Office of the Information & Privacy Commissioner for British Columbia

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Order F19-19

MINISTRY OF FINANCE

Elizabeth Barker
Senior Adjudicator

April 23, 2019

CanLII Cite: 2019 BCIPC 21
Quicklaw Cite: [2019] B.C.I.P.C.D. No. 21

Summary: Three third parties requested the Commissioner reopen Order F16-50. The adjudicator decided that it had been procedurally unfair to not give the third parties notice and an opportunity to make representations at the initial inquiry, so she reopened Order F16-50. The adjudicator then decided that the Ministry was required to refuse to disclose even more information under s. 22(1) (harm to third party personal privacy) of the *Freedom of Information and Protection of Privacy Act* than it had been ordered to refuse to disclose in Order F16-50. The adjudicator ordered the Ministry to disclose the balance of the records to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(a), (g) and (h), 22(3)(d) and (g), 54(b) and 56(3).

INTRODUCTION

[1] This is a decision about an application to reopen Order F16-50.[1] Order F16-50 involved a request by a journalist to the Ministry of Finance (Ministry) for investigation reports issued by the Ministry's Office of the Comptroller General (OCG) regarding activities in a different ministry. For clarity, in these reasons the term "ministry" in lower case refers to the ministry that the OCG investigated.

[2] In Order F16-50 Adjudicator Whittome determined that disclosing the majority of the information in the reports would be an unreasonable invasion of third party personal privacy under s. 22(1) of the *Freedom of Information and*

[1] 2016 BCIPC 55 (CanLII).

Protection of Privacy Act (FIPPA).[2] However, she found that s. 22(1) did not apply to the balance of the information and she ordered the Ministry to disclose it to the applicant.[3]

[3] The application to reopen Order F16-50 is made jointly by three third parties whose names appear in the investigation reports. They submit that the information that Order F16-50 requires the Ministry to disclose identifies them and its disclosure would be an unreasonable invasion of their personal privacy under s. 22(1). They say that the OIPC's failure to notify them and provide them an opportunity to make submissions in the inquiry was procedurally unfair and renders Order F16-50 a nullity. They submit that the unfairness may be remedied by reopening Order F16-50 to hear from them.

DISCUSSION

Overview and Background

[4] After Order F16-50 was issued, the Ministry informed the OIPC that it had written to the individuals whose personal privacy the Ministry believed might be impacted by the impending disclosure in compliance with the order. Soon after, an individual applied to the OIPC to reopen Order F16-50.[4] However, he withdrew his application after the Ministry provided the redacted reports to his lawyer. The term "redacted reports" in these reasons refers to the reports severed in the manner directed by Order F16-50.

[5] The Ministry wrote the OIPC to request that the inquiry should nonetheless be reopened to hear from that individual as well as any others who may be impacted by Order F16-50. After corresponding with the Ministry about how best to reach the people that the Ministry felt would be impacted by the order, the OIPC asked the Ministry to ask those people to contact the OIPC directly if they had concerns regarding the order.[5] This resulted in the OIPC hearing from the three third parties who have made this request to reopen. No other requests were received from third parties.

[6] The OIPC invited the three third parties to make submissions about whether they should have received a copy of the applicant's request for review and an opportunity to make representations pursuant to ss. 54(b) and 56(3) of FIPPA.

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[2] FIPPA defines "third party", in relation to a request for access to a record or for correction of personal information, as any person, group of persons or organization other than (a) the person who made the request, or (b) a public body.
[3] Adjudicator Whittome also found that s. 25 did not apply and she did not need to consider s. 14.
[4] The Ministry also made a request to reopen but it was denied by the OIPC on October 24, 2017.
[5] The Ministry was reluctant to provide their contact details to the OIPC.

[7] The third parties provided a joint submission and the Ministry provided a response. I accepted significant portions of the submissions *in camera* to protect the third parties' identities. The applicant received a copy of those submissions but he declined to provide a submission of his own.

