



Order F21-62

MINISTRY OF FINANCE, PUBLIC SERVICE AGENCY

Jay Fedorak
Adjudicator

December 8, 2021

CanLII Cite: 2021 BCIPC 71
Quicklaw Cite: [2021] B.C.I.P.C.D. No. 71

Summary: An applicant requested records showing the days worked and days absent for a particular employee of the Office of the Premier during two stipulated periods. The Ministry of Finance (Ministry) refused to disclose information in the responsive records under s. 22 (unreasonable invasion of third-party personal privacy). The adjudicator found that s. 22(1) applied to the information at issue and ordered the Ministry to withhold the information.

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

INTRODUCTION

[1] A journalist (applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the BC Public Service Agency of the Ministry of Finance (the Ministry) for records showing the days worked and days absent for a particular employee of the Office of the Premier during two stipulated periods. The Public Service Agency, which manages the leave data of employees of the government of British Columbia, is part of the Ministry. The Ministry responded that it was withholding all of the information under s. 22(1) (unreasonable invasion of third-party personal privacy).

[2] The applicant requested a review by the Office of the Information and Privacy Commissioner (OIPC) of the Ministry's decision to withhold the information under s. 22(1).

[3] Mediation by the OIPC did not resolve the matter and the applicant requested it proceed to an inquiry.

ISSUE

[4] The issue to be decided in this inquiry is:

1. Whether s. 22(1) of FIPPA requires the Ministry to withhold information.

[5] Under s. 57(2) of FIPPA, the applicant has the burden of proving that disclosure of the information in dispute would not be an unreasonable invasion of third-party personal privacy under s. 22(1) of FIPPA.¹

DISCUSSION

[6] **Background** – The employee whose information is at issue worked in the Office of the Premier until the change of government in 2017. The employee received a severance package. The government published the amount of the severance. The applicant is interested in knowing how the government calculated the employee's severance. The applicant believes that the employee was not entitled to the full amount of severance that they received and that the government granted the employee leave without pay contrary to government policy.

[7] **Information at Issue** – The information in dispute appears in two one-page system-generated reports that indicate the employee's leave entitlement and leave transactions for two specified periods. While the reports indicate the leave the employee took, if any, they do not specify the days that the employee worked. My understanding is that the records assume the employee was working on all working days unless a leave transaction indicates otherwise.

Section 22 – harm to third-party personal privacy

[8] The proper approach to the application of s. 22(1) of FIPPA has been the subject of analysis in previous Orders. A clear and concise description of this approach is available in Order F15-03, where the adjudicator stated the following:

This section only applies to “personal information” as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the

¹ However, the public body has the initial burden to show that the information it is withholding under s. 22(1) is personal information: Order 03-41, 2003 BCIPC 49220 (CanLII) at paras. 9-11.

personal information would be an unreasonable invasion of a third party's personal privacy.²

[9] I have taken the same approach in considering the application of s. 22(1) here.

Step 1: Is the information “personal information”?

[10] Under FIPPA, “personal information” is recorded information about an identifiable individual, other than contact information. “Contact information” is “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.”³

[11] The Ministry submits that the information at issue is personal information about an identifiable individual and that it is not contact information. The applicant does not dispute this.

[12] The information is clearly information about an identifiable individual and not contact information. I find that the information at issue is personal information in accordance with s. 22(1).

Step 2: Does s. 22(4) apply?

[13] The relevant provisions read as follows:

- 22(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
- ...
- (d) the disclosure is for a research or statistical purpose and is in accordance with section 35,
 - (e) the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff,
- ...
- (i) the disclosure, in respect of
 - (i) a licence, a permit or any other similar discretionary benefit, or
- ...
- (j) the disclosure, in respect of a discretionary benefit of a financial nature granted to a third party by a public body

² Order F15-03, 2015 BCIPC 3 (CanLII), at para. 58.

³ FIPPA provides definitions of key terms in Schedule 1.

[14] The Ministry argues that none of the provisions in s. 22(4) apply in this case. The applicant cites various provisions. First, they argue that s. 22(4)(d) applies, as they cannot conduct research on the employee without receiving the information in individually identifiable form.⁴ The Ministry responds that this is not applicable, because there is no evidence that the applicant is conducting research in accordance with s. 35.⁵ This provision gives public bodies the discretion to disclose personally identifiable information to support a bona fide research project in cases where a researcher meets the stipulated requirements, and both parties have signed a research agreement, stipulating the necessary security provisions for the personal information involved. The Ministry points out that there is no research agreement in this case.

[15] I find that s. 22(4)(d) does not apply in this case because the applicant and the Ministry have not signed a research agreement in accordance with s. 35, and, therefore, this case does not meet the requirements of s. 35.

[16] Second, the applicant submits that s. 22(4)(e) applies with respect to information about the position, functions or remuneration of a member of a public body.⁶ However, they provide no argument as to how this provision applies in this case. The Ministry denies that the information at issue is about position, functions or remuneration. It asserts that the information relates to benefits to which the employee was entitled under the employment contract.⁷

[17] From my review of the records, the information at issue is not about the position, functions or remuneration of the employee. Rather it indicates the number of hours of vacation and other leave to which the employee was entitled and how many hours the employee claimed. Therefore, I find that s. 22(4)(e) does not apply.

