



Order F21-34

**MINISTRY OF CITIZENS' SERVICES
AND
MINISTRY OF FINANCE, PUBLIC SERVICE AGENCY**

Ian C. Davis
Adjudicator

August 30, 2021

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Summary: The applicant made requests under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Ministry of Finance and Ministry of Citizens' Services (Ministries) for access to records containing any and all allegations made by a named individual against the applicant, either in writing or in an audio recording. The Ministries released the responsive records to the applicant, but withheld some records and information under s. 22(1) (unreasonable invasion of a third party's personal privacy) of FIPPA. The applicant requested a review of the Ministries' decisions. The adjudicator concluded that the Ministries were required to refuse to disclose some of the disputed information under s. 22(1), including most of two audio recordings, but were required to disclose the balance of the disputed information to the applicant.

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

INTRODUCTION

[1] This inquiry concerns two identical requests for access to records under the *Freedom of Information and Protection of Privacy Act* (FIPPA). The applicant made one request to the Public Service Agency, which is part of the Ministry of Finance, and the other to the Ministry of Citizens' Services (collectively, the Ministries). In both requests, the applicant requested "any and all allegations" made by a named individual against the applicant, either in writing or in an audio recording.¹

¹ Investigator's Fact Reports at para. 1.

[2] The Ministries released the responsive records to the applicant, but severed some records and information under s. 22(1) (unreasonable invasion of a third party's personal privacy) of FIPPA.²

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministries' decisions. Mediation did not resolve the matter and it proceeded to inquiry. The applicant made his own inquiry submissions and the Ministries made joint submissions through legal counsel.

ISSUE AND BURDEN OF PROOF

[4] The only issue to be decided in this inquiry is whether the Ministries are required under s. 22(1) to refuse to disclose the information in dispute. The burden is on the applicant to prove that disclosure of the information in dispute would not be an unreasonable invasion of a third party's personal privacy.³ However, the Ministries have the initial burden of proving that the information in dispute is personal information under s. 22(1).⁴

BACKGROUND

[5] The applicant is a former employee of the Ministry of Citizens' Services.⁵ An individual (complainant) alleged that he had engaged in workplace misconduct. The complainant is the individual the applicant named in the access requests.

[6] The Corporate Information and Records Management Office (CIRMO) of the Ministry of Citizens' Services investigated the complainant's allegations. As part of the investigation, CIRMO's Executive Director and a manager (investigators)⁶ interviewed the complainant. The investigators recorded the interview on two audio files. Those audio recordings are responsive to the applicant's access requests and are at issue in this inquiry.

² Initially, the Ministries responded to the two access requests by stating that, pursuant to s. 8(2) of FIPPA, they could neither confirm nor deny the existence of the requested records. The applicant asked the OIPC to review the Ministries' s. 8(2) decisions and the matter proceeded to inquiry. At inquiry, the Ministries withdrew their reliance on s. 8(2) and released the responsive records to the applicant with information severed under s. 22(1). The OIPC cancelled the inquiry relating to the Ministries' s. 8(2) decisions and the applicant asked the OIPC to review the Ministries' s. 22(1) severing decisions. Those are the decisions now in dispute in this inquiry.

³ FIPPA, s. 57(3)(a).

⁴ Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 9-11.

⁵ The information in this background section is based on the Investigator's Fact Reports and the evidence, which I accept, in Affidavit #1 of KG, Affidavit #1 of JF, Affidavit #1 of ES and Affidavit #1 of KB.

⁶ I can see from the records that there were some other government employees, clearly in supervisory roles, involved in conducting or facilitating the investigation. When I refer to the "investigators", I mean those other employees as well, where applicable.

[7] The investigators also interviewed the applicant as part of the investigation and they recorded the interviews. These audio recordings are not records in dispute in this inquiry. However, the applicant attached parts of these recordings to his submissions.

[8] The Ministries say the investigation ultimately substantiated the allegations against the applicant. However, the applicant describes the investigation as “bogus” and says the majority of the allegations were not substantiated.⁷

[9] The applicant later resigned from the public service.