Issues

[8] The third parties submit that Order F16-50 should be reopened because it was procedurally unfair to not give them notice of the request for review and a right to participate in the inquiry under ss. 54(b) and 56(3) of FIPPA.

[9] The threshold issue in this case is whether the third parties should have received notice of the request for review and an opportunity to participate in the inquiry that led to Order F16-50.[6] Only if this issue is answered in the affirmative, will it be necessary to remedy that deficiency by reopening the inquiry and considering if the information that Adjudicator Whittome ordered the Ministry to disclose must also be withheld under s. 22(1).

Notice and the right to make representations

[10] Section 54 of FIPPA determines who is entitled to notice. It says:

> 54 On receiving a request for a review, the commissioner must give a copy to
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> (a) the head of the public body concerned, and
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> (b) any other person that the commissioner considers appropriate.

[11] While s. 54 states that notice is to be given "on receiving a request for review," notice may be given during mediation or at the inquiry stage if it becomes apparent that another party needs to be notified.[7]

[12] The Court of Appeal in *Guide Outfitters Assoc. v British Columbia (Information and Privacy Commissioner)* said that in s. 54(b) the "category of parties to whom notice is to be given is phrased in such a way as to afford a fair measure of discretion to the Commissioner."[8] The Court said that the Commissioner needs to "to exercise his judgment as to who might reasonably be thought to be affected by his decision" and decide who has "sufficient interest in the inquiry proceedings to become a participant in the process."[9]

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[6] This is the same threshold question approach was followed by Commissioner Loukidelis in his May 10, 2002 decision (available at www.oipc.bc.ca/decisions) denying a request to reopen Order 01-52 [*2002 Decision*]. See also Order F14-14, 2014 BCIPC 17 at para. 14.
[7] *2002 Decision* at p. 11.
[8] *Guide Outfitters Assoc. v British Columbia (Information and Privacy Commissioner)*, 2004 BCCA 210 at para. 29.
[9] *Ibid*.

[13] Those who receive notice, have the right to make representations at an inquiry under s. 56 of FIPPA. Section 56(3) states that at an inquiry, the person who asked for the review, the head of the public body concerned and any person given a copy of the request for a review must be given an opportunity to make representations to the commissioner during the inquiry.

Third parties' submissions

[14] The third parties submit that they were appropriate persons to have been notified under s. 54(b) because they are easily identifiable in the reports and their s. 22 interests would be harmed by disclosure of the reports.[10] They submit that the failure to notify them was a denial of procedural fairness that renders Order F16-50 a nullity. They assert that the breach may be remedied by reopening Order F16-50 to allow them to make representations.

[15] The third parties explain that they first learned of the access request, request for review and inquiry from the Ministry after Order F16-50 was issued and the Ministry was preparing to file an application for judicial review.[11] The Ministry permitted the third parties to review the redacted reports. The third parties concluded that disclosing the reports would allow their identity and connection to those matters to be accurately inferred by government employees and members of the public with knowledge of the OCG's investigations as well as by assiduous researchers with an interest in the case, such as journalists. The third parties say that they are part of a relatively small group of people that the reports identify as having a role in the events investigated.[12]

[16] The third parties submit that it would be impossible and unfair for them to defend themselves against the allegations and conclusions revealed by the redacted reports. They say that disclosing the redacted reports would cause them serious reputational harm and be a significant source of concern, stress and isolation to them as well as those close to them.

[17] The third parties also say that s. 22(2)(g) is a relevant circumstance that the Ministry did not raise during the inquiry, which they would have raised if given the chance. Specifically, the third parties say that the reports are likely to be inaccurate or unreliable because of flaws in the investigative process. For instance, they say that they were not given an opportunity to provide input regarding adverse findings against them and one of the third parties was not even interviewed by the investigators.[13] They submit that the reports are also likely to be inaccurate and unreliable because the OCG's investigations and

[10] Third parties' submissions at para. 52.
[11] The Ministry's petition of Order F16-50 has not yet been heard.
[12] Third parties' submissions at paras. 25 and 33. The third parties say that they are not aware of any disciplinary action having been taken as a result of the reports' findings.
[13] Third parties' submissions at para. 37.

some of the investigators overlap with the OCG's investigations and report into procurement practices in the Ministry of Health, which the BC Ombudsperson subsequently found to be inaccurate and biased.[14] They provide additional submissions and evidence *in camera* about conflict of interest and reasonable apprehension of bias.

