



Order F21-64

MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

Lisa Siew
Adjudicator

December 16, 2021

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Summary: The applicant requested access to a child protection report made to the Ministry of Children and Family Development (Ministry). The Ministry withheld information in the responsive records under s. 22(1) (unreasonable invasion of third party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). It also withheld information under ss. 77(1) (reveal the identity of reporter) and 77(2)(b) (information supplied in confidence during assessment or investigation) of the *Child, Family and Community Services Act* (*Act*). The Ministry applied one or more of these exceptions to the same information. The adjudicator determined the Ministry was required to withhold some of the information at issue under ss. 77(1) of the *Act*, but that ss. 77(1) and 77(2)(b) did not apply to other information. For that information, the adjudicator determined s. 22(1) of FIPPA did not apply and ordered the Ministry to disclose it to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 15(1)(l), 22(1), 22(2), 22(2)(f), 22(2)(h), 22(3), 22(3)(b), 22(4), 22(4)(e), 57(1), 57(2). *Child, Family and Community Service Act*, ss. 77(1) and 77(2)(b).

INTRODUCTION

[1] The applicant requested access to a child protection report that was submitted to the Ministry of Children and Family Development (Ministry) in October 2018. The Ministry provided the applicant with partial access to the records, but withheld information under s. 15(1)(l) (harm the security of a computer system) and s. 22(1) (unreasonable invasion of third party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The Ministry also withheld information under s. 77(1) (reveal the identity of reporter) and s. 77(2)(b) (information supplied in confidence during assessment or investigation) of the *Child, Family and Community Services Act* (*Act*). The Ministry applied one or more of these exceptions to the same information.

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision. Mediation did not resolve the matters at issue and they were forwarded to an inquiry. Both parties provided inquiry submissions. The Ministry's evidence includes pre-approved *in camera* material.

[3] During the inquiry, the Ministry released additional information to the applicant because she provided the Ministry with her husband's written consent to the disclosure of his personal information. This information about the applicant's husband was initially withheld by the Ministry under s. 22(1) of FIPPA. Both parties provided new inquiry submissions as a result of this additional disclosure. The Ministry's evidence includes additional pre-approved *in camera* material.

[4] Also during the inquiry, the applicant withdrew her request for access to the information that the Ministry withheld under s. 15(1)(l). The Ministry applied s. 15(1)(l) to the username of a Ministry employee.¹ I conclude this information is no longer in dispute between the parties and will not consider it as an issue in this inquiry.

PRELIMINARY MATTER

Ministry's *in camera* material

[5] The applicant objects to the inclusion in this inquiry of any *in camera* material because she says it is unfair and denies her the opportunity to properly respond. Where information is approved *in camera*, the decision-maker considers this information privately and the other party will receive the inquiry submissions with the *in camera* material redacted. The applicant questions how she can respond to such submissions when she is "left in the dark and denied the opportunity to defend [her] ground."²

[6] Section 56(4)(b) of FIPPA authorizes the Commissioner or their delegate to decide whether a party is entitled to have access to representations made by another party. The usual practice is for all material that will be considered by the decision-maker during the inquiry to be available to all the parties. However, the Commissioner or their delegate may permit a party to make representations *in camera* (i.e., confidentially without the other party having access to them). The Commissioner will generally permit material to be submitted *in camera* if it would reveal the actual information in dispute.

[7] While I understand the applicant's concerns, it is clear to me that the disclosure of the Ministry's *in camera* material could arguably reveal the

¹ Page 37 of the records.

² Applicant's submission at p. 2.

information at issue in this inquiry. Therefore, I am satisfied that the Ministry's *in camera* material was properly received on that basis.

ISSUES

[8] The issues in this inquiry are as follows:

1. Is the Ministry required to withhold information under s. 77(1) of the *Act*?
2. Is the Ministry authorized to withhold information under s. 77(2)(b) of the *Act*?
3. Is the Ministry required to withhold information under s. 22(1) of FIPPA?