[10] After resigning, the applicant made numerous access requests to the Ministries under FIPPA, many of which relate to his former colleagues. In early 2019, the Ministries requested authorization from the OIPC to disregard some of the applicant’s access requests, including the two at issue here, on the basis that the requests were frivolous or vexatious within the meaning of s. 43(b) of FIPPA.⁸ On February 15, 2019, in Order F19-08, an OIPC adjudicator denied the Ministries’ s. 43(b) request.⁹

[11] On October 1, 2018, the applicant made the two access requests at issue in this inquiry.

RECORDS AND INFORMATION IN DISPUTE

[12] Based on my review of the records and the Ministries’ affidavit evidence, I find that the records in dispute are:

- emails containing the complainant’s allegations against the applicant and related background information, primarily including the complainant’s account of statements the applicant made to the complainant at work;
- two audio recordings of the interview of the complainant;
- an email between the investigators attaching the two audio recordings of the complainant’s interview (audio recordings email);
- a document titled “Performance Tracker” (performance tracker document);

⁷ Applicant’s submissions at p.1, paras. 2 and 4.

⁸ Section 43(b) of FIPPA says that if the head of a public body asks, the commissioner may authorize the public body to disregard requests under s. 5 that are “frivolous or vexatious”.

⁹ Order F19-08, 2019 BCIPC 10 (CanLII).

- an interview script the investigators created and used for the interview of the complainant, which is based on and reproduces some of the allegations; and
- handwritten notes the investigators took during the interview of the complainant.¹⁰

[13] The Ministries are withholding the interview script, the notes, the audio recordings email and the audio recordings in their entirety.

[14] Based on my review of the records and the Ministries' evidence, I find that the complainant provided her allegations to the investigators in certain emails and in the interview, which is recorded in the audio recordings. I also find that various other records reproduce or summarize, and therefore reveal, the complainant's allegations, specifically the interview notes and parts of the investigators' interview questions and the interview script. When I refer to the complainant's allegations below, I mean all the information in the records just mentioned that constitutes the allegations or would reveal them.

[15] As for the performance tracker document, I accept the Ministries' evidence that it is a compilation of chronological records created by the applicant's direct supervisor "to track what were [his employer's] ongoing concerns relating to [the applicant's] attendance and performance."¹¹ The information withheld from this document is the names of government employees other than the applicant, online instant messages relating to them and their work statuses at certain times.

THIRD-PARTY PERSONAL PRIVACY – SECTION 22

[16] Section 22(1) states that a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[17] The Ministries submit that s. 22(1) applies to the information in dispute because disclosing that information would be an unreasonable invasion of third-party personal privacy.¹²

[18] As I understand the applicant's position, he submits that s. 22(1) does not apply to the disputed information. His main point is that he already knows some or all of the disputed information, so disclosing the information under FIPPA

¹⁰ The majority of the records in dispute are the records responsive to the request to the Ministry of Citizens' Services. However, there is some overlap in the responsive records for each request. For simplicity, and since the Ministries made joint submissions, I will refer throughout to the "Ministries" collectively, even though some records are only responsive to one request.

¹¹ Affidavit #1 of JF at para. 19.

¹² Ministries' initial submissions at paras. 80 and 85.

would not be an unreasonable invasion of third-party personal privacy.¹³ He also says that the Ministries are required to disclose information that pertains to him.¹⁴ Further, the applicant asks the Commissioner “to compel the Ministries to comply with the FIPPA and require them to do a line by line review of the records, instead of taking the lazy route of redacting information in its entirety.”¹⁵

[19] I turn now to the s. 22 analysis. The analytical approach is well established.¹⁶ I apply it below.

Personal information

[20] Since s. 22(1) only applies to personal information, the first step is to determine whether the disputed information is personal information. FIPPA defines personal information as “recorded information about an identifiable individual other than contact information”.¹⁷ Information is “about an identifiable individual” when it is “reasonably capable of identifying an individual, either alone or when combined with other available sources of information.”¹⁸

[21] FIPPA defines contact information 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”.¹⁹ The parties did not argue that any of the disputed information is contact information and, in my view, none of the information is contact information.

