



Order F20-54

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

Elizabeth Barker
Director of Adjudication

December 3, 2020

CanLII Cite: 2020 BCIPC 63
Quicklaw Cite: [2020] B.C.I.P.C.D. No. 63

Summary: The applicant requested access to the names and job titles of personnel involved with the Site C Clean Energy Project. The public body refused access to approximately 200 names on a list of individuals under ss. 19(1)(a) (threat to health or safety) and 22 (unreasonable invasion of third party personal privacy). The adjudicator found that the public body was authorized to refuse access to all but four names under s. 19(1)(a) but not under s. 22 because s. 22(4)(e) applied. The public body was required to disclose the four names to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 19(1)(a), 22, 22(3)(d), 22(4)(e) and 22(4)(g).

INTRODUCTION

[1] The applicant requested that British Columbia Hydro and Power Authority (BC Hydro) provide him with the names, job titles and/or job descriptions of all personnel involved with the Site C Clean Energy Project for a two and half month period. BC Hydro provided a record but withheld individuals' names under ss. 15 (harm to law enforcement) and 22 (unreasonable invasion of third party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant disagreed with BC Hydro's decision and requested that the Office of the Information and Privacy Commissioner (OIPC) conduct a review. During mediation, BC Hydro withdrew its reliance on s. 15 and added s. 19(1)(a) (threat to health or safety). Mediation did not resolve the ss. 19(1)(a) and 22 issues and they proceeded to inquiry.

PRELIMINARY MATTER

[3] In its initial inquiry submissions, BC Hydro raises a preliminary objection to the inquiry proceeding. It submits that the inquiry is barred from continuing because the present access request was already decided by the commissioner in Order F20-03.¹ Order F20-03 was a court ordered reconsideration of Order F18-51.² The parties in the present inquiry are the same as in the two earlier inquiries.

[4] The adjudicator in Order F18-51 found that s. 19(1)(a) did not apply to the names of several BC Hydro employees who were working on Site C Clean Energy Project (Project). On judicial review, the BC Supreme Court found the adjudicator's decision regarding s. 19(1)(a) was unreasonable and ordered a reconsideration.³ On reconsideration, in Order F20-03, a different adjudicator decided that BC Hydro was authorized to refuse to disclose the names under s. 19(1)(a).⁴

[5] This is not the first time that BC Hydro has asked the commissioner not to proceed with the present inquiry. Shortly after the notice of inquiry was issued, BC Hydro made the same request.⁵ The OIPC's registrar of inquiries, as the commissioner's delegate, decided that matter. She concluded that the present access request and records are not the same as those in Order F20-03 and this inquiry did not duplicate the earlier proceedings. She said that the inquiry needed to be decided on its own merits and cancelling it would be unfair to the applicant. She denied BC Hydro's request to cancel the inquiry.⁶ As a result, the inquiry proceeded as set out in the notice of inquiry, and both parties provided submissions regarding ss. 19(1)(a) and 22.

[6] BC Hydro has provided no reasons why the registrar's decision should be reconsidered and I can see none. Further, I agree with the registrar that the present inquiry does not duplicate the earlier proceedings. The applicant's access requests and the responsive records in Order F18-51 and Order F20-03 are not the same as in the current inquiry. In my view, the present inquiry should be decided on its own merits.

¹ Order F20-03, 2020 BCIPC 3.

² Order F18-51, 2018 BCIPC 55.

³ *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128.

⁴ Order F20-03 was not the subject of judicial review proceedings.

⁵ BC Hydro's May 26, 2020 application.

⁶ Registrar's May 27, 2020 decision.

ISSUES

[7] The issues in this inquiry are:

1. Is BC Hydro authorized to refuse access to the disputed information under s. 19(1)(a) of FIPPA?
2. Is BC Hydro required to refuse to disclose the disputed information under s. 22 of FIPPA?

[8] Section 57(1) says that the public body must prove that s. 19 applies. Section 57(2) says that the applicant must prove that disclosure of any personal information about a third party would not be an unreasonable invasion of the third party's personal privacy under s. 22.

DISCUSSION

Background

[9] The Project is a project to build a dam and hydroelectric generating station on the Peace River in northeastern British Columbia.

[10] The applicant, who is a journalist, asked for: "All names and titles and/or job descriptions of personnel involved with the Site C project, including, but not limited to, personnel from BC Hydro, the Ministry and contractors."⁷ He requested this information for a two and a half month period in 2017.