Ministry's submissions

[18] The Ministry agrees with the third parties' submissions that the inquiry process followed was procedurally unfair and Order F16-50 is a nullity. The Ministry also agrees with the third parties that they were "left out of the loop entirely" during the inquiry because the Ministry did not tender affidavit evidence from them.[15]

Findings, ss. 54(b) and 56(3)

[19] In my judgment, the third parties are individuals who are affected by the inquiry proceedings and the possible disclosure of the information in dispute in the reports. The reports refer to the third parties multiple times and make findings about their decisions and behaviour in the workplace and during the OCG investigation. I can also see that during the inquiry the Ministry did not raise s. 22(2)(g) and that this is a relevant circumstance that the third parties would have made submissions about if given an opportunity.

[20] I am satisfied, therefore, that the third parties had sufficient interest to warrant participation in the inquiry proceedings, and s. 54(b) notice to them was appropriate. The fact that it was not given means that the third parties did not have an opportunity to make representations at the inquiry under s. 56(3), particularly about s. 22(2)(g). The lack of notice means that the Commissioner did not hear from them before making a decision that impacts their personal privacy, and in the circumstances of this particular case, I find that this was procedurally unfair.

Jurisdiction to reopen Order F16-50

[21] The Commissioner has no statutory authority under FIPPA to reopen an order. In the past, the Commissioner has considered applications to reopen orders under the common law doctrine of *functus officio* which is described in *Chandler v Alberta Association of Architects [Chandler].*[16] *Functus officio* is the principle that says once an administrative tribunal has reached a final decision in respect to the matter that is before it in accordance with its enabling statute, as a

[14] Third parties' submissions at paras. 38-39. Ombudsperson's report entitled *Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters*.
[15] Ministry's submission at para. 2, referring to third parties' submission at paras. 49- 51.
[16] [1989] 2 SCR 848 at p. 861. *Chandler* was considered in Order F14-14, 2014 BCIPC 17 and Decision P12-02, 2012 CanLII 58589 (BC IPC).

general rule, that decision can only be reconsidered if authorized by statute, there has been a slip in drawing up the decision or there has been an error in expressing the manifest intention of the tribunal.[17]

[22] While *Chandler* affirmed that *functus officio* applies in the administrative context, it also said it does not apply with the same vigour as in court proceedings. Justice Sopinka said:

> [The principle of *functus officio*]…is based, however, on the policy ground which favours finality of proceedings rather than the rule which was developed with respect to formal judgements of a court whose decision was subject to a full appeal. For this reason I am of the opinion that its application must be more flexible and less formalistic in respect to the decisions of administrative tribunals which are subject to appeal only on a point of law. Justice may require the reopening of administrative proceedings in order to provide relief which would otherwise be available on appeal. [18]

[23] Circumstances which warrant reopening a decision include an error which taints the whole proceedings and renders the decision a nullity, for instance where there has been a denial of natural justice.[19] In addition, if a tribunal "has failed to dispose of an issue which is fairly raised by the proceedings and of which the tribunal is empowered by its enabling statute to dispose, it ought to be allowed to complete its statutory task."[20]

[24] As it was procedurally unfair in the circumstances of this case not to give the third parties notice and the opportunity to make submissions at the inquiry, I find that Order F16-50 was a nullity. For that reason, the Commissioner is not *functus officio* and Order F16-50 should be reopened.