[22] The Ministries submit that the disputed information is personal information. Specifically, the Ministries submit that the disputed information “contains recorded information of various third parties that worked at [the applicant’s workplace] at the time of the creation of the Records”, and that most of the information is “jointly personal information of the Applicant and of a third party.”²⁰

[23] The applicant did not specifically address the definition of personal information.

¹³ Applicant’s submissions at p. 2, paras. 1-3.

¹⁴ Applicant’s submissions at p. 2, para. 4.

¹⁵ Applicant’s submissions at p. 3, para. 6. The applicant also asks the Commissioner to “chastise the Ministries for playing procedural games by undermining [his] right of access”: p. 3, para. 7. This allegation is not stated as an issue in this inquiry and it is not relevant to deciding the s. 22(1) issue, so I decline to address it.

¹⁶ See, for example, Order F15-03, 2015 BCIPC 3 (CanLII) at para. 58.

¹⁷ Schedule 1 of FIPPA.

¹⁸ Order F19-13, 2019 BCIPC 15 (CanLII) at para. 16 citing Order F18-11, 2018 BCIPC 14 (CanLII) at para. 32.

¹⁹ Schedule 1 of FIPPA.

²⁰ Ministries’ initial submissions at para. 37.

[24] The Ministries are withholding information such as page numbers, footers and other formatting information in the interview transcript and the handwritten notes. This information is clearly not personal information. Although this information provides nothing of substance to the applicant, he is entitled to it and it must be disclosed. This information provides the applicant a general sense of the records rather than entirely blacked-out pages.

[25] I find that the other disputed information relates to allegations against the applicant and the investigation into his actions, so the information is about him and is his personal information. I find that most of this information is also the personal information of various third parties, including the complainant, because it is about their interactions with the applicant or their involvement in the investigation.²¹ I find that the audio recordings of the investigators' interview of the complainant is the investigators' and the complainant's personal information, as well as the applicant's, because what they say in relation to the applicant is about them and can identify them.²²

[26] The disputed information also includes names, online instant messages and work statuses relating to other government employees. All of this information is the personal information of the other government employees. Some of it is also the applicant's personal information because it refers to him and appears in the performance tracker document that tracks his work performance.

[27] In short, I conclude that most of the disputed information is the personal information of one or more identifiable individuals.

No unreasonable invasion of privacy – s. 22(4)

[28] The next step is to analyze s. 22(4), which sets out various circumstances in which disclosure of personal information is not an unreasonable invasion of a third party's personal privacy.

[29] The Ministries only raise s. 22(4)(e), but say it does not apply to the disputed information in the workplace investigation context of this case.²³ The applicant did not specifically address s. 22(4).

[30] Section 22(4)(e) states that a disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body.

²¹ For a similar finding, see Order F19-41, 2019 BCIPC 46 (CanLII) at para. 55.

²² For related findings, see, for example, Order PO-3951, 2019 CanLII 45338 (ON IPC) at para. 31; Order F13-12, 2013 BCIPC 15 (CanLII) at para. 8; *Kennedy v. RHC*, 2021 NBQB 151 at para. 32.

²³ Ministries' initial submissions at paras. 38-40.

[31] I accept that, other than the applicant, the government employees mentioned in the records are third parties for the purposes of the s. 22 analysis.²⁴ This is because, in relation to an access request under FIPPA, a third party is “any person, group or persons or organization other than (a) the person who made the request, or (b) a public body”.²⁵

[32] The question is whether any of the disputed information is about the third parties’ positions, functions or remuneration as government employees. Past orders say that the context in which personal information appears plays a significant role in determining whether s. 22(4)(e) applies.²⁶ In particular, s. 22(4)(e) applies to “objective, factual statements about what the third party did or said in the normal course of discharging her or his job duties, but not qualitative assessments or evaluations of such actions.”²⁷

[33] Some records contain the names of third-party government employees and details about their positions such as their job title and the branch, office and/or ministry they work in.²⁸ These records also include information that relates to government employees acting in the normal course of discharging their job duties as supervisors or investigators.²⁹ In my view, this information is about these employees’ positions and functions as public body employees, so s. 22(4)(e) applies and the information must be disclosed.

