the applicant a summary of any personal information supplied in confidence about her in the Report.

6. As a condition under s. 58(4), I require the Ministry to provide me with the summary required under paragraph 5 above, for my approval.

7. I require the Ministry to give the applicant access to the information identified above in paragraph 4, and to provide me with the s. 22(5)

[93] For a similar finding, see Order F10-08, 2010 BCIPC 12 at para. 46.
[94] For example, information located at pp. 1 (repeated on p. 277), 5, 6, 7-8 (repeated on pp. 275-276), 13, 14-16 (repeated on pp. 238-240), 48, 220-222 and 241-242.

summary for my approval, by May 13, 2019. The Ministry must concurrently 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.

March 28, 2019

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

OIPC File No.: F17-70191

Office of the Information & Privacy Commissioner for British Columbia

Protecting privacy. Promoting transparency.

Addendum to Order F19-15

MINISTRY OF ATTORNEY GENERAL

Lisa Siew
Adjudicator

May 7, 2019

* In Order F19-15, the adjudicator inadvertently omitted reference to the withheld information on page 73 of the records under the s. 15(1)(g) analysis. She considered this information during the inquiry and found that s. 15(1)(g) did not apply. The withheld information on page 73 of the records is to be included under paras. 21-23 and 48 of the order.