



Order F21-51

## CITY OF VANCOUVER

Laylí Antinuk  
Adjudicator

October 26, 2021

CanLII Cite: 2021 BCIPC 59  
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**Summary:** The applicant requested the full names of the members of a community panel the City of Vancouver (City) convened to make a recommendation about a new arterial road. The City decided to release all the names of the panelists, despite the objections of one panelist (the Panelist). The Panelist requested that the OIPC review the City’s decision, arguing that s. 22(1) (unreasonable invasion of personal privacy) requires the City to withhold their name. The adjudicator found that s. 22(1) requires the City to withhold the Panelist’s name.

**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(3)(h), 22(4)(a) and 22(4)(e).

### INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), the applicant requested that the City of Vancouver (City) provide the last names of all the panelists involved in the Flats Arterial Community Panel and the full name of panelist #38 (the Panelist).<sup>1</sup> The City decided to release all the names to the applicant as requested. The Panelist objected to the release of their name, arguing that s. 22(1) (unreasonable invasion of personal privacy) required the City to withhold it.

[2] The Panelist asked the Office of the Information and Privacy Commissioner (OIPC) to review the City’s decision. Mediation did not resolve the dispute between the parties and the matter proceeded to inquiry.

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<sup>1</sup> In order to ensure anonymity, I will refer to the Panelist using the neutral pronouns “they/them/their” throughout these reasons rather than “she/her” or “he/him”. To be clear, I am not using these pronouns because the Panelist identifies as “they/their”, but solely to protect the Panelist’s privacy.

[3] The Panelist, the applicant, and the City all made inquiry submissions.

***Preliminary matter***

[4] The Panelist and the applicant both made submissions about whether s. 25 (public interest disclosure) requires the City to disclose the Panelist's name.<sup>2</sup> The City did not make submissions about s. 25.

[5] Section 25 requires a public body to disclose information in certain circumstances without delay despite any other provision of FIPPA.<sup>3</sup> Section 25 overrides all FIPPA's discretionary and mandatory exceptions to disclosure.<sup>4</sup>

[6] As described in the notice of inquiry (notice) received by both parties, the OIPC investigator's fact report (fact report) sets out the issues for the inquiry. The notice also clearly states that parties may not add new issues into the inquiry without the OIPC's prior consent.<sup>5</sup> Numerous previous orders have said that if a party wants to add a new inquiry issue, it must request and receive permission to do so.<sup>6</sup> To allow otherwise would undermine the effectiveness of the mediation process which exists, in part, to assist the parties in identifying, defining and crystallizing the issues prior to inquiry.<sup>7</sup>

[7] The notice and the fact report do not identify s. 25 as an inquiry issue. The Panelist and the applicant did not request permission to add this new issue or point to any exceptional circumstances that would justify doing so at this late stage. Therefore, I will not add s. 25 as an inquiry issue. In any event, previous orders have found that s. 25 requires disclosure in only the clearest and most serious situations.<sup>8</sup> I am not satisfied that the situation addressed in this inquiry (i.e. the disclosure of a single community panel member's name) meets this high threshold.

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<sup>2</sup> Panelist's initial submission at paras. 27-29 and reply to applicant at para. 10. Applicant's response submission at para. 20.

<sup>3</sup> For example, s. 25(1)(a) requires a public body to disclose information about a risk of significant harm to the environment or to the health or safety of the public. Section 25(1)(b) requires a public body to disclose information if the disclosure is clearly in the public interest.

<sup>4</sup> *Tromp v. Privacy Commissioner*, 2000 BCSC 598 at paras. 16 and 19.

<sup>5</sup> Notice of Written Inquiry dated January 25, 2021.

<sup>6</sup> For example, see Order F12-07, 2012 BCIPC 10 at para. 6; Order F10-37, 2010 BCIPC 55 at para. 10; Decision F07-03, 2007 CanLII 30393 (BC IPC) at paras. 6-11; and Decision F08-02, 2008 CanLII 1647 (BC IPC).

<sup>7</sup> Order 15-15, 2015 BCIPC 16 at para. 10; Order F08-02, 2008 CanLII 1647 (BC IPC) at paras. 28-30.

<sup>8</sup> For example, see Order 02-38, 2002 CanLII 42472 (BC IPC) at paras. 45-46, citing Order No. 165-1997, [1997] BCIPD No. 22 at p. 3.

## ISSUE

[8] In this inquiry, I will decide whether s. 22(1) requires the City to refuse to disclose the Panelist's name.