[34] However, I find s. 22(4)(e) does not apply to the balance of the disputed information. This information relates to and appears in the context of a workplace investigation assessing the applicant’s actions. Some of the information is what certain parties did or said in the workplace. However, viewed in context, the information is the third parties’ evidence about the applicant’s conduct and does not describe the third parties in the “normal course” of discharging their job duties. Accordingly, I am not satisfied that the balance of the disputed information is about the third parties’ positions, functions or remuneration under s. 22(4)(e).

[35] I have considered the other parts of s. 22(4) and find that none apply here.

Presumptions of unreasonable invasion of privacy – s. 22(3)

[36] The third step in the s. 22 analysis is to determine if any of the presumptions in s. 22(3) apply. Section 22(3) sets out various circumstances in

²⁴ See, for example, Order 00-53, 2000 CanLII 14418 (BC IPC) at p. 7 (cited to CanLII PDF).

²⁵ Schedule 1 of FIPPA, definition of “third party”.

²⁶ Order F14-45, 2014 BCIPC 48 (CanLII) at para. 45.

²⁷ Order 01-53, 2001 CanLII 21607 (BC IPC) at para. 40. See also Order 02-57, 2002 CanLII 42494 (BC IPC) at para. 36; Order F10-21, 2010 BCIPC 32 (CanLII) at paras. 22-24.

²⁸ Public Service Agency Records at pp. 1 and 4; Ministry of Citizens’ Services Records at pp. 1 and 18.

²⁹ *Ibid*; Ministry of Citizens’ Services Records at p. 12.

which a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy.

[37] The Ministries argue that s. 22(3)(d) applies.³⁰ That section states that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to the third party's employment, occupational or educational history. Specifically, the Ministries submit that the complainant's allegations are evidence and witness statements that relate to the complainant's employment history under s. 22(3)(d).³¹

[38] The applicant mentions s. 22(3)(d), but does not specifically address whether the disputed information relates to employment, occupational or educational history.

[39] In general, in the context of a workplace investigation, information about the conduct of the individual under investigation (i.e., the subject of the investigation) relates to their employment history under s. 22(3)(d). If someone other than the subject requests access to this information, then the subject is a third party under FIPPA and disclosure of the information is presumed to be an unreasonable invasion of the subject's third-party personal privacy.

[40] In this case, the disputed information clearly relates to the applicant's employment history because he was the subject of the investigation and the Ministries were evaluating his workplace conduct. However, this consideration does not weigh against disclosure in this case because the applicant is requesting access to his own employment-related information, not someone else's.

[41] The question is whether the disputed information relates to the employment histories of the third parties, specifically the complainant and the other government employees mentioned in the records.

[42] I find that the complainant's allegations and evidence against the applicant relate to the complainant's employment history under s. 22(3)(d). In Order 01-53, former Commissioner Loukidelis stated that "a complainant's allegations about what another person said or did to the complainant in the workplace can also be seen as the complainant's personal information, as information related to the complainant's employment history."³² Here, the complainant's allegations are about what the applicant said and did to the complainant in the workplace.

³⁰ Ministries' initial submissions at paras. 42-55.

³¹ Ministries' initial submissions at paras. 50-51.

³² Order 01-53, 2001 CanLII 21607 (BC IPC) at para. 38. See also Order F20-37, 2020 BCIPC 43 (CanLII) at para. 99; Order F21-08, 2021 BCIPC 12 (CanLII) at paras. 132-137; Order F06-11, 2006 CanLII 25571 (BC IPC) at paras. 50-51.

[43] However, I am not persuaded that the information about the other government employees relates to their employment histories under s. 22(3)(d). These third parties were not complainants or the subjects of the investigation. I do not see any indication in the records that the Ministries were evaluating or questioning the workplace conduct of these third parties, so I am not satisfied that s. 22(3)(d) applies to the information about them.

[44] To summarize, I accept that s. 22(3)(d) applies to the complainant's allegations as they appear in certain emails, the interview script, the handwritten notes from the interview and the audio recordings of the interview. However, I do not accept that s. 22(3)(d) applies to the other disputed information in the records.

[45] The parties did not raise any other s. 22(3) presumptions and I am satisfied that no others apply in this case.