[9] *Burden of proof for s. 22 of FIPPA*: Section 57(2) of FIPPA places the burden on the applicant to establish that disclosure of the information at issue would not unreasonably invade a third party's personal privacy. However, the public body has the initial burden of proving the information at issue qualifies as personal information under s. 22(1).³

[10] *Burden of proof for s. 77 of the Act*: Neither FIPPA nor the *Act* identify which party has the burden to prove that ss. 77(1) or 77(2)(b) apply to the information at issue. The Ministry, however, submits that s. 57 of FIPPA sets out the burden of proof for s. 77 by assigning that burden to the applicant. It says s. 57 of FIPPA "operates to impose the burden of proof in relation to [s. 77] on the Applicant" and not the public body.⁴ It submits that the *Act* "does not oust the application of s. 57 in relation to the burden of proof as it relates to the protection of personal information."⁵

[11] I am not persuaded that s. 57 of FIPPA applies to s. 77 of the *Act*. The parts of s. 57 that are relevant read as follows:

Burden of proof

57(1) At an inquiry into a decision to refuse an applicant access to all or part of a record, it is up to the head of the public body to prove that the applicant has no right of access to the record or part.

57(2) However, if the record or part that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy. [Emphasis added]

³ Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9–11.

⁴ Ministry's submission dated September 24, 2021 at para. 150.

⁵ *Ibid.*

[12] It is clear that s. 57 of FIPPA does not mention the *Act* or say who has the burden of proving s. 77 applies. The only time FIPPA does not impose the burden of proof on the public body is in the context of s. 22, when it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy under s. 22(1).

[13] Section 77 of the *Act* is not about an unreasonable invasion of a third party's personal privacy. Furthermore, I agree with the Ministry when it says that s. 77 of the *Act* does not “involve any balancing of privacy interests” or an assessment of relevant factors as is the case with s. 22 of FIPPA.⁶ Given the differences between s. 22 and s. 77, I find it inappropriate to read into s. 57 a burden of proof for s. 77 that is not clear from the express language of either FIPPA or the *Act*.

[14] In Order F21-35, I determined that the Ministry, as the public body, has the burden to prove that it is authorized or required to withhold the information at issue under ss. 77(1) and 77(2)(b). For the reasons outlined in Order F21-35, I adopt that approach.⁷

DISCUSSION

Background⁸

[15] Under the *Act*, the Ministry has the legislative authority to provide services to assist families in caring for their children and to protect children. The Director of Child Protection (Director) delegates to child protection social workers the authority to provide child protection services across the province. The *Act* sets out the circumstances in which a child is in need of protection and requires any person who has reason to believe that a child is in need of protection to make a report to the Director or their delegate.

[16] In October 2018, the Ministry received a child protection report about an alleged incident that involved the applicant and her child. The incident took place at a public meeting where an altercation occurred between the applicant and another individual. The child was present for the incident.

[17] The Ministry looked into the matter and conducted a “Family Development Response Assessment” in order to assess the safety of the child and determine whether protection services were necessary.⁹ A Family Development Response

⁶ Ministry's submission dated September 24, 2021 at para. 133.

⁷ Order F21-35, 2021 BCIPC 43 (CanLII) at paras. 19-22.

⁸ The information in this background section is from the parties' submissions and their open evidence.

⁹ Affidavit of C.C. at paras. 11-19.

is a collaborative process to ensure the child's safety and to provide support services and assistance to the family in their care of the child.¹⁰ The Ministry also conducted a "vulnerability assessment" as part of that collaborative process to "assess whether there is a likelihood of future risk of harm to a child."¹¹

[18] In September 2019, the Ministry closed its file on the matter and informed the applicant and her husband that "after a review of the initial concerns reported [the Ministry] does not feel the need for further involvement with your family regarding the report made."¹²

[19] In February 2021, the applicant's husband submitted an access request to the Ministry. He was given partial access to the records responsive to his request which he then shared with the applicant.¹³

[20] The applicant also requested and obtained Royal Canadian Mounted Police (RCMP) records about the reported incident.¹⁴ Those records indicate that the RCMP received a Crime Stoppers tip after a person observed video footage of the alleged incident via social media and was concerned the applicant was "putting her child in a concerning position and jeopardizing [the child's] safety."¹⁵ After a police investigation, no criminal charges were laid.¹⁶