[11] BC Hydro disclosed a list of job titles but not the names of the individuals who held those jobs. BC Hydro also said that it "does not keep track of records for the Ministry or contractors."⁸

Information in dispute

[12] The information in dispute is in a five-page table with three columns: "Employee Name", "Name (Sortable)" and "Position Title". There are about 200 employees listed in the table and each employee's name appears twice, once in each of the name columns. BC Hydro is refusing to disclose the employee names but has disclosed the information in the position title column.

Threat to health or safety, s. 19(1)(a)

[13] BC Hydro is refusing access to the employee names under s. 19(1)(a), which states:

⁷ Applicant's June 22, 2017 access request.

⁸ BC Hydro's July 28, 2017 response. The issues in this inquiry do not include a dispute over BC Hydro's statement that it does not have information about the names and job titles of contractors.

19(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

(a) threaten anyone else's safety or mental or physical health, ...

[14] The Supreme Court of Canada summarized the test for exceptions that use the “could reasonably be expected to” language:

This Court in *Merck Frosst* adopted the “reasonable expectation of probable harm” formulation and it should be used wherever the “could reasonably be expected to” language is used in access to information statutes. As the Court in *Merck Frosst* emphasized, the statute tries to mark out a middle ground between that which is probable and that which is merely possible. An institution must provide evidence “well beyond” or “considerably above” a mere possibility of harm in order to reach that middle ground... This inquiry of course is contextual and how much evidence and the quality of evidence needed to meet this standard will ultimately depend on the nature of the issue and “inherent probabilities or improbabilities or the seriousness of the allegations or consequences” [citations omitted].⁹

[15] In Order 00-28, former Commissioner Loukidelis described the nature of evidence required in such cases:

As I have said in previous orders, a public body is entitled to, and should, act with deliberation and care in assessing – based on the evidence available to it – whether a reasonable expectation of harm exists as contemplated by the section. In an inquiry, a public body must provide evidence the clarity and cogency of which is commensurate with a reasonable person’s expectation that disclosure of the information could threaten the safety, or mental or physical health, of anyone else. In determining whether the objective test created by s. 19(1)(a) has been met, evidence of speculative harm will not suffice. The threshold of whether disclosure could reasonably be expected to result in the harm identified in s. 19(1)(a) calls for the establishment of a rational connection between the feared harm and disclosure of the specific information in dispute.¹⁰

[16] Previous orders have said that a threat to “mental health” is not raised merely by the prospect of someone being made upset.¹¹ Rather, s. 19(1)(a) may be applied where disclosure can reasonably be expected to cause “serious mental distress or anguish.”¹²

⁹ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54, citing *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 94.

¹⁰ Order 00-28, 200 CanLII 14393 (BC IPC) at p. 2.

¹¹ Order 01-15, 2001 CanLII 21569 (BC IPC) at para. 74.

¹² Order 00-02, 2000 CanLII 8819 (BC IPC) at p. 5.

BC Hydro's submission

[17] BC Hydro submits that disclosing the names of the employees who are associated with the Project could reasonably be expected to threaten the physical or mental health or safety of those employees.”¹³ BC Hydro says that as noted in Order F20-03, employees already feel apprehensive and threatened by events arising from opposition to the Project and disclosing the current list of names “would only heighten those feelings, which could reasonably be expected to result in severe anxiety or mental distress.”¹⁴ BC Hydro says that the same security concerns continue to exist and are heightened because there are more employee names at issue now. BC Hydro also says that the employee names could easily be distributed online and be available to a wide audience, including those opposed to the Project with the intention to harass, stalk or possibly harm the employees.¹⁵

[18] BC Hydro relies on the evidence provided by its security project manager and security lead for Site C (Security Manager). In his June 17, 2020 affidavit, the Security Manager says that he adopts the entirety of his June 20, 2018 affidavit provided in the Order F18-51 inquiry.¹⁶

[19] The Security Manager says that on July 16, 2015 a man opposed to the Project attended a public information meeting in Dawson Creek, ripped down display maps, overturned two tables and screamed obscenities at staff. He says, the man’s actions “terrified BC Hydro staff.”¹⁷ The police were called to deal with that situation. When the police arrived, they encountered a different man outside the venue who was wielding a knife. The police shot and killed the man with the knife. The Security Manager says, “I was one of the two investigators for BC Hydro who interviewed the BC Hydro employees who were present at this meeting. The incident greatly affected their personal mental health and their perception of security.”¹⁸

[20] The Security Manager provides a news clipping in which the organizers of a July 23, 2015 rally are reported to have cancelled their Vancouver protest because of the Dawson Creek killing and the potential for violence.¹⁹

[21] The Security Manager says, “I have personally witnessed many incidents of personal verbal abuse and threatened violence when attending public events

¹³ BC Hydro's initial submission at para. 44.