[9] The applicant bears the burden of proving that disclosing the Panelist's name will not unreasonably invade the Panelist's personal privacy.<sup>9</sup>

## DISCUSSION

### *Background*

#### The Community Panel

[10] In 2017, the City began an arterial study to locate and build a new major arterial road through the False Creek Flats.<sup>10</sup> The location of the arterial road was a long-standing, unresolved, high conflict issue for the City. Given this, the City convened a community panel (the Panel) made up of panelists from local and city-wide neighbourhoods and businesses to recommend a preferred route. The Panel served as an independent body tasked with learning about the False Creek Flats arterial issues from a range of perspectives, considering the different options, and recommending a clear course of direction for City decision-makers.

[11] The City contracted with a non-governmental organization (the NGO) to design, lead and document the proceedings of the Panel. The NGO provided the project manager and consulting team that directed the Panel. None of the members of the project team or the facilitators for the Panel were City employees, and the City had no direct managerial responsibility over the Panel. To ensure the Panel's independence, the NGO single-handedly selected and communicated with the panelists throughout the entire process. The City took a hands-off approach as a core aspect of the methodology for the Panel.

[12] The NGO randomly selected panelists from approximately 200 volunteers. Initially, 42 individuals served on the Panel, but five resigned over the course of the Panel's work, leaving a total of 37 panelists. From January to April of 2019, the Panel participated in seven days of learning and discussion, a site tour of the

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<sup>9</sup> Section 57(3)(a) of FIPPA. Wherever I refer to section numbers throughout this order, I am referring to sections of FIPPA.

<sup>10</sup> The information summarized in this Background section comes from the City's response submission at paras. 2-13, 17, 19-20, 24, 27-29, 31, 33-34 and 42; the Manager of Civic Engagement's affidavit at paras. 5-7, 11, 15-17, 22, Exhibit A and Exhibit C at p. 59; and the FOI Manager's affidavit at paras. 5-6 and 8. With one exception, these aspects of the City's submissions and evidence are uncontested, so I accept them as fact. However, the Panelist clarified that the Manager of Civic Engagement's affidavit contains incorrect dates for the time period the Panel did its work (Panelist's reply to City at footnote 3). I find that the Panelist did its work from January to April 2019.

neighbourhood, and two public workshops. In April of 2019, the Panel issued its final report (the Report), recommending an arterial route. The Report identifies 36 of the 37 panelists by first and last name, but refers to the Panelist simply as “Panelist #38 (prefers anonymity)”.<sup>11</sup> In addition to identifying all but one of the panelists by name, the Report contains brief profiles of all panelists. The profile for the Panelist states:

Panelist #38 (prefers anonymity) – I was born in Vancouver, and now reside in East Vancouver. I recently changed commuting from a motorcycle to a bicycle and look forward to the bicycle friendly route along the proposed development of the False Creek Flats. I joined the Panel because I want to be part of guiding the development of our community. With St. Paul’s hospital moving into the neighbourhood, I also wish to ensure the emergency access routes are in place and it is easily & efficiently accessible.

#### The access request and the City’s response

[13] Prior to the release of the Report, the City received the applicant’s request for all the panelists’ full names. The City sought input from the NGO when considering how to respond. The NGO objected to the release of the panelists’ names prior to the release of the Report. It told the City that 36 of the 37 panelists would be named in the Report, but that the Panelist would remain anonymous. The NGO also asked for “the opportunity to argue that [the Panelist] should be exempt from the FOI request based on potential for professional reputation damage” and said it had “worked with our legal counsel to arrive at this determination.”<sup>12</sup>

[14] The City then provided the Panelist with notice that it had received the request and offered the Panelist an opportunity to consent to the disclosure or explain why the City should not disclose the information.<sup>13</sup> The Panelist did not respond. The City then notified the Panelist that it decided to release their name. About a month later, the Panelist wrote the City explaining why they wanted to remain anonymous and why they had not responded earlier. Despite the Panelist’s objection to the release of their name, the City still decided to provide the applicant with the full names of all panelists.

[15] At the inquiry, the Panelist provided emails to show that the NGO had provided them with assurances of confidentiality.<sup>14</sup> The City says it had not seen

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<sup>11</sup> Manager of Civic Engagement’s affidavit, Exhibit C at p. 59.

<sup>12</sup> FOI Manager’s affidavit at para. 8.

<sup>13</sup> Under s. 23(1) of FIPPA, a public body *must* give a third party written notice if it intends to give access to a record that contains information that might be excepted from disclosure under s. 22. Additionally, under s. 23(2), a public body *may* give a third party notice even if it does not intend to give access to a record that contains information excepted from disclosure under s. 22.