All relevant circumstances – s. 22(2)

[46] The final step in the analysis is to determine whether disclosure of the disputed information would be an unreasonable invasion of a third party's personal privacy, considering all relevant circumstances including those listed in s. 22(2). It is at this stage that the presumption under s. 22(3)(d) that I found applies to the allegations may or may not be rebutted.

[47] The parties raise ss. 22(2)(a), 22(2)(e) and 22(2)(f). In my view, s. 22(2)(h) and other unlisted factors are also relevant to consider. The parties also address whether the applicant knows some of the disputed information, which is a relevant factor that previous orders have considered and that I will consider below.³³

Public scrutiny – s. 22(2)(a)

[48] Section 22(2)(a) states that a relevant circumstance to consider under s. 22(1) is whether disclosure of the personal information in dispute is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny.

[49] The Ministries addressed s. 22(2)(a), but submit that it does not apply.³⁴ The Ministries argue that disclosing the disputed information would subject the complainant and other third parties to public scrutiny, but would not be desirable for subjecting the activities of the Ministries to public scrutiny. The Ministries say

³³ Ministries' initial submissions at paras. 56-74; Ministries' reply submissions at paras. 12-21; applicant's submissions at p. 2, paras. 1-4.

³⁴ Ministries' initial submissions at paras. 57-58.

the applicant may want the disputed information to scrutinize his former colleagues, but not to scrutinize the Ministries.

[50] The applicant did not specifically address s. 22(2)(a).

[51] In my view, s. 22(2)(a) does not apply to the disputed information. I do not see any indication in the records that s. 22(2)(a) applies here. Without more from the applicant, I am not persuaded that disclosure of the disputed information would be desirable to subject the activities of the Ministries to public scrutiny.

Unfair exposure to harm – s. 22(2)(e)

[52] Section 22(2)(e) provides that a relevant circumstance to consider under s. 22(1) is whether the third party will be exposed unfairly to financial or other harm.

[53] The Ministries submit that s. 22(2)(e) applies and weighs against disclosure of the disputed information.³⁵ The Ministries argue that the applicant's current and past access requests, and their wording, demonstrate that the applicant is "using the access to information process to target and harass certain ... employees as well as other government employees who have worked on matters relating to the Applicant."³⁶ The Ministries say they have taken steps to limit their staff's contact with the applicant. The Ministries argue that disclosing the disputed information would unfairly expose third parties to "other harm" under s. 22(2)(e), specifically serious mental distress, anguish or harassment.

[54] The applicant did not specifically address s. 22(2)(e).

[55] Previous orders establish that harm under s. 22(2)(e) can include mental harm, in the form of serious mental distress or anguish. However, embarrassment or upset or having a negative reaction do not rise to the level of mental harm.³⁷

[56] I accept that the Ministries' evidence shows a certain level of hostility or ill will on the part of the applicant toward the Ministries and the applicant's former colleagues. However, in Order F19-08, an adjudicator already rejected the Ministries' claim that the applicant's access requests were vexatious in the sense of being made in bad faith or with an intent to harass. I am not persuaded that circumstances have materially changed since the decision in Order F19-08 and that the applicant intends to use the disputed information to harass his former colleagues.

³⁵ Ministries' initial submissions at paras. 59-69.

³⁶ Ministries' initial submissions at para. 65.

³⁷ Order F20-37, 2020 BCIPC 43 (CanLII) at para. 120.

[57] Further, even if the applicant does seek to harm third parties, I am not persuaded that the Ministries have established a sufficient connection between harm and disclosure of the disputed information. It is clear to me from the evidence, which I discuss further below, that the applicant already knows the identities of the complainant and most of the other government employees involved in the background circumstances, as well as the allegations. As a result, the applicant already has sufficient information to attempt to cause harm to third parties, if that is his intent. I do not accept that disclosing the specific information in dispute here will further enable the applicant to unfairly expose third parties to harm.³⁸

[58] I conclude that s. 22(2)(e) does not weigh in favour of withholding the disputed information.

Information supplied in confidence – s. 22(2)(f)

[59] Section 22(2)(f) provides that a relevant circumstance to consider under s. 22(1) is whether the personal information has been supplied in confidence.