[25] However, I am reopening Order F16-50 only to reconsider if s. 22(1) applies to the information that Order F16-50 required be disclosed to the applicant. I will not reconsider the part of Order F16-50 that found that the majority of the information in the reports must be withheld under s. 22(1) because the third parties have not challenged that part.

Disclosure harmful to personal privacy - s. 22

[26] Section 22(1) requires that public bodies refuse to disclose personal information if disclosure would be an unreasonable invasion of a third party's

[17] *Chandler* at p. 860.
[18] Chandler at p. 862
[19] *Chandler* at p. 862
[20] *Chandler* at p. 862.

personal privacy.[21] Only "personal information" may be withheld under s. 22(1). Therefore, the first step in the s. 22 analysis is to determine if the information that Order F16-50 said should be disclosed is personal information.

Personal information

[27] FIPPA defines "personal information" as recorded information about an identifiable individual other than contact information.[22] Information is about an identifiable individual when it is reasonably capable of identifying the individual, either alone or when combined with other available sources of information.[23] "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."[24]

[28] The information in the reports that Order F16-50 required the Ministry disclose is as follows:

a. Names and address block of the two OCG officials who sent and received the reports;
b. Name of the ministry that was investigated;
c. Name of the official representative/contact of the ministry under investigation;
d. The date of the reports, some dates on the first pages of the reports, headers and footers, titles/topic headings, file numbers and page numbers;
e. Partial sentences that reveal the investigative approach and the steps taken during the investigation;
f. Partial sentences that reveal the allegations and what government policies and/or practices were allegedly not followed;
g. Partial sentences that reveal the investigators' observations and conclusions about individuals and their actions.

Order F16-50 found that s. 22(1) applied to the individuals' names so they are blacked-out and are not part of the information that I am considering here.

[21] Schedule 1 of FIPPA says: "third party" in relation to a request for access to a record or for correction of personal information, means any person, group of persons or organization other than (a) the person who made the request, or (b) a public body.
[22] FIPPA, Schedule 1.
[23] Order F18-11, 2018 BCIPC 14 at para. 32.
[24] See Schedule 1 of FIPPA for these definitions.

[29] The third parties submit that any meaningful information that remains at issue in the redacted reports identifies them. They say that the only information that may be disclosed without causing them harm is the name and contact information of the OCG officials on the first and last pages of the redacted reports.[25]

[30] The third parties submit that whatever else could be disclosed, such as titles and generic phrases, is not meaningful. They say that any meaningful information that would give an understanding of the investigations and reports cannot be released because it identifies individuals, alone or in combination with available information.[26]

[31] They also submit that the OCG investigations and reports "are not general or system-level."[27] Instead, they were workplace investigations that focussed on or targeted the conduct of individuals. They say that the reports contain investigators' observations and findings and qualitative statements about a number of identifiable individuals.[28]

[32] Because he is a journalist, they believe the applicant "can be expected to vigorously and skillfully pursue the unmasking of details of the investigations, findings and identities of targets in the reports."[29]

[33] The third parties also submit that any information that connects the reports to the specific ministry that was investigated or reveals the nature of the allegations, evidence analysis or findings "also links to the specific investigations and investigated individuals."[30] They say that "the wide knowledge within and without government of the fact and context of the investigations involved, will enable informed people and diligent researchers such as the Applicant to connect the redacted reports to those investigations."[31]

[34] The third parties also submit that the reports target a small group of individuals that includes the third parties. For that reason, they believe that disclosing adverse or disparaging findings implicates all of them.[32]

[35] The third parties provide affidavit evidence that the investigations were widely known because the OCG investigators interviewed many past and present employees and contractors.

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[25] Third parties' submission at paras. 7, 87, 89 and 114.
[26] Paras 85-87.
[27] Third parties' submission at para. 73.
[28] Third parties' submission at para. 73.
[29] Third parties' submission at para. 74.
[30] Third parties' submission at para. 75.
[31] Third parties' submission at para. 77.
[32] At paras. 79-80.