<sup>14</sup> Panelist’s initial submission at Exhibits A and C.

this evidence when it decided to disclose the Panelist's name. Now that it is aware of all the facts, the City takes no position on whether disclosure constitutes an unreasonable invasion of the Panelist's personal privacy under s. 22(1).

### ***Information in dispute***

[16] The only information in dispute is the Panelist's first and last name. It appears on a single-page record the City created in response to the applicant's access request.

### **UNREASONABLE INVASION OF PERSONAL PRIVACY – SECTION 22**

[17] Section 22(1) requires public bodies to refuse to disclose personal information if disclosure would constitute an unreasonable invasion of a third party's personal privacy.

[18] The analysis under s. 22 involves four steps:<sup>15</sup>

- 1) Determine whether the information in dispute is personal information.
- 2) Determine whether any of the circumstances described in s. 22(4) apply. If they do, then disclosure is *not* an unreasonable invasion of personal privacy.
- 3) Determine whether any of the presumptions listed in s. 22(3) apply. If they do, disclosure is *presumed* to be an unreasonable invasion of personal privacy. Presumptions may be rebutted by considering all the relevant circumstances (the next step in the analysis).
- 4) Consider the impact that disclosure would have in light of all the relevant circumstances, including those listed in s. 22(2). Do the relevant circumstances weigh in favour of or against disclosure?

### ***Personal information***

[19] FIPPA defines personal information as recorded information about an identifiable individual other than contact information.<sup>16</sup> Previous orders have said that information is about an identifiable individual when it is reasonably capable of identifying an individual on its own, or when combined with information from other available sources.<sup>17</sup>

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<sup>15</sup> For example, see Order 01-53, 2001 CanLII 21607 (BC IPC) at paras. 22-24.

<sup>16</sup> Schedule 1 of FIPPA contains its definitions.

<sup>17</sup> For examples, see Order F16-38, 2016 BCIPC 42 at para. 112; and Order F13-04, 2013 BCIPC 4 at para. 23.

[20] FIPPA defines contact information as information to enable an individual at a place of business to be contacted. Contact information includes an individual's name, position or title, and their business telephone number, address, email or fax number.

[21] I find that the Panelist's name is their personal information because it is clearly about them. It is not contact information because it does not appear in the record at issue in order to enable others to contact the Panelist at a place of business.

***Not an unreasonable invasion of privacy – section 22(4)***

[22] The next step in the s. 22 analysis requires considering whether s. 22(4) applies to the personal information at issue. Section 22(4) lists situations in which disclosure of personal information is not an unreasonable invasion of personal privacy.

[23] The City submits that nothing in s. 22(4) applies to the disputed information.<sup>18</sup> The Panelist made submissions about ss. 22(4)(a) and (e). The applicant did not make submissions about s. 22(4).

[24] I will discuss ss. 22(4)(a) and (e) given the facts and submissions before me.

Third party consent – section 22(4)(a)

[25] The Panelist submits that s. 22(4)(a) does not apply to their name.

[26] Section 22(4)(a) says that if a third party consents to or requests disclosure in writing, then disclosure is not an unreasonable invasion of that party's personal privacy. The NGO asked the Panelist if they would consent to the release of their name to the applicant. The Panelist refused.<sup>19</sup> Therefore, I find that s. 22(4)(a) does not apply.

Position, function or remuneration – section 22(4)(e)

[27] Under s. 22(4)(e), the disclosure of personal information about a third party's position, functions, or remuneration as an officer, employee or member of a public body or a member of a minister's staff is not an unreasonable invasion of personal privacy. Previous orders have held that the names of a public body's employees generally fall under s. 22(4)(e).<sup>20</sup>

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<sup>18</sup> City's response submission at para. 41.

<sup>19</sup> Panelist's initial submission at paras. 12-13 and Exhibit C.

<sup>20</sup> For example, Order 01-15, 2001 CanLII 21569 (BC IPC) at para. 35; and Order 04-20, 2004 CanLII 45530 (BC IPC) at para. 18. The BC Supreme Court found this interpretation of s. 22(4)(e)

[28] As noted, the disputed information in this case is the Panelist's name. The Panelist says they have never been employed by the City and did not receive any payment for their involvement on the Panel.<sup>21</sup> I accept that the Panelist was not a paid City employee. However, under FIPPA, the definition of an "employee" of a public body includes a volunteer.<sup>22</sup> FIPPA does not define the term "volunteer".