Records and information at issue

[21] The responsive records total 38 pages, with approximately 18 of those pages containing information in dispute. The records consist of documents from the Ministry's case file related to the reported incident and includes printouts of electronic records and copies from the physical case file.¹⁷

Section 77(1) of the Act - protecting the identity of a person

[22] The Ministry applied s. 77(1) to withhold several pages of records or certain information on a number of pages.¹⁸

¹⁰ Affidavit of C.C. at para. 16.

¹¹ Affidavit of C.C. at para. 22.

¹² Letter dated September 30, 2019 in "attached files" of applicant's submission.

¹³ Applicant's submission at p. 2.

¹⁴ Applicant's submission at pp. 2-3.

¹⁵ Copy of record located in "attached files" of applicant's submission.

¹⁶ Applicant's submission at p. 2 and copy of RCMP record in "attached files" of applicant's submission.

¹⁷ Ministry's submission dated September 24, 2021 at para. 27.

¹⁸ The Ministry entirely withheld pp. 6-10 and 13 and partially withheld pp. 15, 17, 18, 19, 27 of the records.

[23] Section 77(1) protects the identity of a person who has made a child protection report to the Director under s. 14 of the *Act*. It says:

77(1) A director must refuse to disclose information in a record to a person who has a right of access to the record under the *Freedom of Information and Protection of Privacy Act* if the disclosure could reasonably be expected to reveal the identity of a person who has made a report under section 14 of this Act and who has not consented to the disclosure.

[24] Section 14 imposes a duty on any person who has reason to believe that a child is in need of protection to make a report to the Director or their delegate. Section 13 of the *Act* lists a number of circumstances in which a child is considered to be in need of protection under s. 14. For instance, s. 13(1)(a) applies where a child has been, or is likely to be, physically harmed by the child's parent. On receiving a report under s. 14, section 16 requires the Director to either promptly refer the report to another director for assessment or assess the information in the report.

Ministry's position on s. 77(1)

[25] The Ministry submits that the purpose of s. 77(1) is to encourage child protection reports by removing the risk that anyone who makes such a report would be identified through a FIPPA access request. The Ministry says s. 77(1) is a mandatory provision that "does not involve a balancing of privacy interests" as is the case with s. 22 of FIPPA.

[26] It also notes that the applicant's pre-existing knowledge of the identity of the person is not relevant to the question of whether it must withhold information under s. 77(1).¹⁹ The Ministry contends that it must withhold the information if disclosing that information could reasonably be expected to identify a person who made a child protection report.

[27] Based on these principles, the Ministry submits that it applied s. 77(1) to information in the records that would reveal the identity of the person who made a child protection report about the applicant and her child. The Ministry argues the identity of this person is revealed directly in the records or there is information that could be used to confirm the identity of this person when combined with other available information.²⁰

[28] In support of its position, the Ministry provided an affidavit from a Ministry employee who is identified as an Intake "team leader."²¹ This team leader

¹⁹ Ministry's submission dated September 24, 2021 at para. 133.

²⁰ *Ibid* at para. 136.

²¹ Affidavit of L.M. at para. 2.

provides information, *in camera*, to support the Ministry's application of s. 77(1) to certain information in the records.

[29] The Ministry also provided an affidavit from a child protection social worker who was involved in the Ministry's assessment and response to the reported incident involving the applicant.²² The social worker explains the various steps that were taken by Ministry employees in this matter and also describes the records at issue. The social worker identifies, *in camera*, the person who reported the incident to the Ministry.

Applicant's position on s. 77(1)

[30] The applicant says the person who called the Ministry about the incident is a named RCMP officer. She says she discovered the name of this person from the RCMP records and because that RCMP officer told her husband so during a phone call. As a result, the applicant suspects the Ministry has misused s. 77(1) because it has confused the person who made the Crime Stoppers report with the person who called the Ministry about the incident. The applicant contends the identity of the person who provided the Crime Stoppers tip should be protected, but not the RCMP officer's identity since she says the officer is not the reporter of the incident.

