



Order F21-09

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

Elizabeth Barker
Director of Adjudication

March 4, 2021

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Summary: An applicant requested reports about an incident that occurred on the tracks of a Sky Train station. The public body relied on several exceptions in the *Freedom of Information and Protection of Privacy Act* to refuse access to information in the records. The adjudicator found that s. 15(1)(l) (harm to communication system) and 22(1) (unreasonable invasion of third party personal privacy) applied to some of the disputed information, and ordered the public body to disclose the rest. The applicant claimed all the information should be disclosed under s. 25(1) (public interest disclosure), but the adjudicator found that provision did not apply.

Statute Considered: *Freedom of Information and Protection of Privacy Act*, ss. 15(1)(l), 22(1), 22(2)(a), 22(3)(a), 22(3)(d), 22(4), 25(1).

INTRODUCTION

[1] An applicant requested that the South Coast British Columbia Transportation Authority (TransLink) provide him with access to the incident report and the investigation report regarding an incident that occurred at a SkyTrain Station. TransLink provided records but withheld some information from them under ss. 13 (advice or recommendations), 15(1)(l) (harm to communication system) and 22(1) (unreasonable invasion of third party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant disagreed with TransLink's decision and requested that the Office of the Information and Privacy Commissioner (OIPC) conduct a review. The applicant also claimed that disclosure of the records was in the public

interest under s. 25(1) of FIPPA. Mediation did not resolve the issues and they proceeded to inquiry.

[3] After the inquiry commenced, TransLink withdrew its reliance on s. 13 and it also disclosed further information that had been severed under s. 22(1).

ISSUES

[4] The issues I will decide in this inquiry are:

1. Is TransLink required to disclose the information under s. 25(1)?
2. Is TransLink authorized to refuse to disclose the information under s. 15(1)(l)?
3. Is TransLink required to refuse to disclose the information under s. 22?

[5] The public body has the burden to prove it is authorized to withhold the information requested under s. 15.¹ The applicant has the burden to prove that disclosing any personal information in the records would not be an unreasonable invasion of third party personal privacy under s. 22. FIPPA does not say who has the burden of proving that s. 25 applies. However, previous BC orders have said that it is in the interests of both parties to provide the adjudicator with whatever evidence and argument they have regarding s. 25.²

DISCUSSION

Background

[6] The applicant's access request relates to an October 2015 incident at a SkyTrain station where an individual (Person) was hit by a train. The applicant, who is a journalist, says that he is concerned with issues related to suicide deaths on the SkyTrain, the trauma to drivers and bystanders, and how public bodies and the government respond.

[7] In Order F20-51, I decided an inquiry involving the same parties and the same type of records with the same type of information severed from them. While the specific SkyTrain incident is different, the rest of the inquiry is almost identical, including the applicant's inquiry submissions.³

Information in Dispute

[8] There are four partially severed records in dispute. As noted, they are identical to the type of records at issue in Order F20-51 and they have been

¹ Section 57 sets out the burden of proof for inquiries.

² For example, see: Order 02-38, 2002 CanLII 42472 (BC IPC) at para. 39.

³ The only significant difference is that s.15(1)(l) was not at issue in Order F20-51 because the applicant decided he no longer wanted that type of information. In the present case, the applicant says he wants access to that same type of information being withheld under s. 15(1)(l).

severed in almost the same way. Two are “Accident/Incident Report” forms, filled-in and signed by TransLink employees. The third record is a “Safety Investigation: In-Track, [code name]” form containing details and analysis of the incident. The fourth record has no title and appears to be a print-out from an electronic case management system.

[9] TransLink has provided the applicant with most of the information in the records, including the fact the Person is male, but is refusing to disclose the following:

- Parts of sentences that describe the Person’s actions and condition.
- The actions of TransLink staff and first responders with regards to the Person.
- The names of TransLink employees who were offered support and assistance and how they responded.
- The employee ID numbers for the two TransLink employees who responded to the incident and completed the Accident/Incident Report forms and the supervisor who reviewed the forms. The names and signatures of the employees and the supervisor have already been disclosed to the applicant.
- TransLink analysis and conclusion about whether the incident was accidental or intentional and whether drugs or alcohol were a factor.
- Alpha Codes (explained below), comprised of one and two-word phrases.