[29] The Panelist and the City both submit that s. 22(4)(e) does not apply to the Panelist's name.<sup>23</sup> Both parties also agree that the Panelist was not working as a "volunteer" for the City for the purposes of s. 22(4)(e).<sup>24</sup>

[30] The Panelist notes that, by definition, a "volunteer" is "a person who works for an organization voluntarily and without pay."<sup>25</sup> The Panelist says that when they served on the Panel, they were not working for the *City*. Instead, they were working for the *community* by serving as a community representative on an independent body. The Panelist draws my attention to several parts of the City's evidence that describe the Panel as an independent body. The Panelist says:

I was engaged to represent the affected neighbourhoods on the Panel and not the City; otherwise my perspective would have been in a conflict of interest. The panel was required to provide unbiased and independent opinions. The distinction in this case is essential as it illustrates the conclusion that I was not the City's volunteer...<sup>26</sup>

[31] The City argues that all citizens who volunteer their time to engage with the City cannot be considered a "volunteer" for the purpose of s. 22(4)(e).<sup>27</sup> The City contends that disclosure of the panelists' names should not be mandatory under s. 22(4)(e) simply based on the fact that they volunteered to participate on the Panel. According to the City, s. 22(4)(e) should be interpreted to exclude a

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reasonable in *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 at paras. 70-71.

<sup>21</sup> Panelist's initial submission at paras. 37, 39 and 42.

<sup>22</sup> See the definition of "employee" under Schedule 1. None of the parties specifically addressed this in their inquiry submissions, so I invited them to make additional submissions about s. 22(4)(e) with FIPPA's definition of a public body "employee" in mind. I took this exceptional step because the application of s. 22(4)(e) is potentially dispositive of the issue in this case. In other words, if I find that s. 22(4)(e) applies, I will order disclosure without considering ss. 22(3) or 22(2). The City and the Panelist provided helpful additional submissions, which I have carefully considered. The applicant did not provide additional submissions.

<sup>23</sup> Panelist's additional submission at para. 28; City's additional submission at paras. 10-11 (my numbering).

<sup>24</sup> Panelist's additional submission at paras. 3, 5, 8 and 14; City's additional submission at paras. 1, 7 and 9-10 (my numbering).

<sup>25</sup> The information summarized in this paragraph comes from the Panelist's additional submission at paras. 4-14.

<sup>26</sup> Panelist's additional submission at para. 14.

<sup>27</sup> The information summarized in this paragraph comes from the City's additional submission at paras. 1-3 and 10 (my numbering).

person participating in consultations with the City in a democratic capacity unless the person clearly agreed to become formally engaged as part of the City's decision-making process.

[32] Both the City and the Panelist also made submissions about Order F17-39, which involved Capilano University.<sup>28</sup> In that order, Adjudicator Whittome considered the meaning of the words “officer, employee or member of a public body”, noting that the definition of a public body “employee” in FIPPA includes a “volunteer”. She found that the commonality in the definitions of all four of these words is a “formality and stability in the relationship between the individual and the public body.”<sup>29</sup> As a result, she held that s. 22(4)(e) only applied to persons in an “official, enduring relationship” with a public body.<sup>30</sup>

[33] The City and the Panelist both argue that the panelists were not in an official, enduring relationship with the City.<sup>31</sup>

[34] I agree. The evidence shows that the Panel was a form of independent community consultation on a specific project. It existed for only four months and the NGO selected its members without any say from City staff, or City Council. The panelists were not obliged to complete the process and five panelists resigned prior to the final session. The NGO facilitated the entire Panel process from start to finish and single-handedly managed all interactions with panelists. For example, the City did not even know the full names or the contact information of the panelists before the release of the Report.<sup>32</sup> In my assessment, the evidence clearly shows that great efforts were taken to ensure that the Panel was independent from the City. In these circumstances, I do not think that volunteering as a community representative on an independent body that did not interact with the City makes the panelists City volunteers. I conclude that the Panelist does not fit within the meaning of a public body employee under FIPPA.

[35] Based on the facts in this case, I find that the Panelist's name is not information about their “position, functions, or remuneration as an officer, employee or member of a public body” under s. 22(4)(e).

[36] I have considered the other subsections of s. 22(4) and find none of them applicable here.

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<sup>28</sup> 2017 BCIPC 43.

<sup>29</sup> *Ibid* at para. 86.

<sup>30</sup> *Ibid* at paras. 83-91.

<sup>31</sup> Panelist's additional submission at paras. 19-20, 23 and 25; City's additional submission at paras. 7-10 (my numbering).

<sup>32</sup> FOI Manager's affidavit at para. 11.