[31] The applicant also questions whether any of the withheld information actually reveals the identity of the Crime Stoppers' tipster. She notes that the RCMP records reveal that the "complaint was received from someone who observed video footage via social media."²³ The applicant submits that the identity of this person is not apparent from this statement alone and any non-identifying information in the records should be released to her.

[32] The applicant clarifies that she is not interested in the tipster's identity. She says she is only interested in certain emails between a named social worker and her husband that the Ministry has entirely withheld from her. She says the emails "are mainly about how [her] husband actively interacted with the [Ministry]" and that her husband consented to her having access to that information.²⁴

[33] The applicant also explains that she is interested in the contents of the child protection report so she can understand what she was accused of and provide her side of the story. She contends that it is simply absurd to accuse

²² Affidavit of C.C.

²³ Applicant's submission at p. 3

²⁴ *Ibid* at pp. 1 and 3.

a person of criminal behaviour, but to “never let the person know what crime you think the person committed.”²⁵

Analysis and conclusions on s. 77(1)

[34] I find s. 77(1) applies to some of the withheld information. Based on my review of the records, I can see that the name of the person who made the child protection report to the Ministry and other identifying details were withheld in the records. As well, there is no evidence that this individual consented to the disclosure of their identity. Therefore, the Ministry is required to withhold this information under s. 77(1).

[35] Furthermore, I find s. 77(1) applies to certain information that the Ministry withheld under both s. 77(2)(b) of the *Act* and s. 22 of FIPPA.²⁶ Although the Ministry did not withhold this information under s. 77(1), I find s. 77(1) applies since it could reveal information that I conclude the Ministry has properly withheld under s. 77(1) when combined with information already disclosed in the records.²⁷

[36] I am also satisfied some of the withheld information could reasonably be expected to reveal this person’s identity when combined with other available sources of information. For instance, some of the withheld information on its own does not reveal the identity of the person who made a child protection report and, in my opinion, s. 77(1) would not normally apply to this information.²⁸ However, through actions taken by the Ministry and other later events, I can see the circumstances surrounding this information has changed so it could now reveal the person’s identity and s. 77(1) is engaged.

[37] Most of these circumstances were described *in camera*; therefore, I am constrained in my ability to provide detailed reasons. However, the Ministry’s *in camera* evidence persuades me that the applicant can now use this information, along with other available information, to determine the identity of the person who made a child protection report. Therefore, without disclosing any of the Ministry’s *in camera* evidence, I conclude s. 77(1) applies to this information.

[38] I am aware that the applicant believes these records include emails between her husband and a named social worker. The Ministry confirms the records include an email chain and describes some of its contents as a “third party” criticizing how a public body employee is performing their work.²⁹ Without revealing any of the information in dispute, I can say that there is nothing in these

²⁵ *Ibid* at p. 3.

²⁶ Information located on p. 20 of the records.

²⁷ Information located on pp. 15 and 27 of the records.

²⁸ Information located on pp. 6-10 and 13 of the records.

²⁹ Ministry’s submission dated September 24, 2021 at paras. 79, 84 and 92.

[39] particular records that casts any further light on the contents of the child protection report or addresses the allegations made against the applicant.

[40] Furthermore, I can appreciate the applicant's frustration and confusion about why she is being denied access to information that she believes she is authorized to have. To address some of those concerns, I would like to clarify that s. 77(1) imposes a mandatory obligation on the Ministry to refuse to disclose any information in a record that could reasonably be expected to reveal the identity of a person who made a child protection report. In other words, the Ministry does not have the discretion or option of disclosing any identifying information in response to an access request under FIPPA.

[41] To be clear, if the requirements of s. 77(1) are satisfied, then the Ministry must withhold this information regardless of the circumstances. As noted by the Ministry, s. 77(1) does not involve a balancing of privacy interests and whether or not an applicant already knows the identity of the person is not relevant to the question of whether the Ministry must withhold information under s. 77(1).³⁰ Based on the existing circumstances and for the reasons given, I find the Ministry has appropriately applied s. 77(1) to withhold some information in the records.