Findings, personal information

[36] The reports are about the OCG's investigations into alleged wrongdoing by individuals and they contain the investigators' observations and findings about individuals' workplace decisions and behaviour.

[37] The reports and the third parties' submissions and affidavit evidence establish that the OCG investigators interviewed many individuals, both employees and contractors. This persuades me that the investigations and the nature of what was being investigated were widely known.

[38] I cannot provide much detail in these reasons as a fair bit of the evidence was provided *in camera*. I can say, with the benefit of the third parties' submissions and evidence, that some of what Order F16-50 ordered disclosed would allow one to discern the identities of some individuals. That is because of the widely known nature of the investigations and the relatively small group of people who appear to have been responsible for the actions and decisions being investigated. It is reasonable to expect that employees and contractors of the ministry under investigation would be able to identify individuals even if the individuals' names have been redacted. This also applies to statements about the ministry under investigation as a whole, such as "the ministry did this/failed to do that." Normally, references to a large group like a ministry would not be about identifiable individuals. However, in this case, given the specific information and details that I can see in the reports, it is reasonable to expect that anyone who knew what matters were investigated (i.e., because they were interviewed or worked in that part of the ministry) would be able to infer whose actions and behaviour are meant by these references to the "ministry." Therefore, I find that this information is personal information.

[39] The balance of the information ordered disclosed by Order F16-50, however, is not personal information. For instance, the names, job titles and telephone number of two OCG officials on the first and last pages of the redacted reports. This information clearly appears as their business "contact information" so it does not meet the definition of "personal information." For that reason, s. 22 does not apply to it.

[40] I also find that the page numbers, file numbers, the report headings/titles and non-descriptive phrases and the date of the reports are not personal information. The titles and phrases are generic and they reveal nothing about any identifiable individuals. Similarly, the file numbers are six digits which suggest nothing about anyone's identity. I also do not think that the date of the reports could be used to discern the identity of the individuals involved because they do not reveal the date of the investigations or the alleged events. It is not apparent how any of the information I am discussing in this paragraph could be used,

alone or in combination with other known information, to identify individuals. Therefore, s. 22 does not apply to this information.

Section 22(4) - Not an unreasonable invasion of privacy

[41] Section 22(4) lists circumstances where disclosure is not an unreasonable invasion of third party privacy. I find that none of the circumstances in s. 22(4) apply to the personal information at issue here.

Section 22(3) - Presumed unreasonable invasion of privacy

[42] Section 22(3) lists circumstance where disclosure of personal information is presumed to be an unreasonable invasion of third party privacy. The third parties submit that ss. 22(3)(d) and (g) apply.[33] Those provisions state:

> 22(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
> …
> (d) the personal information relates to employment, occupational or educational history,
> …
> (g) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party;

[43] Past orders have held that s. 22(3)(d) applies to information and allegations of wrongdoing in the workplace and an investigator's observations or findings about an individual's workplace behaviour or actions.[34] Past orders have also said that s. 22(3)(g) applies to information that evaluates employees in the context of a formal workplace investigation.[35]

[44] Some of the partial sentences at issue here contain the OCG's qualitative or evaluative comments about how employees' carried out their duties. There was a formal OCG investigation and a large number of people were interviewed about the matters in the particular work units under investigation. For that reason, even if the partial sentences do not name individuals, it would not be difficult for those who were aware of the investigations or who were interviewed to figure out who the evaluative statements are about. This also applies to information about what policies and procedures were alleged to have been contravened. For instance, sentences that say "the ministry did this/failed to do that" could be linked to the actual individuals who job duties related to those matters. I find that s. 22(3)(d) and (g) apply to these partial sentences because they contain

[33] The Ministry's submissions do not address s. 22(3).
[34] Order 01-53, 2001 CanLII 21607 (BC IPC) paras. 32-36.
[35] Order 01-07, 2001 CanLII 21561 (BC IPC) at para 21.

allegations of wrongdoing as well as evaluation and judgement about how individuals performed their employment duties.