***Presumed unreasonable invasion of privacy – section 22(3)***

[37] The third step in the s. 22 analysis requires determining whether any of the presumptions in s. 22(3) apply to the personal information at issue. Section 22(3) lists circumstances in which disclosure of personal information is presumed to constitute an unreasonable invasion of a third party's personal privacy.

[38] The City submits that none of the presumptions in s. 22(3) apply.<sup>33</sup> The Panelist makes submissions about s. 22(3)(d) and 22(3)(h).<sup>34</sup>

[39] Under s. 22(3)(d), disclosure of personal information that relates to a third party's employment, occupational or educational history presumptively constitutes an unreasonable invasion of that party's personal privacy. Under s. 22(3)(h), disclosure presumptively constitutes an unreasonable invasion of a third party's personal privacy if it could reasonably be expected to reveal the content of a personal recommendation or evaluation, a character reference or a personnel evaluation supplied by the third party in confidence and the applicant could reasonably be expected to know the identity of the third party.

[40] In my view, none of the presumptions in s. 22(3) apply to the Panelist's name, including ss. 22(3)(d) and 22(3)(h). The Panelist's name and their role as a panelist does not relate to their employment, occupational or educational history. As I found above, the Panelist was not a City employee. Furthermore, there is no personal recommendation or evaluation, character reference or personnel evaluation at issue here.

[41] I find that none of the presumptions in s. 22(3) apply.

***Relevant circumstances – section 22(2)***

[42] The last step in the s. 22 analysis requires a consideration of all the relevant circumstances to determine whether disclosure of the personal information at issue would constitute an unreasonable invasion of personal privacy.

[43] Section 22(2) lists some relevant circumstances to consider at this stage. Taken together, the parties submissions discuss or allude to the circumstances listed in ss. 22(2)(a), (e), (f) and (h). I will discuss each subsection, then turn to a relevant circumstance that is not listed in s. 22(2).

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<sup>33</sup> City's response submission at para. 41.

<sup>34</sup> Panelist's initial submission at paras. 40-47.

Disclosure desirable for public scrutiny – section 22(2)(a)

[44] Section 22(2)(a) asks whether disclosure of personal information is desirable for the purpose of subjecting the activities of a public body to public scrutiny. In doing so, this section highlights the importance of fostering accountability.<sup>35</sup>

[45] The applicant argues that the public has a right to know the identities of all the panelists, so it can decide whether the panelists acted out of self-interest.<sup>36</sup> The applicant also says the public has the right to know who aided in the process, what talents and biases they brought to the table, what interests they were representing and whether they benefitted from their involvement on the Panel. According to the applicant, there is a public value in transparency and integrity and the “rights of the community must prevail over one individual’s desire to remain secret.”<sup>37</sup> The applicant further contends that the public will lose trust and confidence in the process if it does not know the Panelist’s name. From all this, I understand the applicant to argue that s. 22(2)(a) weighs in favour of disclosure.

[46] The City does not explicitly address any of the relevant circumstances listed in s. 22(2), but it does submit that “there is a strong public interest in disclosure.”<sup>38</sup> The City says the Panel was specifically designed to be transparent and open to the public.<sup>39</sup> For example, the City’s says the presentations made to the Panel were live streamed and most deliberations were open to the public to watch and observe.<sup>40</sup> I view the City’s submissions and evidence related to transparency and the public interest as arguments that s. 22(2)(a) weighs in favour of disclosure.

[47] The Panelist says “I believe that the disclosure of my name and/or any of my personal information is not relevant for the purpose of subjecting the Public Body to scrutiny in this context.”<sup>41</sup>

[48] I agree with the Panelist for the reasons that follow.

[49] I do not see how identifying and scrutinizing one individual panelist will allow the public to scrutinize the City’s activities in relation to the Panel or the ultimate decision the City made about the arterial route.

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<sup>35</sup> Order F05-18, 2005 CanLII 24734 (BC IPC) at para. 49.

<sup>36</sup> The information summarized in this paragraph comes from the applicant’s response submission at paras. 25-28 and 38-39.

<sup>37</sup> *Ibid* at para. 39.

<sup>38</sup> City’s response submission at para. 3.

<sup>39</sup> *Ibid* at para. 14.

<sup>40</sup> Manager of Civic Engagement’s affidavit at para. 24.

<sup>41</sup> Panelist’s initial submission at para. 51.