[42] However, there is some other information which I find could not reasonably be expected to reveal the identity of the person who made a child protection report. This information consists of factual information about the applicant and the incident with no identifying details about the person who made the report.³¹ I am satisfied that this withheld information does not reveal the reporter's identity on its own or combined with other available sources of information.

[43] The non-identifying information also includes a Ministry employee's "rational [*sic*] for coding" the alleged incident as a "section 13 concern" in which "there is real possibility that a child/youth will experience physical harm by a parent in the near future, but the child/youth has not yet been harmed."³² The withheld information captures a Ministry employee's assessment of the alleged incident. I conclude that none of the withheld information in this part could reasonably be expected to reveal, either directly or indirectly, the identity of the person who made the child protection report.³³

³⁰ Ministry's submission dated September 24, 2021 at para. 133.

³¹ Information located on p. 18 of the records. The Ministry also withheld this information under s. 77(2)(b) of the *Act* and s. 22 of FIPPA.

³² Information quoted from page 18 of the records where this information is openly disclosed.

³³ The Ministry also withheld this information under s. 77(2)(b) of the *Act* and s. 22 of FIPPA.

Section 77(2)(b) – information supplied in confidence

[44] Turning now to s. 77(2)(b), the Ministry applied this provision to the following information:

- Information about the alleged incident that I found above could not be withheld under s. 77(1).³⁴
- A small amount of information that outlines a social worker’s activities on a file.³⁵
- Two phone numbers on a page of handwritten notes.³⁶

[45] Section 77(2)(b) states:

77(2) A director may refuse to disclose information in a record to a person who has a right of access to the record under the *Freedom of Information and Protection of Privacy Act* if

...

(b) the information was supplied in confidence, during an assessment under section 16(2)(b.1) [family assessment] or an investigation under section 16(2)(c) [a child’s need for protection], by a person who was not acting on behalf of or under the direction of a director.

[46] In order for s. 77(2)(b) to apply, there must be evidence that establishes all three of the following requirements are satisfied:

- 1) The information must have been provided to the Ministry by a person who was not acting on behalf of or under the direction of a director;
- 2) The information must have been provided in the course of an assessment under s. 16(2)(b.1) or an investigation under s. 16(2)(c); and
- 3) The information must have been supplied in confidence.³⁷

³⁴ Information located on p. 18 of the records. The Ministry also withheld this information under s. 22 of FIPPA.

³⁵ Information located on p. 20 of the records. The Ministry also withheld this information under s. 22 of FIPPA.

³⁶ Information located on p. 15 of the records. The Ministry also applied s. 22 of FIPPA to this information.

³⁷ Order F21-35, 2021 BCIPC 43 at para. 134.

Parties' position on s. 77(2)(b)

[47] The Ministry submits the withheld information was supplied in confidence during an assessment under s. 16(2)(b.1). The Ministry says s. 16(2)(b.1) gives it the authority to conduct an assessment of the child's safety and to decide whether it is necessary to provide the family with services to support and assist them in caring for their child and making the family safe for the child.³⁸

[48] The Ministry says that it applied s. 77(2)(b) to information that it collected from third parties in the course of responding to the child protection report. The Ministry says that it "determined that a Family Development Response was the appropriate manner to deal with the child protection report" and such an assessment fits within the parameters of s. 16(2)(b.1).³⁹

[49] It describes a "Family Development Response Assessment" as its "primary way of responding to child protection reports" under the *Act* and explains that the assessment requires it "to assess the risk of future harm to a child."⁴⁰ It says the purpose of the assessment is to assess the safety of the child and determine whether protection services are necessary to make the family safe for the child.

[50] In terms of confidentiality, the social worker says she believes the information she collected from the family and the person who made the child protection report was disclosed to her in confidence.⁴¹ The Ministry also submits that it is reasonable to conclude the information was supplied in confidence based on the context in which the information was gathered and its sensitive content.