¹⁴ BC Hydro's initial submission at para. 43.

¹⁵ BC Hydro's initial submission at para. 43

¹⁶ His June 20, 2018 affidavit (2018 affidavit) is exhibit A to his June 17, 2020 affidavit (2020 affidavit).

¹⁷ 2018 affidavit at para. 9.

¹⁸ 2018 affidavit at para. 9.

¹⁹ 2018 affidavit at para. 10 and Exhibit A.

in relation to Site C. As part of my role, I am also aware of other incidents because they are reported to me.”²⁰ He gives the following examples:²¹

- On November 28 and 29, 2015 a speedboat “dangerously encircled a working excavator, attempting to splash the contractor’s employee (located inside the excavator) and disrupt their work. The occupants of the boat were aggressive and intimidating in their behaviour shouting obscenities at the contractor’s employees and at BC Hydro employees on the land.” This event was reported to the Security Manager by a member of his security team along with photos of the event.
- At public meetings, people have “made veiled threats of future violence, using such phrases as ‘watch your back’ and ‘blow them up’.”
- BC Hydro employees have been told that if they enter certain properties, the landowner will be there with “guns waiting”.
- Protestors have “physically demonstrated their own anger about Site C, menacingly waving their fists in extreme temper at public meetings, blocking vehicles and construction equipment, and yelling at BC Hydro employees.” They have also got too close for comfort in some cases.
- In October 2017, members of the Security Manager’s security team reported to him that two signs in and around the construction zone had bullet holes in them. He provides photos of the signs.

[22] The Security Manager says, when viewed as a whole, the above examples have made Project employees “feel vulnerable, apprehensive, and threatened in the public arena.”²² He also says that these incidents have been “emotionally unnerving to many BC Hydro Site C employees.”²³ He also says:

Site C employees are working in a very emotionally-charged environment which, in my view, is very menacing and threatening from a worker’s perspective. The tone and tenor of the language used for abusive verbal threats during meetings and at the construction site are such that many employees simply do not feel safe. I strongly believe that most Site C employees would be alarmed to have their names made public, and possibility circulated on social media as a result of a freedom of information request²⁴

[23] The Security Manager says that BC Hydro is extremely concerned that disclosing employee names will put those individuals at risk for targeted violence and increase the risk of their experiencing mental distress.²⁵

²⁰ 2018 affidavit at para. 12.

²¹ These examples and quotes are from 2018 affidavit at para. 13.

²² 2018 affidavit at para. 14.

²³ 2018 affidavit at para. 16.

²⁴ 2018 affidavit at para. 17.

²⁵ 2018 affidavit at para. 21.

[24] The Security Manager says that BC Hydro does not include the Project's office information on employee business cards and it has not released the names of Project employees who are not part of the "public face" (i.e., those who are tasked with speaking publicly about the Project). He says that BC Hydro has increased security measures throughout the Project's operations and offered basic personal security training to all Project employees.

[25] BC Hydro also relies on the affidavit evidence of its director of safety and security for Site C (Director of Safety). BC Hydro says her affidavit demonstrates that the strong opposition to the Project has continued since the incidents described by the Security Manager's 2018 affidavit. She says:

The Project has a contentious history and opposition to the Project remains active. I regularly liaise with employees that work on the Project, including security personnel who have advised me of numerous incidents since 2018 where individuals and organized groups have taken actions or threatened to take actions to disrupt the Project or harm persons working on the Project. Because of my interactions with BC Hydro employees of all levels of seniority and work experience, I believe I am well-suited to speak to their perceptions of the Site C Project from a security perspective.²⁶

[26] The Director of Safety provides the following examples of concerning incidents:

- On March 15, 2018, two people started to video record and verbally harass a security guard on the Project site. They left before police could be called.
- On May 14, 2018, someone was spotted photographing security employees at the Project camp site. They left as soon as they realized they had been seen by security personnel.
- On July 8, 2018, security personnel discovered a damaged viewing window in a fence, which suggested to them that someone had tried to get into the Project site.
- On October 17, 2018, an employee at the Project site discovered that someone had put grease under their vehicle's door handle.
- On April 16, 2019, a man and woman became angry and raised their voices when meeting with a BC Hydro representative in the Project's community consultation office in Fort St. John. Another employee came to offer support and escorted them out and told security staff that she was shaken by the incident.