[50] When it comes to the City's activities in relation to the Panel, the evidence shows that the City provided many opportunities for the public to understand, engage with, participate in, and scrutinize the Panel process. For example, the City issued a public bulletin explaining the community panel process.<sup>42</sup> The bulletin includes a website and information to allow members of the public to subscribe to a notification list to receive regular updates on the process. In addition and as previously noted, the City engaged an independent NGO to select the panelists and facilitate the Panel process, and the City took a hands-off approach. All content related to the Panel was made available online, including live streaming of the presentations made to the Panel, and most deliberations were open to the public to watch and observe.<sup>43</sup> Additionally, two public workshops were held during the four months of the Panel's work.<sup>44</sup> Furthermore, at the conclusion of its work, the Panel published its Report publicly. The Report sets out the selection process and specific demographic breakdown information about the Panel. It also includes details about how the Panel did its work.

[51] In short, there is already a wealth of publicly available information related to the Panel's work and the process by which it came into being. I am not persuaded that knowing a single panelist's name will assist the public in scrutinizing the City's actions in relation to the Panel. Given the amount of publicly available information about the selection of the Panel and the Panel's work, I also am not persuaded by the applicant's argument that the public will lose trust and confidence in the process if it does not know one panelist's name.

[52] When it comes to the City's ultimate decision about the arterial road, the evidence shows that the City did not ultimately select the Panel's recommended route. City staff did not support the Panel's recommendation, in part because of its cost, and Council did not ultimately select it.<sup>45</sup> Given this, it is not clear to me how much influence the Panel as a whole – let alone one single panelist – had on the City's ultimate decision-making process. Therefore, I am not persuaded that knowing the Panelist's name will assist the public in scrutinizing the City's decision-making process related to the arterial road.

[53] The applicant argues that the public has a right to know the identities of all the panelists, so it can decide whether they acted out of self-interest. However, nothing in the evidence suggests that any panelist acted out of self-interest. Additionally, the applicant (and the public) already knows the names of 36 panelists. The applicant has not provided any evidence to show that knowing this information has allowed him (or any other member of the public) to determine

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<sup>42</sup> Manager of Civic Engagement's affidavit, Exhibit A.

<sup>43</sup> City's response submission at para. 14.

<sup>44</sup> Manager of Civic Engagement's affidavit, Exhibit C at pp. 11-12. Exhibit C contains the Report.

<sup>45</sup> Manager of Civic Engagement's affidavit at paras. 18-20; City's additional submission at para. 9 (my numbering).

“what interests [the panelists] were representing and whether they benefitted from their involvement on the Panel” or whether any of them acted out of self-interest.

[54] Taking all this into account, I am not satisfied that the disclosure of the Panelist’s name is desirable for the purpose of subjecting the activities of the City to public scrutiny. I find that s. 22(2)(a) does not weigh in favour of disclosure in the circumstances.

Unfair exposure to harm – section 22(2)(e)

[55] Section 22(2)(e) asks whether disclosure will unfairly expose a third party to financial or other harm. Past orders have interpreted “other harm” as serious mental distress, anguish, or harassment.<sup>46</sup> For mental harm to fit within the meaning of “other harm,” it must go beyond embarrassment, upset, or a negative reaction to someone’s behaviour.<sup>47</sup>

[56] Based on the City’s evidence, I find it clear that the False Creek Flats arterial route involved controversial, high conflict issues. For example, the City’s evidence shows that the NGO had to take steps to insulate the Panel from lobbying and intimidation tactics prior to the Panel’s recommendation being made public.<sup>48</sup> Additionally, the City security office was required to protect staff and panelists when a large-scale protest was organized while the panelists were given a tour of the different route options.

[57] The Panelist says they have frequently expressed their concerns about intimidation by certain members of the public with strong opinions about the False Creek Flats arterial route. The Panelist says “there is a reasonable probability of being exposed to provocation if my name is released.”<sup>49</sup> The applicant counters this, arguing that there is no evidence that any of the panelists whose names were published in the Report have suffered any harm or loss as a result of public scrutiny.<sup>50</sup>

[58] I find it abundantly clear that the Panelist does not want their name released. Given the Panelist’s submissions and evidence, I think it fair to say the Panelist would be upset if the City disclosed their name. Given the high conflict nature of the False Creek Flats arterial issues, I understand why the Panelist might feel this way. However, nothing in the evidence suggests that any of the panelists experienced harassment after their names were released in the Report.

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<sup>46</sup> Order 01-37, 2001 CanLII 21591 (BC IPC) at para. 42.

<sup>47</sup> Order 01-15, 2001 CanLII 21569 (BC IPC) at paras. 49-50.

<sup>48</sup> The information summarized in this paragraph comes from the City’s response submission at para. 15 and the Manager of Civic Engagement’s affidavit at para. 25.

