



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F20-49

**SOUTH COAST BRITISH COLUMBIA
TRANSPORTATION AUTHORITY
(TRANSLINK)**

Lisa Siew
Adjudicator

November 13, 2020

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Summary: An applicant requested TransLink provide access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to records about a security incident aboard one of TransLink's Seabus ferries. TransLink withheld information under s. 22(1) claiming the disclosure of the withheld information would result in an unreasonable invasion of several third parties' personal privacy. The adjudicator determined that s. 22(1) applied to most of the information at issue and confirmed TransLink's decision to withhold that information. However, the adjudicator found that TransLink was not required to withhold a small amount of information under s. 22(1) since the adjudicator was satisfied that disclosing this information would not constitute an unreasonable invasion of a third party's personal privacy.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2), 22(3), 22(4).

INTRODUCTION

[1] An applicant requested access to records from the South Coast British Columbia Transportation Authority (TransLink) under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The applicant requested access to an incident report and an investigation report about a security incident that occurred aboard a TransLink passenger ferry.

[2] TransLink disclosed the requested records, but it withheld information from the records under s. 15(1)(l) (harm to the security of any property or system) and s. 22 (unreasonable invasion of third party personal privacy). The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review

TransLink's decision to refuse access to the withheld information. Mediation did not resolve the issues in dispute and the matter proceeded to inquiry.

[3] Sometime after the OIPC issued the notice of inquiry, TransLink withdrew its application of s. 15(1)(l) to the disputed records. It disclosed to the applicant all of the information it previously withheld under that exception. As a result, s. 15(1)(l) is no longer at issue.

ISSUE

[4] The issue I must decide in this inquiry is whether TransLink is required to withhold the information at issue under s. 22(1) of FIPPA. Section 57(2) places the burden on the applicant to establish that disclosure of the information at issue would not unreasonably invade a third party's personal privacy. However, the public body has the initial burden of proving the information at issue qualifies as personal information under s. 22(1).¹

DISCUSSION

Background

[5] SeaBus is a passenger-only ferry system that crosses the Burrard Inlet, connecting downtown Vancouver with North Vancouver and the north shore area. SeaBus is owned by TransLink, but it is operated by the Coast Mountain Bus Company (Coast Mountain).² Coast Mountain is an operating subsidiary of TransLink, but it is a separate public body under Schedule 2 of FIPPA.

[6] In March 2015, a suspicious package was reported aboard a SeaBus ferry.³ The incident stopped SeaBus service and closed down the Lonsdale Quay terminal located in North Vancouver. TransLink and several other authorities responded to the incident, including the RCMP bomb disposal unit. They determined the item posed no threat and the SeaBus terminal was reopened for service.

Records and information in dispute

[7] The record in dispute is a report titled "After Action Report" totaling 32 pages. The report includes witness statements from three Coast Mountain employees. TransLink disclosed this record to the applicant, but it withheld a small amount of information from 13 of those 32 pages.⁴ The withheld

¹ Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9–11.

² Order F15-60, 2015 BCIPC 64 (CanLII) at para. 1.

³ The information for this background section is compiled from the parties' submissions and information disclosed in the responsive records. The applicant's submission included a link to a March 11, 2015 news article about the incident.

⁴ Information located on pp. 3, 15, 17, 18, 20, 25-32 of the records.

information consists of employee identification numbers and birthdates for several Coast Mountain employees.

Section 22 – unreasonable invasion of third party personal privacy

[8] Section 22 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. Numerous OIPC orders have considered the application of s. 22 and I will apply the same approach in this inquiry.⁵

Personal information

[9] The first step in any s. 22 analysis is to determine if the information is personal information. "Personal information" is defined in FIPPA as "recorded information about an identifiable individual other than contact information."⁶ 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.⁷

[10] 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."⁸

[11] TransLink submits that the information at issue clearly qualifies as personal information. The applicant does not make any direct submissions about whether or not the withheld information qualifies as personal information. Instead, the applicant says an identifier such as a birthdate or employee number may be useful as a "tiebreaker" should the name of the employee be identical to another employee or a member of the public.⁹ The applicant also notes the employee identification numbers were given by the company.

[12] I conclude the information withheld by TransLink under s. 22 qualifies as personal information. TransLink disclosed the names of the employees, but it withheld their employee identification numbers and birthdates. I find these employee identification numbers and birthdates are personal information where they are directly associated with the already-disclosed name of a Coast Mountain employee.

⁵ See for example, Order F17-39, 2017 BCIPC 43 (CanLII) at paras. 71-138.

⁶ See Schedule 1 of FIPPA for this definition.