[45] However, I find that no presumptions apply to the balance of the personal information I am considering here.

Section 22(2) - Relevant Circumstances

[46] Section 22(2) says that in determining whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of the public body must consider all the relevant circumstances, including those listed in s. 22(2). It is at this step, after considering all relevant circumstances, that the s. 22(3) presumptions may be rebutted.

[47] The third parties say that s, 22(2)(a) does not apply and ss. 22(2)(g) and (h) weigh against disclosure.[36] Those provisions state as follows:

> 22(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether
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> (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,
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> …
>
> (g) the personal information is likely to be inaccurate or unreliable,
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> (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, …

[48] Section 22(2)(a) – The third parties submit that s. 22(2)(a) does not apply to any of the personal information in this case because disclosing it would subject individuals, not government, to public scrutiny.

[49] I agree that s. 22(2)(a) does not apply to the partial sentences that contain the OCG's observations and conclusions about individuals and their actions. This information provides a level of judgement of specific individuals that is not necessary for the public to appreciate the nature of the issues under investigation and how the public bodies involved acted. I cannot see how disclosing this type of personal information is desirable for the purpose of holding the government accountable to the public.

[50] However, I find that s. 22(2)(a) applies to the partial sentences that reveal the name of the ministry under investigation, the identity of the government policies and procedures that were allegedly not followed (but not specifically how) as well as the general investigative approach and steps taken. This

[36] The Ministry's submissions do not address s. 22(2) specifically.

includes the name and job title of the official who the OCG contacted as the ministry representative during the OCG investigation. It also includes the dates on the first pages of the reports because they reveal the sequence of OCG's handling of the investigations. All of this information shows how the OCG operates, specifically what type of situation warrants an investigation and then how the OCG carries out its oversight role. I also find that the nature of the government policies and procedures at the heart of the investigation are about the fundamental principles of government's duty to be accountable to the public. In my view, it is desirable for the purposes of public accountability that the name of the ministry and the government policies and procedures at issue be disclosed.

[51] Sections 22(2)(g) and (h) - I cannot provide much detail about the third parties' and the Ministry's evidence regarding these circumstances, given I accepted that evidence *in camera*. However, I can say that the Ministry and the third parties provide convincing evidence that the reports contain information that is likely to be inaccurate and unreliable. The Ministry's evidence on this point is particularly strong. For that reason, I am persuaded that information that reveals the investigators' judgement of what took place and their findings may be inaccurate and unreliable. While this information does not specifically mention anyone by name (because Order F16-50 required such detail be withheld), it is reasonable to expect that the third parties' identities would still be discernible to any of the large number of people who were aware of the investigations when they took place (i.e., the many individuals who were interviewed by the investigators). Given the *in camera* evidence about the context and why this information may be unreliable and inaccurate, I conclude that disclosing this information may unfairly damage the third parties' reputations.

[52] On the other hand, I do not think that ss. 22(2)(g) and (h) are relevant to the disclosure of the partial sentences that reveal the name of the ministry under investigation, the government policies and procedures that were allegedly not followed as well as the general investigative approach and steps taken. Nor are they relevant circumstances regarding the name and job title of the official who was the ministry contact/representative at the time of the OCG investigation. This person's conduct was not under investigation and his name appears in a neutral and factual way when the report author describes the OCG procedure and protocol followed at the outset of the investigation.

[53] Sensitivity of the personal information - The third parties submit that the personal information at stake is sensitive.[37] I agree that some of the personal information is sensitive and that this circumstance weighs against its disclosure. The information is sensitive because it reveals the OCG's judgments about individuals' behaviour and decisions in the context of a workplace investigation.

[37] Third parties' submissions at para. 112.