²⁶ Director of Safety's affidavit, dated June 18, 2020, at para. 4.

- On September 3, 2019, someone drove through the work area, loudly expressed disagreement with the Project and raised his middle finger at the Project workers.
- The Project gets mentioned during protests around the province, and BC Hydro monitors those situations for any security issues that may arise.
- Since 2018, “[i]ndividuals and groups in Fort St. John, the Lower Mainland, and around the Province have continued to present security threats to the Project, which has included attempts to gain access to the Project site, and harassment and intimidation of employees working on the Project.”²⁷

[27] The Director of Safety also says:

Based on my interactions with Site C Project employees, I strongly believe that many BC Hydro employees would be distressed and alarmed to have their names made public in a manner that could be easily distributed online. Some employees have expressed reservations about working for the Project if their names were publicly disclosed, and their safety put at risk. Employees have expressed concerns that they could be exposed to threats, vandalism, and harassment in their communities...²⁸

Applicant’s submission

[28] The applicant argues that the public and the media need the employees’ names for public accountability reasons and BC Hydro has not proven that s. 19(1)(a) applies. He says that the information should be publicly available because:²⁹

- The public “has a right to know who the public employs, whatever their title and whatever their function may be, and how much they are paid, regardless of department.”³⁰
- Cross-referencing the employees’ names with Elections BC’s database would uncover any connections between unions, the NDP and the employees’ political donations.
- The potential for corruption is too great on a megaproject to allow the identity of workers to be shielded.
- There is a need to scrutinize whether the employees are properly qualified and if their pay is fair.

²⁷ Director of Safety’s affidavit at para. 9.

²⁸ Director of Safety’s affidavit at para. 11.

²⁹ Applicant’s submission at paras. 29, 34, 35, 42 and 85.

³⁰ Applicant’s submission at para. 34.

- The Project brought in many workers from outside Canada and so “Spanish or South Korean names” would show that the government misled the public about the Project benefitting Canadian workers.

[29] The applicant says, “BC Hydro is advancing a speculative argument with no evidence” and its affidavit evidence “contains hearsay and bald assertions that border on fabrication.”³¹ He also says:

BC Hydro is already required on an annual basis to publish a sunshine list of its employees and their total salaries, under the Financial Information Act. There is no evidence that this has led to any harms described by BC Hydro. Similarly, the names and photographs of board members and senior management are published by BC Hydro. There is no evidence that this has led to any harms described by BC Hydro. BC Hydro features one of its own employees in its advertising, [name]. BC Hydro does not fear for the safety of its board members, senior executives or [name]. If it did, it would conceal their identities.

BC Hydro conducted a fishing expedition for any and all security incidents, but none rise to the standard necessary. There are no police reports, Crown counsel reports, court transcripts or reasons for judgment by a judge that would lend credence to the BC Hydro arguments.

Clearly, many BC Hydro and Site C contractors are proud of their work and have publicly put their names and their faces to their positions. Even some of the people involved in this inquiry are showing no fear. They are all over the LinkedIn social media platform.³²

[30] The applicant provides a copy of BC Hydro’s *Financial Information Act* return for 2018/19 fiscal year which shows the names and remuneration of its employees. (The return does not show if they work for the Project). He also provides copies of the LinkedIn profiles for 10 people who publicly state that they work for BC Hydro on the Project.

[31] The applicant says that bullet holes in stop signs that BC Hydro mentions are not uncommon in rural areas and it is an overreaction to use that as a reason to withhold information from the public.³³ He also says that some of the BC Hydro security reports about protests are not about security matters, but are just about people exercising their *Charter* rights to peaceful assembly and expression.³⁴

³¹ Applicant’s submission at paras. 12 and 16.

³² Applicant’s submission at paras. 13-15.

³³ Applicant’s submission at para. 17.

³⁴ Applicant’s submission at para. 16.