[60] The Ministries argue that the disputed information was supplied in confidence.³⁹ The Ministries provided sworn evidence that:

- in accordance with guidance from the Public Service Agency, CIRMO's practice is to treat complaints by its employees against co-workers as highly confidential so that employees feel safe in coming forward with workplace issues;
- in a workplace investigation, CIRMO only provides the least amount of personal information of a complainant to co-workers named in the complaint that is necessary to investigate the complaint;
- the investigators provided the applicant with "certain details" of the complainant's allegations that they believed were necessary to perform the investigation;
- at both the start and end of the interview of the complainant, the investigators informed the complainant of the confidentiality of the investigation process;
- during the interviews with the applicant, the investigators informed him that the investigation is confidential and he is not to discuss the investigation with individuals that were not present at the interviews.⁴⁰

³⁸ For similar reasoning, see, for example Order 04-22, 2004 CanLII 45532 (CanLII) at para. 53.

³⁹ Ministries' initial submissions at paras. 70-74.

⁴⁰ Affidavit #1 of JF at paras. 10-12 and 14; Affidavit #1 of KB at paras. 6-14.

[61] The applicant did not specifically address s. 22(2)(f).

[62] I will discuss the complainant's allegations first.

[63] In Order 01-30, the applicant requested access to a letter authored by a third party that contained allegations against her. An employee of the public body had previously read the letter aloud to the applicant. Former Commissioner Loukidelis found that the personal information in the letter was supplied in confidence within the meaning of s. 22(2)(f), "but that the quality of confidentiality was later diminished, if not lost", when the information was read aloud to the applicant.⁴¹

[64] I make a similar finding here. I accept the Ministries' evidence that the complainant supplied the allegations to the investigators in the context of a confidential investigation. However, I also accept the Ministries' evidence that the investigators later disclosed details of the allegations to the applicant in the course of the investigation.⁴² As a result, I find, as in Order 01-30, that the quality of confidentiality of the allegations was diminished or lost when details were disclosed to the applicant. However, I will consider this factor in relation to the applicant's knowledge below.

[65] As for the disputed information other than the allegations, I find that s. 22(2)(f) does not apply or weigh in favour of disclosure. This information is certain parts of the interview script, the audio recordings email and the performance tracker document. I do not see how this information is "supplied". For example, based on the Ministries' evidence and my review of the performance tracker document, I find the information in that record was gathered and created by the supervisor, not "supplied" by others.

[66] I conclude that s. 22(2)(f) weighs in favour of withholding the allegations,⁴³ but not the balance of the disputed information.

Unfair damage to reputation – s. 22(2)(h)

[67] Section 22(2)(h) states that a relevant circumstance to consider under s. 22(1) is whether the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant. The parties did not explicitly address this factor. However, in my view, it is relevant and relates to the Ministries' arguments, so I must consider it.

⁴¹ Order 01-30, 2001 CanLII 21584 (BC IPC) at para. 17.

⁴² Affidavit #1 of KB at para. 10.

⁴³ For a similar finding, see Order F05-34, 2005 CanLII 39588 (BC IPC) at paras. 45-53.

[68] The Ministries emphasize that disclosure of the disputed information under FIPPA is, in effect, disclosure to the world.⁴⁴ That is because FIPPA imposes no obligations on access applicants regarding what they may do with the information they receive.

[69] I accept the Ministries' point that disclosure under FIPPA is disclosure to the world, not just the applicant. I accept that, although the applicant knows the complainant's identity and the allegations, the world does not know this information.

[70] In my view, disclosure of the complainant's allegations may unfairly damage the complainant's reputation under s. 22(2)(h). I must analyze disclosure of the allegations as disclosure to the world, including, for example, the complainant's current and former co-workers, not just to the applicant. I accept that if these individuals found out that the complainant made a formal complaint about a former colleague, they may view that negatively and lose trust in the complainant, resulting in damage to the complainant's workplace reputation. I am satisfied that this would be "unfair" to the complainant because I accept that the complainant made the complaint confidentially and reasonably expected that the allegations would not be disclosed publicly.