[54] Widely known information - The third parties provide persuasive evidence that the investigations were widely known and dozens of people were interviewed. For that reason, I find that the following information would be widely known: the name of the ministry under investigation, the government policies and procedures that were allegedly not followed (but not the OCG's findings regarding the allegations) and some dates on the first pages of the reports that reveal when the investigation took place. It is also reasonable to expect that the identity of the ministry official who was the ministry contact/representative during the investigation would also be known. I find that the existing wide knowledge of this information weighs against a finding that its disclosure in these reports would be an unreasonable invasion of third party personal privacy.

Conclusion, s. 22

[55] I find that some of what was ordered disclosed by Order F16-50 is personal information. While none of it refers to anyone by name, given the widely known nature of the investigations, the number of people who were interviewed, and the context of the investigation, it is reasonable to expect that disclosing this disputed information would reveal the third parties' identities. The rest of the disputed information, however, is not personal information because it is contact information about OCG officials or it reveals nothing about identifiable individuals (i.e., it is page numbers, file numbers, report headings/titles, non-descriptive phrases and the date of the reports).

[56] The ss. 22(3)(d) and (g) presumptions apply to some of the personal information, in particular in the partial sentences that contain evaluation and judgement about how individuals performed their employment duties. All of the relevant circumstances, namely ss. 22(2)(a), (g), (h) and the sensitivity of the information, do not weigh in favour of disclosure. Therefore, I find that the presumptions have not been rebutted for this personal information and disclosing it would be an unreasonable invasion of third party personal privacy. The Ministry must refuse to disclose it under s. 22(1).

[57] However, no presumptions apply to the balance of the disputed information, which consists of the name of the ministry under investigation, the government policies and procedures at issue, the investigative approach and steps taken and the name and job title of the official who was the ministry contact/representative at the time the OCG investigation commenced. This information reveals in only a broad sense the nature of the investigation and how it was conducted. It does not reveal any evaluative information about individuals or the OCG's findings, and it is not sensitive. I find that s. 22(2)(a) applies to some of this information because disclosing it would be desirable for the purpose of subjecting the activities of the investigated ministry and the OCG to public scrutiny. It is also information that I find is already known by the many employees and contractors that participated in the investigation. I find that all relevant circumstances weigh in favour of disclosure of this personal information and

disclosing it would not be an unreasonable invasion of third party personal privacy. The Ministry is, therefore, not required to refuse to disclose that specific information under s. 22(1).

[58] In conclusion, pursuant to s. 22(1), the Ministry must refuse to disclose some of the information that Order F16-50 said it must disclose. For clarity, I have highlighted that information in a copy of the records that is being sent to the Ministry.

Reasonable severing, s. 4(2)

[59] Section 4(2) of FIPPA states that, where the excepted information can reasonably be severed from a record, the applicant has the right of access to the remainder of the record.

[60] The third parties submit that any meaningful information that would give the applicant an understanding of the nature and details of the investigations and reports must be withheld under s. 22(1).[38] They submit that to disclose meaningless snippets of information is not reasonable severing and is not the intent of s. 4(2). For instance, they submit that disclosing the dates and file number alone provides only meaningless information and does not fulfill the objectives of FIPPA.

[61] I find that reasonable severing is possible in this case. The information that I find may be disclosed conveys meaning. It provides information about the ministry that was investigated, the nature of the matters under investigation and how OCG conducted the investigation.

CONCLUSION

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

1. Subject to paragraph 2 below, the Ministry is required to refuse to disclose the information in the reports pursuant to s. 22(1) of FIPPA.

2. The Ministry is required to give the applicant access to the information in the reports that is neither highlighted nor blacked-out in the copy of the reports being sent to the Ministry along with this order.

[38] Paras 85-87

3. I require the Ministry to comply with paragraph 2 immediately above by June 5, 2019. The Ministry must concurrently provide the OIPC Registrar of Inquiries with a copy of its cover letter and the records sent to the applicant.

April 23, 2019

ORIGINAL SIGNED BY

Elizabeth Barker, Senior Adjudicator

OIPC File No.: F15-60660