[51] The applicant did not directly address s. 77(2)(b), but she argues that any emails written by her husband were not supplied in confidence since her husband was acting on her behalf during these communications and shared the content of any emails, as well as any records that he obtained through his FIPPA access request.

Analysis and conclusions on s. 77(2)(b)

[52] For the reasons to follow, I am not satisfied s. 77(2)(b) applies to the information at issue. Specifically, s. 77(2)(b) does not apply to information provided by a person who was acting on behalf of or under the direction of a director. Some of the information at issue is a Ministry employee's assessment

³⁸ Ministry's submission dated September 24, 2021 at para. 142.

³⁹ Ministry's submission dated September 24, 2021 at paras. 144 and 146.

⁴⁰ *Ibid* at para. 145.

⁴¹ Affidavit of C.C. at para. 24.

of the alleged incident to support coding the incident as a “section 13 concern.”⁴² The Ministry’s evidence indicates that the employee providing this information is a “social worker.”⁴³ The Ministry does not sufficiently explain how this social worker is not “acting on behalf of or under the direction of a director” in accordance with s. 77(2)(b). As a result, I find this withheld information does not meet the criteria set out in s. 77(2)(b).

[53] I also find this reasoning applies to some of the information that outlines a social worker’s activities on a file.⁴⁴ I find most of this withheld information was not supplied in confidence in accordance with s. 77(2)(b) since it is a social worker’s notes recording her actions taken on the file involving the applicant. The Ministry does not sufficiently explain how this social worker is not “acting on behalf of or under the direction of a director.” There is also nothing about the information itself or its context to suggest that it was provided by a person in confidence since it deals with non-sensitive information of an administrative nature. The Ministry also disclosed this same information elsewhere in the records which contradicts any suggestion that this information was supplied in confidence.⁴⁵ I, therefore, find that s. 77(2)(b) does not apply to this information.

[54] Finally, the Ministry applied s. 77(2)(b) to two phone numbers that it describes as “two unlisted cell phone numbers”.⁴⁶ However, the Ministry does not identify who provided the phone numbers or that they did so in confidence. The social worker says she tried calling these phone numbers to reach the applicant and her family as part of a family assessment, but she says both numbers were not in service at the time.⁴⁷ The social worker believes the phone numbers were already inputted into the Ministry’s electronic case management system when she was assigned to the matter. Therefore, it is not clear who provided the information or that this information was intended to be confidential. As a result, I am also not satisfied that this withheld information meets the criteria set out in s. 77(2)(b).

Section 22 – unreasonable invasion of third party personal privacy

[55] Section 22(1) of FIPPA provides that a public body must refuse to disclose personal information the disclosure of which would unreasonably invade a third party’s personal privacy. Numerous OIPC orders have considered the application of s. 22 and I will apply the same approach in this inquiry.

⁴² Information located on p. 18 of the records. I found s. 77(1) did not apply to this information.

⁴³ Affidavit of C.C at para. 14.

⁴⁴ Information located on p. 20 of the records.

⁴⁵ I have not identified where this information is located in the records since it would reveal the information at issue.

⁴⁶ Ministry’s submission dated September 24, 2021 at para. 63. Information located on p. 15 of the records.

⁴⁷ Affidavit of C.C at para. 20.

[56] Turning now to what information will be considered under s. 22, there was some overlap between the Ministry's application of s. 77 of the *Act* and s. 22 of FIPPA. The Ministry applied s. 22 to the same information that it also withheld under s. 77(1) or s. 77(2)(b) and that information is as follows:

- Information about the alleged incident that I found could not be withheld under either ss. 77(1) or 77(2)(b).⁴⁸
- A small amount of information that outlines a social worker's activities on a file that I found could not be withheld under s. 77(2)(b).⁴⁹
- Two phone numbers on a page of handwritten notes that I found could not be withheld under s. 77(2)(b).⁵⁰

[57] I will consider all of this information below in the s. 22 analysis.

[58] However, some of the parties' submissions focus on information that I found the Ministry must withhold under s. 77(1)⁵¹ or is no longer at issue since it has already been disclosed to the applicant.⁵² It is, therefore, not necessary to consider this information under the s. 22 analysis.