<sup>49</sup> Panelist’s initial submission at para. 57.

<sup>50</sup> Applicant’s response submission at para. 7.

[59] Additionally, I am not satisfied that the Panelist's own evidence establishes that disclosure would expose them to serious mental distress, anguish or harassment within the meaning of s. 22(2)(e). As noted, the Panelist said that they may be "exposed to provocation" if their name is released. Provocation means a cause of annoyance.<sup>51</sup> To my mind, being exposed to provocation is the same as being exposed to behaviour that may elicit a negative reaction. Past orders have said that s. 22(2)(e) requires more and I agree.

[60] Taking all this into account, I find that s. 22(2)(e) does not weigh in favour of withholding the Panelist's name.

Information supplied in confidence – section 22(2)(f)

[61] Section 22(2)(f) asks whether the personal information at issue was supplied in confidence.

[62] I have no hesitation in concluding the information in dispute was supplied in confidence. As I have said, the evidence shows that the Panelist received explicit assurances from the NGO that they would not be publicly named.<sup>52</sup> They agreed to become a panelist on the condition of anonymity, a fact the NGO repeatedly told the City.<sup>53</sup> At one point, the NGO wrote the Panelist and said "both the City of Vancouver and our legal counsel affirm that Panelists have a right to anonymity in this context."<sup>54</sup>

[63] The City acknowledges that the NGO made assertions of confidentiality, but says "it is unclear on what basis these assertions were made. At no point during the Community Panel process did the City expressly agree to allow the [Panelist] to remain confidential even after the release of the Final Report."<sup>55</sup> The applicant argues that the Panelist "only brings hearsay about being granted anonymity... If anyone gave him or her that assurance of confidentiality, it is very likely that they did so by error or out of convenience, just to placate him or her temporarily."<sup>56</sup>

[64] Past orders have said that to establish confidentiality of supply, a party must show that the supplier provided the information under an objectively

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<sup>51</sup> *Canadian Oxford Dictionary*, 2<sup>nd</sup> ed, (Ontario: Oxford University Press Canada, 2004) sub verbo "provocation".

<sup>52</sup> Panelist's initial submission at paras. 5-7 and Exhibit A; Panelist's reply to applicant at paras. 1, 3, 6, 12, 17-18 and 45; Panelist's reply to City at paras. 3-4; and City's response submission at para. 34.

<sup>53</sup> Emails sent March 20, 2019 at 12:04 PM and April 1, 2019 at 10:56 AM included in Exhibit E of the Manager of Civic Engagement's affidavit. Given this evidence, I also find that the NGO supplied the Panelist's name to the City in confidence.

<sup>54</sup> Panelist's initial submission at para. 12 and Exhibit C.

<sup>55</sup> City's response submission at para. 34.

<sup>56</sup> Applicant's response submission at para. 22.

reasonable expectation of confidentiality.<sup>57</sup> In my view, the Panelist's evidence clearly shows that they had an objectively reasonable expectation of confidentiality. They made their desire for anonymity clear right from the start and only participated on the Panel after receiving explicit assurances that they would not be publicly named. Contrary to the applicant's submissions, this is not based on hearsay. It is based on the Panelist's own evidence, as the supplier of the information. Furthermore, the Panelist provided emails to prove their claims about what the NGO said to them.

[65] With all this in mind, I find that s. 22(2)(f) weighs in favour of withholding the Panelist's name.

Unfair damage to reputation – section 22(2)(h)

[66] Section 22(2)(h) asks whether disclosure may unfairly damage the reputation of a person referred to in the records.

[67] The Panelist says the applicant is a journalist who likely intends to mention the Panelist's name in news publications.<sup>58</sup> The Panelist says the False Creek Flats arterial route was, and still is, a hot topic for many Vancouver residents. Due to this ongoing controversy, the Panelist argues that their engagement as a Panel member "could be misconstrued and my professional reputation could be thereby negatively affected."<sup>59</sup> The Panelist further submits that they are "afraid that the Applicant might write unfavourably about my involvement on the panel and thereby unfairly damage my professional integrity and reputation. My name, if not withheld, can be easily correlated to my image and contact information on the internet."<sup>60</sup>

[68] The applicant asks a series of seemingly rhetorical questions that I understand to be arguments related to s. 22(2)(h).<sup>61</sup> For example, the applicant asks why the Panelist, who was among 41 other panelists, is concerned about their reputation if the public learns their name. Why, asks the applicant, is the Panelist assuming that their contributions will attract adverse attention, instead of neutral or even laudatory attention? The applicant also asks what special interests the Panelist had, whether they made political donations, ran for public office or worked for politicians or corporations connected to the arterial route project.