[71] In my view, the workplace context of this case makes public disclosure of the identity of the complainant and the allegations significantly different than situations, for example, where a member of the public makes a complaint about a public body employee.⁴⁵ The latter situations do not have the same workplace reputational repercussions.

[72] I conclude that s. 22(2)(h) weighs against disclosure in this case.

Applicant's knowledge

[73] Past orders have considered the applicant's knowledge of the disputed information as a relevant circumstance under s. 22(2).⁴⁶

[74] The applicant submits that he already knows "the details of the allegations" because the Ministries disclosed that information to him in interviews, which were recorded.⁴⁷ The applicant submitted parts of the recordings as evidence.

⁴⁴ Order 03-35, 2003 CanLII 49214 (BC IPC) at para. 31 (my emphasis).

⁴⁵ See, for example, Order F17-01, 2017 BCIPC 1 (CanLII) at paras. 70-74.

⁴⁶ See, for example, Order F21-08, 2021 BCIPC 12 (CanLII) at para. 192 (and the cases cited there).

⁴⁷ Applicant's submissions at p. 2, para. 1.

[75] The Ministries submit that the applicant's knowledge does not weigh in favour of disclosure in this case.⁴⁸ The Ministries emphasize again that disclosure of the disputed information is disclosure to the world. However, the Ministries concede that, during the investigators' interviews with the applicant, the investigators provided the applicant with "certain details of the allegations".⁴⁹

[76] I find that the applicant already knows the complainant's name and most, if not all, of the allegations. The name is disclosed in the records⁵⁰ and the investigators explicitly disclosed it to the applicant in the interviews. The Ministries acknowledge that the applicant knows "certain details of the allegations". It is also clear to me from my review of the audio recordings of the applicant's interviews that he already knows most, if not all, of the allegations because the investigators put those allegations to the applicant during the interviews.

[77] Past orders, including ones cited by the Ministries, consistently find that an applicant's knowledge of allegations and complaint details against them weighs in favour of disclosure of that information under s. 22(2).⁵¹ I make a similar finding here. The applicant already knows the complainant's name and details of the allegations, so this weighs in favour of disclosure.

[78] However, I am not satisfied that the applicant knows the disputed information in the records other than the complainant's name and allegations, so the applicant's knowledge does not weigh in favour of disclosing that information.

[79] Accordingly, I find that the applicant's existing knowledge weighs in favour of disclosing the complainant's name and allegations. However, this factor does not weigh in favour of disclosing the rest of the disputed information.

Applicant's personal information

[80] Previous orders have considered as a relevant circumstance under s. 22(2) whether the disputed information is the applicant's personal information.⁵² As former Commissioner Loukidelis stated in Order 01-54, "an applicant will rarely be denied access to her or his own personal information in order to protect third-party personal privacy."

⁴⁸ Ministries' reply submissions at paras. 12-21.

⁴⁹ Affidavit #1 of KB at para. 10.

⁵⁰ Ministry of Citizens' Services Records at p. 1.

⁵¹ Order 01-30, 2001 CanLII 21584 (BC IPC) at para. 20; Order F05-34, 2005 CanLII 39588 (BC IPC) at para. 57 (see also paras. 54-70); Order F17-01, 2017 BCIPC 1 (CanLII) at paras. 70-74. See also Order F06-11, 2006 CanLII 25571 (BC IPC); Order F18-30, 2018 BCIPC 33 (CanLII) at para. 42.

⁵² See, for example, Order F18-30, 2018 BCIPC 33 (CanLII) at para. 41; Order F20-13, 2020 BCIPC 15 (CanLII) at para. 73.

[81] Most of the disputed information is the joint personal information of the applicant and third parties. As a result, I find this consideration weighs in favour of disclosure of this information, although its weight is diminished because the information is not solely the applicant's personal information.⁵³

Sensitivity of the information

[82] Finally, another relevant factor that previous orders have considered under s. 22(2) is the sensitivity of the disputed information.⁵⁴

[83] In my view, the allegations were supplied confidentially, but I do not find their substance particularly sensitive. They do not include intimate details about personal lives, for example. In addition, I find that some of the disputed information is fairly innocuous and lacking in substance, such as generic or template language in the interview script and audio recordings, email headers, certain parts of the performance tracker document and the audio recordings email. In my view, the lack of sensitivity of this information weighs in favour of its disclosure.