⁷ Order F16-36, 2016 BCIPC 40 (CanLII) at para. 17.

⁸ See Schedule 1 of FIPPA for this definition.

⁹ Applicant's submission at para. 3.

[13] There is one employee identification number that is not connected to an employee name in the records.¹⁰ I conclude, however, that this employee identification number is personal information under s. 22. The employee identification number is used instead of the person's name to describe their work-related activity during the security incident. Given the context in which this information appears, I accept that the employee number qualifies as personal information since it may be possible for someone with knowledge of the employee's workplace or access to employee records to identify this individual.¹¹

Section 22(4) – disclosure not an unreasonable invasion

[14] 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 not an unreasonable invasion of a third party's personal privacy and the information must be disclosed.

[15] TransLink submits that none of the provisions under s. 22(4) apply in this case. The applicant argues that it is not an unreasonable invasion of personal privacy to disclose information about employees acting in a professional or employment capacity. I understand the applicant to be arguing that s. 22(4)(e) applies.

[16] Section 22(4)(e) provides that the disclosure of personal information about a public body employee's position, functions or remuneration is not an unreasonable invasion of that third party's personal privacy. Previous OIPC orders have found that s. 22(4)(e) applies to third-party identifying information that in some way relates to a third party's job duties in the normal course of work-related activities.¹² This type of information would include objective, factual statements about what the third party did or said in the normal course of discharging his or her job duties.

[17] I do not find that s. 22(4)(e) applies to the third parties' birthdates or the employee identification numbers since this information is not about the position, functions or remuneration of these Coast Mountain employees. For instance, the employee identification numbers are unique personal identifiers assigned to a specific employee. Section 22(4)(e) does not typically apply to personal identifiers for an employee and I find that reasoning to be applicable here.¹³

¹⁰ Employee number located on page 3 of the records. TransLink does not explain how this employee number qualifies as personal information in that context.

¹¹ For similar findings, see Order F15-60, 2015 BCIPC 64 (CanLII) at para. 25 and Order F16-33, 2016 BCIPC 37 (CanLII) at para. 14.

¹² Order 01-53, 2001 CanLII 21607 at para. 40.

¹³ Order F14-41, 2014 BCIPC 44 (CanLII) at para. 46.

Section 22(3) – presumptions in favour of withholding

[18] 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.¹⁴

[19] TransLink submits that s. 22(3)(d) is relevant in this case as the employee identification numbers and birthdates relate to employment history. Section 22(3)(d) applies to personal information that relates to the employment history of a third party. The applicant did not directly respond to TransLink's assertion that s. 22(3)(d) applies to the information at issue.

[20] Previous OIPC orders have found that a person's employee number or personal identifiers for an employee may form part of their employment history under s. 22(3)(d).¹⁵ Consistent with past orders, I conclude that s. 22(3)(d) applies to the employee numbers since it is an individual, personal identifier assigned to these employees as part of their employment.

[21] However, I find that s. 22(3)(d) does not apply to the employees' birthdates since a person's date of birth is not normally created and assigned to that person as part of their employment. TransLink does not explain how the birthdates of these Coast Mountain employees qualifies as their employment history. As a result, I am not satisfied that s. 22(3)(d) applies to the employees' birthdates.

Section 22(2) – relevant circumstances

[22] 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). Section 22(2) requires a public body to specifically consider ss. 22(2)(a) to 22(2)(i) and any other relevant circumstances.

[23] TransLink says none of the s. 22(2) factors are relevant, but it does not explain how it reached this conclusion. Instead, it generally claims the applicant has not proven that the disclosure of the withheld information would not be an unreasonable invasion of a third party's personal privacy.

¹⁴ *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.

¹⁵ Order F14-41, 2014 BCIPC 44 (CanLII) at para. 46; Order F15-17, 2015 BCIPC 18 (CanLII) at para. 37 and Order 03-21, 2003 CanLII 49195 at paras. 25-26.

[24] The applicant believes two circumstances are relevant in establishing that disclosure would not be an unreasonable invasion of a third party's personal privacy. I will discuss each in turn.

[25] First, the applicant claims TransLink is improperly withholding information because it is concerned about avoiding "any embarrassment to its brand by any employee publicly discussing the way it manages or mismanages transit."¹⁶

[26] TransLink disputes these allegations, citing a lack of evidence, and says it is unclear "how disclosure of birth dates and employee numbers would embarrass TransLink's brand."¹⁷

[27] Although the applicant does not directly say so, I understand the applicant may be referring to s. 22(2)(a), which considers whether disclosing the third party's personal information is desirable for the purpose of subjecting a public body's activities to public scrutiny. I find, however, that this is not a relevant circumstance that weighs in favour of disclosure. The information at issue does not reveal any employee discussing the way TransLink manages transit. Instead, as noted, TransLink disclosed most of the information in the disputed records and only withheld several employee's birthdates and employee numbers.