[18] Third, the applicant submits that the information at issue related to a discretionary benefit that the employee received from the government in accordance with ss. 22(4)(i)(i) and 22(4)(j).⁸ The Ministry responds that annual leave is not a discretionary benefit, it is one that all employees receive.⁹

[19] I find that the evidence establishes that leave is an entitlement for government employees under their contract of employment. There is no evidence that leave is a benefit given at the government's discretion. Therefore, I find that ss. 22(4)(i)(i) and 22(4)(j) do not apply.

⁴ Applicant's response submission, paras. 11-12.

⁵ The Ministry's reply submission, para. 10.

⁶ Applicant's response submission, paras. 11 and 13.

⁷ The Ministry's reply submission, para. 11.

⁸ Applicant's response submission, para. 14.

⁹ The Ministry's reply submission, para. 11.

[20] The parties do not raise any other provision of s. 22(4) and none of them appear to me to apply. Therefore, I find that none of the information falls within s. 22(4).

Step 3. Does s. 22(3) apply?

[21] The relevant provisions read as follows:

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

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

[22] The Ministry submits that information related to employee's leave activities are subject to s. 22(3)(d). It argues that previous BC Orders have found that this provision applies to unused vacation time and that leave can reveal an employee's personal circumstances.¹⁰ The Ministry describes the information contained in the employee's leave report as follows:

- the type of leaves that have been taken (vacation, leave without pay, etc.)
- the amount of leave taken, and
- the remaining balance that employee has.

[23] The Ministry asserts that this information consists of "the personal information of the third party that is created in the context work attendance or their employment and is in relation to their employment history", which is subject to s. 22(3)(d).¹¹

[24] The applicant makes no submission with respect to the application of s. 22(3)(d) other than to argue that other relevant circumstances rebut the presumption that disclosure would be an unreasonable invasion of privacy. I will deal with that issue below.

[25] Having reviewed the record, I find that s. 22(3)(d) applies and that disclosure of the information at issue would be presumed to be an unreasonable invasion of the third party's personal privacy.

¹⁰ The Ministry's initial submission, para. 52. Order 00-53, 2000 BCIPC 57 (CanLII) pp. 18-19; Order F15-17, 2015 BCIPC 18 (CanLII) para. 36.

¹¹ The Ministry's initial submission, paras. 55-57.

Step 4: Do the relevant circumstance in s. 22(2) rebut the presumption of invasion of privacy?

[26] The relevant provisions are these:

22(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) for the purpose of subjecting the activities of the government of British Columbia to public scrutiny.

[27] **Section. 22(2)(a) public scrutiny** – The purpose of s. 22(2)(a) is to provide that, where disclosure of records would promote accountability of a public body, this may in some cases support a finding that the release of third party personal information would not constitute an unreasonable invasion of personal privacy.¹²

[28] The applicant cites s. 22(2)(a) as a relevant circumstance in this case. They assert that information in the records will assist the public in determining whether the severance package the government paid the employee was appropriate. They also argue that the government improperly granted the employee leave without pay in violation of government policy. The applicant alleges that the government granted this leave to enable the employee to work on an election campaign. The applicant submits that the information in the records is necessary to hold the government accountable for “the revolving door between the Office of the Premier and the ruling party’s headquarters”.¹³

[29] The Ministry responds that the information at issue does not relate to the issue of the severance the employee received. It argues that the government has made the amount of the severance public, and disclosure of the information at issue would not “shed meaningful light on the severance provided to the third party or the allegations raised by the Applicant”.¹⁴ It adds that the information would not assist is the analysis of the allegation that the government violated its own policy when it granted the employee leave without pay.¹⁵

[30] For s. 22(2)(a) to apply, the disclosure must have the potential to serve the public purpose of scrutiny of the activities of the public body. Without commenting on the validity of the applicant’s accusations, from my review of the records, I see nothing that would either support or refute those allegations.

¹² Order F05-18, 2005 BCIPC 24734 (CanLII), para. 49.

¹³ Applicant’s response submission, paras. 2-10.

¹⁴ The Ministry’s reply submission, para. 8.

¹⁵ The Ministry’s reply submission, para. 5.

I conclude that disclosure of the information at issue would not assist the public in holding the government or the employee to public scrutiny.

[31] Therefore, I find that s. 22(2)(a) is not a relevant circumstance in this case arguing in favour of disclosure.

[32] **Other relevant circumstances** – The parties do not argue the application of any other relevant circumstances in this case, and I find that none apply here.

[33] I found above that the information in dispute constitutes personal information. I have found that none of the provisions in s. 22(4) apply that would have excluded the application of s. 22(1).

[34] I find that the personal information constitutes the employment history of the employee, in accordance with s. 22(3)(d), and that its disclosure is presumed to be an unreasonable invasion of third-party personal privacy

[35] I find that none of the relevant factors in s. 22(2) apply to rebut the presumption that disclosure would be an unreasonable invasion of privacy. I also find that the applicant did not make a case that disclosure of this personal information would not be an unreasonable invasion of privacy.

[36] In conclusion, I find that s. 22(1) applies to the personal information at issue and the Ministry must withhold it.

CONCLUSION

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

1. Under s. 58(2)(c), I require the Ministry to refuse access, under s. 22(1), to the personal information it withheld under s. 22(1).

December 8, 2021.

ORIGINAL SIGNED BY

Jay Fedorak, Adjudicator

OIPC File No.: F19-79103