Unreasonable invasion of privacy – s. 22(1)

[84] Given my analysis above and having regard to all relevant circumstances, I conclude as follows.

[85] In accordance with s. 22(4)(e), it is not an unreasonable invasion of third-party personal privacy for the Ministries to disclose: names of the applicant's supervisor and the investigators; details about their positions such as their job titles and the branch, office and/or ministry they work in; and information relating to these government employees acting in the normal course of discharging their job duties as investigators and supervisors.

[86] I am satisfied that it would be an unreasonable invasion of the complainant's personal privacy to disclose the complainant's name and the allegations as recorded in certain emails, parts of the interview script, most of the audio recordings and the handwritten notes.⁵⁵ The presumption in s. 22(3)(d) applies to this information, it was supplied in confidence under s. 22(2)(f), and disclosing it to the world may unfairly damage the complainant's workplace

⁵³ See, for example, Order F15-52, 2015 BCIPC 55 (CanLII) at para. 45.

⁵⁴ See, for example, Order F18-30, 2018 BCIPC 33 (CanLII) at para. 43; Order F20-13, 2020 BCIPC 15 (CanLII) at para. 74.

⁵⁵ The Ministries disclosed the complainant's name on p. 1 of the Ministry of Citizens' Services records and p. 1 of the Ministry of Finance, Public Service Agency records, but withheld that information elsewhere. For the reasons provided, I am satisfied that s. 22(1) applies to the complainant's name, so it must be withheld. I have highlighted in blue in a copy of the records that will be provided to the Ministries with this order the information that should have and can be severed under s. 22(1).

reputation under s. 22(2)(h). I find it would unreasonably invade the complainant's personal privacy to publicly disclose under FIPPA information that the complainant supplied confidentially in the workplace. In my view, the applicant has not met his burden to establish that his knowledge of the information and the fact that the information is his joint personal information outweigh the above factors.

[87] I am also satisfied that it would be an unreasonable invasion of third-party personal privacy to disclose most of the disputed third-party personal information in the performance tracker document. That personal information is about government employees whose involvement in the investigation was minor and incidental, and I am not satisfied the applicant already knows this personal information.

[88] However, I am not persuaded that it would be an unreasonable invasion of third-party personal privacy to disclose fairly innocuous information to which no s. 22(3) presumption applies. This information is: generic or template language in the interview script; general introductory, administrative and concluding comments in the audio recordings of the complainant's interview that would not reveal the complainant's identity; certain parts of the performance tracker document; and most of the audio recordings email.

Summary of the information – s. 22(5)

[89] Section 22(5)(a) of FIPPA states that if a public body refuses to disclose personal information supplied in confidence about an applicant, the public body must give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information.

[90] I found above that the complainant's allegations were supplied in confidence. However, I am satisfied that a summary of that information cannot be prepared without disclosing the identity of the complainant. Again, the applicant knows the complainant's identity, but the public does not. The allegations are fact-specific and only involve a few select individuals. I am satisfied that someone could accurately infer the complainant's identity even from a summary. At any rate, as discussed above, I am satisfied that the applicant received an adequate summary and even details of the allegations in the course of the investigation, so a further summary under s. 22(5) is not required here.

CONCLUSION

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

1. Subject to item 2 below, I require the Ministries to refuse to disclose to the applicant the information withheld under s. 22(1).
2. The Ministries are not required under s. 22(1) to refuse to disclose to the applicant:
 - 0:00 to 00:30 and 00:36 to 01:26 of the first audio recording marked Part 1;
 - 00:00 to 00:10 and 32:24 to 32:40 of the second audio recording marked Part 2; and
 - the information I have highlighted in a copy of the written records that will be provided to the Ministries with this order.
3. I require the Ministries to give the applicant access to the information in accordance with items 1 and 2 above. The Ministries must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records.

Pursuant to s. 59(1) of FIPPA, the Ministries are required to comply with this order by October 13, 2021.

August 30, 2021

ORIGINAL SIGNED BY

Ian C. Davis, Adjudicator

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F20-83739