[32] The applicant also cites Order F14-22 that found that s. 19(1)(a) did not apply to the names of two Civil Forfeiture Office employees.³⁵

BC Hydro's reply

[33] BC Hydro says that the evidence it provided in Order F20-03 met the test that s. 19(1)(a) applies and in the present inquiry it is relying on that same evidence plus more. BC Hydro submits that the applicant's submissions in this inquiry are essentially a shortened version of his submissions in the inquiry for Order F20-03 and they are as unpersuasive now as they were then.

[34] BC Hydro also responds to the applicant's arguments about how there is no evidence of harm actually flowing from existing disclosures of employees' names. BC Hydro says that the applicant's argument fails to recognize that BC Hydro does not have to demonstrate that harm has occurred for s. 19 to apply, only that there is a reasonable risk of harm connected to disclosure.³⁶

[35] As for the applicant's evidence that several employees have LinkedIn accounts that voluntarily disclose that they work on the Project, BC Hydro says:

Examples of a few select employees (and some people whose profiles the Applicant included that are not BC Hydro employees) who individually decide to make public disclosures about their work with the Site C Project or that have public-facing roles does not diminish BC Hydro's overarching reasonable apprehension of harm related to the disclosure of all employee names nor its concern that the majority of its employees do not want to be associated with working on the Site C Project given the violence, threats, and controversy that surround it.³⁷

Analysis and findings

[36] In Order F18-51, BC Hydro relied on s. 19(1)(a) to refuse the applicant access to eight names of employees working on Project matters. The adjudicator found that s. 19(1)(a) did not apply. However, on judicial review, Madam Justice D. MacDonald found that the adjudicator had imposed too high a burden on BC Hydro by requiring the apprehended harm to rise to the level of either a near certainty or to have already occurred in a similar context. She said that the adjudicator had incorrectly required evidence of actual harm and that the adjudicator implied that BC Hydro had to establish that some employees were

³⁵ Order F14-22, 2014 BCIPC 25 (CanLII). A petition for judicial review of that order was dismissed in *British Columbia (Ministry of Justice) v. Maddock*, 2015 BCSC 746. The applicant also cites two matters that did not involve s. 19(1)(a): *Nalcor Energy (Re)*, 2017 CanLII 91325 (NL IPC) and an access request to the BC Ministry of Transportation about the Evergreen Line Rapid Transit project.

³⁶ BC Hydro's reply submission at paras. 8 and 10

³⁷ BC Hydro's reply submission at para. 9, footnote omitted.

physically hurt or suffered from mental health issues in order to prove s. 19(1)(a) applies.³⁸ She explained that, instead, the law requires that BC Hydro demonstrate that disclosure will result in a risk of the harm that is well beyond the merely possible or speculative, but it does not need to prove on the balance of probabilities that disclosure will in fact result in such harm.³⁹ She quashed Order F18-51 and sent it back to be reconsidered.

[37] On reconsideration in Order F20-03, a different adjudicator found, based on the same evidence that was before the original adjudicator in Order F18-51, that BC Hydro had proven that s. 19(1)(a) applied. She concluded that disclosing the eight employee names could reasonably be expected to threaten their mental health. Citing previous BC Orders, she explained that a threat to mental health is not raised merely by the prospect of someone being made upset. Rather, it arises where disclosure can reasonably be expected to cause “serious mental distress or anguish”.⁴⁰

[38] In the present inquiry, I can see that BC Hydro relies on the same s. 19(1)(a) evidence it used in Order F18-51 and Order F20-03, specifically the Security Manager’s June 20, 2018 affidavit. In addition, it has supplemented that evidence with the affidavit from its Director of Safety.

[39] For the reasons that follow, in this case, I find that BC Hydro’s evidence establishes that the risk of harm under s. 19(1)(a) is beyond merely possible or speculative. The evidence persuades me that disclosing some employees’ names could reasonably be expected to threaten those employees’ mental health. The only exception relates to four names that also appear in the LinkedIn profiles that the applicant provides, which I discuss in more detail below in paragraph 44.

[40] There is persuasive evidence about the context of opposition to the Project and how that opposition has led to several incidents of physical and verbal violence directed at the Project’s employees and their worksite. I accept the evidence of the Security Manager and the Director of Safety about what has transpired in that regard. The Security Manager says that he has personally witnessed many incidents of personal verbal abuse and threatened violence when attending public events in relation to the Project and he is also aware of other incidents because they were reported to him. He gives examples of those incidents. He says that when viewed as a whole, these incidents have been emotionally unnerving to many Project employees and have made some Project

³⁸ *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 at paras. 94-96.