Public Interest, s. 25

[10] The applicant submits that TransLink should disclose the information in dispute pursuant to s. 25. Section 25 requires public bodies to proactively disclose information about a risk of significant harm or when disclosure is clearly in the public interest. Section 25 says:

- 25(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
 - (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
 - (b) the disclosure of which is, for any other reason, clearly in the public interest.
- (2) Subsection (1) applies despite any other provision of this Act.
- (3) Before disclosing information under subsection (1), the head of a public body must, if practicable, notify
 - (a) any third party to whom the information relates, and

(b) the commissioner.

[11] Section 25 imposes an obligation to disclose information even if there has been no access request. This obligation overrides every other section in FIPPA, including the mandatory exceptions to disclosure found in Part 2 and the privacy protections contained in Part 3. Given this broad override of privacy interests, the threshold for proactive disclosure under s. 25 is very high, and s. 25 only applies in the clearest and most serious situations.⁴

[12] The applicant's s. 25 submission and the type of records and information in dispute here are identical to what I considered in Order F20-51. TransLink's submission is also essentially the same. Therefore, without repeating what I said in Order F20-51, I make the same finding here. I find that s. 25 does not apply and TransLink is not required to disclose the information on that basis.

Harm under s.15(1)(l)

[13] Section 15(1)(l) says that the head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

[14] The standard of proof applicable to harms-based exceptions like s. 15(1)(l) is whether disclosure of the information could reasonably be expected to cause the specific harm. The Supreme Court of Canada has described this standard as “a reasonable expectation of probable harm” and “a middle ground between that which is probable and that which is merely possible.” The standard does not require proof that harm will occur on the balance of probabilities, but something well beyond the merely possible or speculative must be shown. In addition, the evidence needs to show that there is a clear and direct connection between disclosure of the withheld information and the alleged harm.⁵

Parties' submissions

[15] TransLink relies on s. 15(1)(l) to refuse the applicant access to one and two-word phrases that it calls “Alpha Codes.” TransLink's Manager of Information Access (Manager) provides the following evidence about the Alpha Codes:

⁴ See, for example, Order 02-38, 2002 CanLII 42472 (BC IPC) at paras. 45-46, citing Order No. 165-1997, [1997] BCIPD No. 22 at p. 3.

⁵ All principles in this paragraph can be found in *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para. 54 and *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at paras 197, 199, 206 and 210.

TransLink has never disclosed the Alpha Codes that it uses to the public. Alpha Codes form part of TransLink's communication system. They are used by SkyTrain attendants to communicate matters under investigation with control room staff when in a public setting. The purpose of Alpha Codes are [sic] to minimize the risk of causing panic to the public, particularly as many situations reported to TransLink staff turn out to be false alarms. By way of example, if members of the public at a SkyTrain station heard the word "bomb" over the intercom, that would likely cause significant panic and a risk of injury or death in the event of a stampede out of the station. The use of Alpha Codes enables SkyTrain attendants to communicate issues relating to public safety to other TransLink staff in a secure and reliable manner and to engage automatic responses without causing undue panic which could jeopardize the safety of the public.

As well, there is also a concern that unsubstantiated threats would spread quickly through social media reports.⁶

[16] The Manager says that one of the Alpha Codes is used to refer to an emergency that needs investigation and verification and the other Alpha Code refers to a suicide or attempted suicide.

[17] When she decided to sever the Alpha Codes from the records, the Manager says she "concluded that disclosure of Alpha Codes could reasonably be expected to cause significant harm to the security of TransLink's communications system and that the expectation of harm was not speculative because disclosure of the Alpha Codes could cause public panic in the event of an incident."⁷

[18] The applicant disputes that s. 15(1)(l) applies to the Alpha Codes. He says that TransLink "relies on speculation, without advancing any evidence."⁸

Findings, s. 15(1)(l)

[19] FIPPA does not define the term "system". However, previous orders have said that a system under s. 15(1)(l) includes "a series of clear security principles or procedures."⁹ I agree with that interpretation of the term "system" and find the Alpha Codes fit within it. The Alpha Codes are a procedure or scheme for communicating in confidence about emergencies and suicides in a public setting.

[20] I am also persuaded that disclosing the Alpha Codes could reasonably be expected to harm the system for communicating confidentially about emergencies and suicides when in a public setting. If the public knew what the

⁶ Manager's affidavit at paras. 5-6

⁷ Manager's affidavit at para. 7.