[28] I do not accept the applicant's argument that TransLink is hiding this personal information in order to avoid embarrassment and protect its brand. The applicant does not explain how birthdates and employee numbers could have any bearing on such matters. I am, therefore, not persuaded that disclosing this personal information would be useful or desirable for the purpose of allowing the public to scrutinize TransLink's activities. I have also considered the other s. 22(2) factors and find none apply.

[29] Second, the applicant submits that there would be little to no harm in disclosing the information at issue because more than five years has elapsed since the security incident. I understand the applicant to be arguing that the passage of time has diminished any possible harm that could result from disclosing the third parties' personal information. In response, TransLink says "this argument is speculative and without any foundation" and "the effluxion of time is irrelevant."¹⁸

[30] In this case, I am not satisfied that the passage of time is a factor weighing in favour of disclosure. The security incident did occur five years ago, but I am not persuaded that this amount of time is sufficient to rebut the s. 22(3)(d) presumption that applies to the employee identification numbers or the privacy concerns associated with the disclosure of a person's birthdate. Section 22(3)(d)

¹⁶ Applicant's submission at para. 4.

¹⁷ TransLink's reply submission at p. 1.

¹⁸ TransLink's reply submission at p. 1.

protects information related to a third party's employment *history*; therefore, this provision takes into account the elapse of time and protects that employment information. The applicant does not sufficiently explain how the s. 22(3)(d) privacy protection assigned to employee identification numbers would be lessened or eliminated over the years.

[31] As for the birthdates, I have considered that an individual's date of birth is the type of information that could be used to commit identity fraud. It is, therefore, not clear to me why it would be less invasive on a third party's personal privacy to disclose their birthdate five years later. I also considered whether there are any factors that weigh in favour of disclosing the employees' birthdates to the applicant and could find none.

[32] I do, however, find it relevant that some of the third party personal information at issue is clearly incorrect. I can tell by comparing an employee's birthdate on pages 27 and 28 of the records that the birth year withheld on page 27 of the records is incorrect. According to that birth year, the employee would have been an infant at the time of the security incident; therefore, this information is clearly inaccurate.

[33] Considering all the relevant circumstances, I am satisfied that disclosing the employee's birth year on page 27 of the records would not be an unreasonable invasion of this employee's personal privacy since it is not the employee's correct birth year nor would it allow someone to accurately infer the employee's actual birth year. To be clear, there may be some cases where it would be an unreasonable invasion to disclose inaccurate or incorrect third party information after considering all the relevant circumstances. However, in this case, I am satisfied that there is no reasonable possibility of someone being able to determine this third party's actual birth year from the disclosure of the birth year on page 27 of the records. As a result, I find this factor weighs in favour of disclosing this information.

Conclusion on s. 22

[34] To summarize, I find the information at issue qualifies as personal information. I conclude that s. 22(4) does not apply to any of this personal information. I do find, however, that the presumption under s. 22(3)(d) applies to the employee identification numbers since they qualify as part of the employment history of these third parties. I find there were no relevant circumstances to rebut that presumption. Therefore, TransLink must refuse under s. 22(1) to disclose the employee identification numbers to the applicant.

[35] As for the birthdates, considering all the relevant circumstances, I am satisfied that disclosing the employee's birth year on page 27 of the records would not be an unreasonable invasion of this employee's personal privacy. The disclosure of this incorrect information would not reveal the employee's correct

birth year nor would it allow someone to accurately infer the employee's actual birth year.

[36] However, I find it would be an unreasonable invasion of a third party's personal privacy to disclose the other birthdates. I found there were no s. 22(3) presumptions that applied to the birthdates. But, taking into account the privacy concerns around birthdates, I find there were no factors that weighed in favour of disclosing the employees' birthdates to the applicant. In conclusion, TransLink must refuse to disclose this personal information to the applicant under s. 22(1).

CONCLUSION

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

1. I confirm, in part, TransLink's decision to refuse access to the information withheld under s. 22(1), subject to paragraph 2 below.
2. TransLink is not authorized or required, under s. 22(1), to withhold the employee's birth year on page 27 of the records. TransLink must disclose this information to the applicant and concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, along with a copy of the relevant record.

[38] Under s. 59 of FIPPA, TransLink is required to give the applicant access to the information it is not authorized or required to withhold by December 29, 2020.

November 13, 2020

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

OIPC File No.: F15-61901