³⁹ *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 at para. 86, citing *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 196.

⁴⁰ See Order 01-15, 2001 CanLII 21569 (BC IPC) at para. 74 and Order 00-02, 2000 CanLII 8819 (BC IPC) at p. 5.

employees feel vulnerable, apprehensive, and threatened in the public arena. He also says that he interviewed the BC Hydro employees who were present at the Dawson Creek meeting that turned violent and the incident greatly affected their personal mental health and their perception of security.

[41] The Director of Safety describes incidents of violence and threats and says that some employees have expressed concerns that they could be exposed to threats, vandalism, and harassment if their names were made public in a manner that could be easily distributed online. She says that there are continued attempts to gain access to the Project site, and harassment and intimidation of employees working on the Project.

[42] Based on that evidence, with the exception of the four names I discuss in paragraph 44 below, I am satisfied that disclosing the Project employees' names could reasonably be expected to cause them to feel emotionally unnerved, vulnerable and apprehensive. I find that this type of distress rises to the level that would be a threat to their mental health. This is the same harm that the adjudicator in Order F20-03 found could reasonably be expected from disclosure of the names in that case.

[43] I have considered Order F14-22, which the applicant raises. In that case, I found that the Civil Forfeiture Office had not provided evidence to satisfactorily demonstrate a clear and rational connection between disclosure of the names of two support staff and a reasonable expectation of harm under s. 19(1)(a). The facts and the evidence in this case are not the same as in Order F14-22, and I am not bound to make the same finding as I did there. My decision here is based solely on the facts of this case.

[44] As mentioned above, I find that s. 19(1)(a) does not apply to the four names that also appear in the LinkedIn profiles that the applicant provided. These four people have voluntarily disclosed in a public way that they work on the Project. It is apparent that they do not think disclosing where they work online poses a threat to their safety or wellbeing. In my view it is highly improbable that disclosing the names of these four individuals to the applicant could reasonably be expected to threaten their safety or mental or physical health. Therefore, I am not persuaded that BC Hydro is authorized to refuse to disclose these four names under s. 19(1)(a). I note that this same type of evidence was not before the adjudicators in Order F18-51 and Order F20-30. In those earlier inquiries, there was LinkedIn information, but it was not about the eight individuals whose names were in dispute.

[45] In conclusion, I find that BC Hydro has established that it is authorized under s. 19(1)(a) to refuse to disclose the information in dispute with the exception of the four names of the people who have LinkedIn accounts. For

clarity, I have highlighted those names in a copy of the disputed records that is being sent to BC Hydro along with this order.

Unreasonable invasion of personal privacy, s. 22

[46] BC Hydro is also refusing to disclose the information in dispute under s. 22. Section 22 requires public bodies to refuse to disclose personal information if its disclosure would be an unreasonable invasion of a third party's personal privacy. Although I have found that BC Hydro is authorized to refuse access to all but four of the names under s. 19(1)(a), I have considered whether disclosing any of the names would be an unreasonable invasion of third party personal privacy.

[47] The approach for applying s. 22 is well established and I will apply the same approach in this inquiry.⁴¹

Personal information

[48] The first step in any s. 22 analysis is to determine if the information in dispute is personal information. Personal information is defined as "recorded information about an identifiable individual other than contact information." 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."⁴²

[49] I find that the withheld information is personal information. The recorded names are clearly about identifiable individuals, and it is evident from the format and context that the names are not contact information.

Sections 22(4) and 22(3)(d)

[50] The next steps in the s. 22 analysis require deciding if ss. 22(4) or 22(3) apply. If the personal information falls into any of the types of information listed in s. 22(4), disclosure is not an unreasonable invasion of third party personal privacy. If the information falls into the types of information listed in s. 22(3), disclosure is presumed to be an unreasonable invasion of third party personal privacy.

[51] The follow provisions are relevant in this case:

22(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

⁴¹ See for example, Order F17-39, 2017 BCIPC 43 (CanLII) at paras. 71-138.

⁴² See Schedule 1 of FIPPA for these definitions.

(d) the personal information relates to employment, occupational or educational history,

...

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

...

(e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff,

...

(g) public access to the information is provided under the *Financial Information Act*,

...

[52] The applicant submits that s. 22(4)(e) applies.