⁸ Applicant's submission at para. 15.

⁹ Order F16-52, 2016 BCIPC 58 (CanLII) at para. 37. See also F21-01, 2021 BCIPC 1 (CanLII) at para. 36.

Alpha Codes mean, the confidentiality of such communications would be completely undermined.

[21] I find that TransLink's evidence establishes a clear and direct connection between disclosure of the Alpha Codes and a reasonable expectation of harm to a communication system. TransLink has proven that it is authorized to refuse to disclose the Alpha Codes under s. 15(1)(l).

Third Party Personal Privacy, s. 22

[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.¹⁰

Personal information

[23] Section 22 only applies to personal information, so the first step in a s. 22 analysis is to determine if the information is personal information. FIPPA defines "personal information" 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."¹¹

[24] I described the information that TransLink withheld under s. 22(1) in paragraph 9 above. TransLink submits it is personal information because it is details of what happened to the Person, employee identification numbers, and information that identifies the employees who were offered assistance.

[25] I find that the information in dispute does not identify the Person. His name and contact information do not appear anywhere in the records. Further, the description of the Person and how he was dressed and behaved is characterless and nondescript.

[26] I considered whether one could accurately infer who the Person is by combining the disputed information with the already-disclosed information or other available information. The parties' submissions and evidence do not address whether this is possible, and it is not apparent to me that it would be. For instance, there is nothing to indicate that the Person's identity was ever made public. I am satisfied that disclosing the information in dispute could not

¹⁰ 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.

¹¹ See Schedule 1 of FIPPA for the definitions of personal information and contact information.

reasonably be expected to identify the Person. Therefore, I find that none of the information in dispute is the Person's personal information.

[27] However, I find that the balance of the information withheld under s. 22 is personal information. For instance, the ID numbers of the employees and supervisor are side-by-side with their names and signatures which have already been disclosed. Thus, the ID numbers are information about identifiable individuals. I also find that disclosing the names of the TransLink employees who were offered support and assistance, and how they responded, would reveal their personal information.

Not an unreasonable invasion, s. 22(4)

[28] The second step in the s. 22 analysis is to determine if the personal information falls into any of the types of information listed in s. 22(4). If so, its disclosure is not an unreasonable invasion of third party personal privacy.

[29] TransLink says none of the factors enumerated in s. 22(4) apply in this case.

[30] The applicant makes what I understand to be an argument that s. 22(4)(b) applies, saying:

Under section 22(4), there is no unreasonable invasion of a third party's personal privacy if there are compelling circumstances affecting anyone's health or safety.... The most compelling circumstance is to prevent further incidents and save lives.¹²

[31] Section 22(4)(b) says that a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if there are compelling circumstances affecting anyone's health or safety and notice of disclosure is mailed to the last known address of the third party.

[32] I find that s. 22(4)(b) does not apply for the same reason as in Order F20-51. Section 22(4)(b) is only relevant and applicable when a public body has decided to disclose a third party's personal information and is required to justify doing so.¹³ That is not the context here as TransLink is refusing to disclose the third party personal information.

[33] I also find that no other parts of s. 22(4) apply to the personal information in dispute.

¹² Applicant's submission at paras. 39-40.

¹³ Order F19-02, 2019 BCIPC 2 (CanLII) at paras 20-27; Order F20-37, 2020 BCIPC 43 (CanLII) at para. 92; Order F20-36, 2020 BCIPC 42 (CanLII) at paras. 63-64; Order F19-36, 2019 BCIPC 40 (CanLII) at paras. 84-85; Order F12-05, 2012 BCIPC 6 (CanLII) at para. 31.

Presumed unreasonable invasion of privacy, s 22(3)

[34] The third step in a s. 22 analysis is to determine whether s. 22(3) applies to the personal information. If so, disclosure is presumed to be an unreasonable invasion of the third party's personal privacy.

[35] Sections 22(3)(a) and (d) were raised by TransLink.¹⁴ 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

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,

...

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

[36] TransLink submits that s. 22(3)(a) is engaged in relation to the Person and it cites Order F07-20.¹⁵ In that case, the father of a man who committed suicide asked the Office of the Chief Coroner for a copy of his son's suicide note. The adjudicator found that the suicide note shed light on the deceased's state of mind and related to his medical or psychological condition or history, so s. 22(3)(a) applied.