[69] I am not satisfied that s. 22(2)(h) weighs in favour of withholding the Panelist's name for the reasons that follow. Having reviewed the Report, I find

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<sup>57</sup> Order F11-05, 2011 BCIPC 5 at para. 41.

<sup>58</sup> The information summarized in this paragraph comes from the Panelist's initial submission at paras. 61-62.

<sup>59</sup> *Ibid* at para. 61.

<sup>60</sup> *Ibid* at para. 62.

<sup>61</sup> Applicant's response submission at paras. 11-19.

that it does not contain any information about the Panelist beyond their brief anonymous profile. The Report does not identify the Panelist's positions on the arterial route issues, or any specific arguments or recommendations made by the Panelist. I accept the City's submission that the Panel's recommended arterial option was not unanimous and the Report does not indicate whether or not the Panelist supported this option.<sup>62</sup> Additionally, the Panelist says the voting to determine the Panel's recommended route was anonymous.<sup>63</sup> Therefore, if the City discloses the Panelist's name, the only thing the public will learn about the Panelist in relation to the controversial False Creek Flats arterial issues, is that they participated on the Panel. I do not see how or why the bare fact of the Panelist's participation on the panel could damage their reputation.

[70] I find that s. 22(2)(h) does not weigh in favour of withholding the Panelist's name.

[71] I have considered the other circumstances listed in s. 22(2) and find none of them relevant here. However, the applicant and the Panelist both made submissions about a relevant circumstance not listed in s. 22(2), which I will now address.

#### Sensitivity of the information

[72] Some past orders have treated the sensitivity of the personal information at issue as a relevant circumstance. For example, where personal information is innocuous and not sensitive in nature, past orders have found that this weighs in favour of disclosure.<sup>64</sup> Conversely, if information is particularly sensitive or private in nature, this factor may weigh against disclosure.<sup>65</sup>

[73] The applicant argues that the disputed information is not sensitive.<sup>66</sup> The Panelist disagrees, contending that the information is, in fact, sensitive because disclosure could have a negative effect on their professional reputation.<sup>67</sup>

[74] I am not persuaded that the sensitivity of the information in dispute is a factor that weighs for or against disclosure in this case. In a very general sense, I agree that an individual's name is not typically considered sensitive information. However, depending on the context, identifying an individual by name can reveal

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<sup>62</sup> The City's response submission at para. 40.

<sup>63</sup> Panelist's initial submission at para. 42.

<sup>64</sup> For example, see Order F08-20, 2008 CanLII 66914 (BC IPC) at para. 44; Order F17-13, 2017 BCIPC 14 at para. 62; Order F16-06, 2016 BCIPC 7 at para. 38; Order F14-45, 2014 BCIPC 48 at para. 58; Order F16-38, 2017 BCIPC 14 at paras. 114 and 149; and Order F14-39, 2014 BCIPC 42 at paras. 54 and 59.

<sup>65</sup> For example, see Order F17-39, 2017 BCIPC 43 at paras. 120-121; and Order F15-52, 2015 BCIPC 55 at para. 46.

<sup>66</sup> Applicant's response submission at para. 41.

<sup>67</sup> Panelist's reply to applicant at para. 19.

extremely sensitive information about that individual. Consider, for example, the implications of publicly naming a victim of childhood sexual abuse.

[75] Here, I understand that the Panelist considers their name sensitive and fears negative repercussions if they are publicly identified as a panelist. However, given the nature of the Panel's work, I am not persuaded that being identified as a panelist reveals sensitive details about the Panelist. That said, I acknowledge that the Panelist considers their involvement on the Panel sensitive. In these circumstances, I have decided that the sensitivity of the information weighs neither for nor against disclosure.

Conclusion – section 22(1)

[76] I find that the Panelist's name is personal information. None of the circumstances in s. 22(4) apply here, nor do any of the presumptions in s. 22(3). None of the relevant circumstances weigh in favour of disclosure. The information was supplied in confidence, which weighs against disclosure. Therefore, taking all the relevant circumstances into account, I find that disclosure of the Panelist's name would be an unreasonable invasion of the Panelist's personal privacy under s. 22(1).

**CONCLUSION**

[77] For the reasons given above, under s. 58(2)(c) of FIPPA, I require the City to withhold the Panelist's name under s. 22(1).

October 26, 2021

**ORIGINAL SIGNED BY**

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Laylí Antinuk, Adjudicator

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