[53] BC Hydro submits that the information “should more appropriately be considered employment or educational history as opposed to simply the position or functions of the employees in question.”⁴³ BC Hydro submits that s. 22(3)(d) applies and that s. 22(4), and in particular s. 22(4)(e), do not apply.

[54] Regarding s. 22(4)(e), BC Hydro says:

Section 22(4)(e) is not applicable as that section is intended to apply to the position, functions or remuneration of a particular third party that is an officer, employee or member of a public body. BC Hydro submits that the Legislature could not have intended that this section would apply to whole sections of public bodies as otherwise there would be no requirement for the inclusion of Section 22(4)(g) of FOIPPA.”

...

There would be no need for the Legislature to specify that information subject to public access under the FIA [*Financial Information Act*] is not an unreasonable invasion of privacy if the intention of the Legislature in enacting Section 22(4)(e) was to include the position, functions or remuneration of all public body employees as that section would be redundant.⁴⁴

[55] I find that BC Hydro’s argument that s. 22(4)(e) can only apply to “particular” individuals and not to “whole sections” of employees does not assist it in this case, and I do not need to decide that question or whether s. 22(4)(g) is redundant. Each name in dispute in this case is clearly about a particular employee.

⁴³ BC Hydro’s initial submission at para. 54

⁴⁴ BC Hydro’s initial submission at paras. 52-53.

[56] The information in the record that BC Hydro disclosed is the job title for each Project employee. Thus, having access to the withheld names would reveal who is associated with which job title. I find that disclosing the names would reveal information about the position and functions of the individuals as employees of BC Hydro and s. 22(4)(e) applies. Past orders have also said that s. 22(4)(e) applies to the names and job titles of public body employees.⁴⁵

[57] Regarding s. 22(3)(d), BC Hydro says that the information reveals an employee's position and assignment at a point in time and it is "much like what would be found on an individual's resume."⁴⁶ BC Hydro also says that disclosing the names of the co-op students and articling students working on the Project would reveal their educational history.

[58] I do not agree with BC Hydro that the information is like what would be found in a resume. Resumes contain an actual history or chronology of how an individual's career has progressed. They describe the individual's unique background, qualifications and accomplishments. Disclosing the employees' names in this case would reveal only the employees' job titles at the time of the access request and the fact that they worked on the Project (along with about 200 other employees). Unlike a resume, the information that would be revealed here does not qualify, evaluate or colour how the individual performed their job or how their career progressed. I find that the information in dispute does not relate to employment or occupational history and s. 22(3)(d) does not apply.

[59] I also find that disclosing the names would not reveal information related to educational history under s. 22(3)(d). The names of the co-op or articling students appear in the context of a record about their employment with a public body. It is not information about what educational institution they attended, courses or grades, which is the type of information that previous orders have found relates to educational history.⁴⁷ In any case, the only names that I have found may not be withheld under s. 19(1)(a) are not associated with a co-op student or articling student job title.

[60] In conclusion, I find that s. 22(4)(e) applies to the names in the record and s. 22(3)(d) does not.

[61] Because s. 22(4)(e) applies, I find that disclosing the four names that cannot be withheld under s. 19(1)(a) would not be an unreasonable invasion of personal privacy. For clarity, I have highlighted those four names in a copy of the records that have been given to BC Hydro along with this order.

⁴⁵ Order F14-41, 2014 BCIPC 44 (CanLII) at para. 26; Order F14-45, 2014 BCIPC 48 (CanLII) at para. 44; Order F10-21, 2010 BCIPC 32 (CanLII) at para. 22.

⁴⁶ BC Hydro's initial submission at paras. 54-55

⁴⁷ For example, see Order F10-11, 2010 BCIPC 18 (CanLII), Order F16-01, 2016 BCIPC 1 (CanLII) and Order F20-06, 2020 BCIPC 7 (CanLII).

CONCLUSION

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

1. Subject to paragraph 3 below, I confirm BC Hydro's decision that it is authorized by s. 19(1)(a) to refuse to disclose the disputed information to the applicant.
2. BC Hydro is not required to refuse to disclose the information in dispute under s. 22.
3. BC Hydro is required to provide the applicant access to the four names highlighted in a copy of the records that have been given to BC Hydro with this order.

[63] Pursuant to s. 59(1) of FIPPA, BC Hydro is required to comply with this order by January 19, 2021.

December 3, 2020

ORIGINAL SIGNED BY

Elizabeth Barker, Director of Adjudication

OIPC File No.: F17-71525