[37] I find that the personal information in the present case is not the same as the information in Order F07-20. The personal information here is not about any identifiable individual's medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation, so s. 22(3)(a) does not apply.

[38] TransLink also submits that s. 22(3)(d) applies to the employee and supervisor ID numbers and the identity of the employees who were offered assistance and support.¹⁶

[39] I find that the employee ID numbers in this case are unique identifiers that relate to the employees' employment. Previous OIPC orders have concluded that such numbers are part of an employee's employment history under s. 22(3)(d),¹⁷ and I make the same finding here.

¹⁴ The applicant's submission does not discuss s. 22(3).

¹⁵ Order F02-70, 2007 CanLII 52745 (BC IPC) at para. 16. The adjudicator found that the Coroner must refuse access to the suicide note under s. 22(1).

¹⁶ TransLink's initial submission at para. 34.

¹⁷ Order F20-51, 2020 BCIPC 60 (CanLII) at para. 44; Order F20-13, 2020 BCIPC 15 (CanLII) at para. 55; Order F14-41, 2014 BCIPC 44 (CanLII) at para. 46; Order F15-17, 2015 BCIPC 18 (CanLII) at para. 37; Order 03-21, 2003 CanLII 49195 (BCIPC) at paras. 25-26 and Order No. 161-1997, 1997 CanLII 1515 (BC IPC) at p. 5.

[40] However, I do not think that s. 22(3)(d) applies to the identity of the employees who were offered assistance and support. TransLink did not explain how this information is about their employment, occupational or educational history and it did not identify orders that have said that this is the type of information to which s. 22(3)(d) applies.

Relevant circumstances, s. 22(2)

[41] The final step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those listed in s. 22(2).

[42] TransLink submits s. 22(2)(i) applies, which deals with how long a person has been deceased. I find that s. 22(2)(i) is not relevant here because I found the information respecting the Person is not personal information.¹⁸ As described above, the personal information in dispute is employee and supervisor ID numbers and the information that identifies the TransLink employees who were offered support and assistance.

[43] The applicant says, “The most compelling circumstance is to prevent further incidents and save lives.”¹⁹ He submits that danger to public health and safety can be prevented by full disclosure of TransLink’s records about incidents of injury and fatality.²⁰ I am not persuaded by that argument. I cannot see how knowledge of the specific personal information in dispute in this case would promote or reveal anything about public health and safety.

[44] There are no circumstances that I consider weigh in favour of disclosing the personal information to the applicant.

Summary, s. 22

[45] I find that only some of the information TransLink withheld under s. 22(1) is about identifiable individuals and qualifies as personal information. The personal information is the ID numbers of employees and a supervisor and the information that identifies the TransLink employees who were offered support and assistance. I have highlighted the information that I find is not personal information in a copy of the records TransLink will receive with this order.

[46] Section 22(4) does not apply to any of the personal information. Section 22(3)(d) applies to the ID numbers.

¹⁸ TransLink’s initial submission at paras. 35-37.

¹⁹ Applicant’s submission at para. 40.

²⁰ Applicant’s submission at para 45. Although he does not mention s. 22(2)(a) directly, he seems to be alluding to it. Section 22(2)(a) is about disclosure that is desirable for the purpose of subjecting the public body’s activities to public scrutiny.

[47] There are no relevant circumstances that weigh in favour of disclosing any of the personal information. Therefore, I find that TransLink must refuse to disclose it under s. 22(1).

CONCLUSION

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

1. I confirm TransLink's decision that it is not required to disclose the information in dispute under s. 25(1).
2. I confirm TransLink's decision to refuse to disclose information under s. 15(1)(l).
3. Subject to item 4 below, I confirm, in part, TransLink's decision to refuse to disclose information under s. 22(1).
4. TransLink is required to provide the applicant access to the information that is not personal information, which has been highlighted in a copy of the records provided to TransLink with this order.
5. TransLink must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records it provides to the applicant.

[49] Pursuant to s. 59(1) of FIPPA, TransLink is required to comply with this order by April 19, 2021.

March 4, 2021

ORIGINAL SIGNED BY

Elizabeth Barker, Director of Adjudication

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