Personal information

[59] The first step in any s. 22 analysis is to determine if the information is personal information. The Ministry has the burden of proving the information at issue qualifies as personal information.⁵³

[60] "Personal information" is defined in FIPPA as "recorded information about an identifiable individual other than contact information."⁵⁴ Information is about an identifiable individual when it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.⁵⁵

⁴⁸ Information located on p. 18 of the records. Where s. 77 of the *Act* and s. 22(1) is applied to the same information, I find the proper approach is to first consider whether the information can be withheld under s. 77 of the *Act* and then consider whether s. 22(1) applies to any of the information that cannot be withheld under s. 77.

⁴⁹ Information located on p. 20 of the records.

⁵⁰ Information located on p. 15 of the records.

⁵¹ Pages 6-10 of the records. The Ministry made submissions about this information under ss. 22(3) and 22(4). It is not necessary to consider this information under those provisions since I found the Ministry can withhold that information under s. 77(1).

⁵² Pages 5 and 21 of the records.

⁵³ Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9–11.

⁵⁴ Schedule 1 of FIPPA.

⁵⁵ Order F16-36, 2016 BCIPC 40 (CanLII) at para. 17.

[61] Contact information is defined in FIPPA 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.”⁵⁶

Parties’ position on personal information

[62] The Ministry submits that it has applied s. 22 to the personal information of several third parties, including the personal information of Ministry staff and a third party discussed in the child protection report. The Ministry says it also withheld the applicant’s personal information “where it is also the personal information of third parties or is inextricably intertwined with third party personal information.”⁵⁷

[63] With regards to the two phone numbers, the Ministry says these phone numbers are “unlisted cell phone numbers” that qualify as personal information even though the Ministry does not know the names of the owners of the phone numbers.⁵⁸ It explains that a Ministry “social worker called the phone numbers to reach the [applicant and her family] in the course of the child protection matter” and the phone numbers were not in service at that time.⁵⁹

[64] In terms of recent search efforts, a Ministry employee attests that she searched yellowpages.ca, but her search showed that the numbers were unlisted and “did not result in names associated with the phone numbers.”⁶⁰ The Ministry says, however, that one of the phone numbers is now active and was confirmed as an individual’s phone number. The Ministry employee attests that she called one of the phone numbers in August 2020 and that a woman answered.⁶¹ The Ministry employee says she explained to the unidentified woman the reason for her call, including that it was to confirm the phone number was active and being used as a personal phone number rather than a business phone number. The Ministry employee says the woman confirmed that it was her personal phone number and they ended the call.

[65] For the other phone number, the Ministry submits that it is also a personal cell phone number since the Ministry employee called this phone number twice and reached “an automated message saying that the customer was unavailable and to try calling again later.”⁶² The Ministry employee attests that “there was no voicemail or messaging option provided.”⁶³ The Ministry submits that “if the

⁵⁶ Schedule 1 of FIPPA.

⁵⁷ Ministry submission dated September 24, 2021 at para. 53.

⁵⁸ Ministry submission dated September 24, 2021 at paras. 63 and 70.

⁵⁹ Ministry submission dated September 24, 2021 at para. 64.

⁶⁰ Affidavit of S.R. at para. 4.

⁶¹ Affidavit of S.R. at para. 6.

⁶² Ministry submission dated September 24, 2021 at para. 68.

⁶³ Affidavit of S.R. at para. 7.

number were a business phone number, it is likely that the business would have answered the phone call or would have had a voice message identifying the business.”⁶⁴

[66] The Ministry contends that the two phone numbers qualify as personal information because the people who own the phone numbers are reasonably capable of identification as “it would be a simple matter to identify the owners of the phone numbers by calling the numbers and talking to the account owners.”⁶⁵

[67] The applicant did not make any direct submissions in response to the Ministry’s arguments and evidence on the issue of whether the information qualifies as personal information. However, I understand from the applicant’s submission that she accepts there may be personal information in the records, but disagrees with the Ministry’s claim that disclosing any of this information would be an unreasonable invasion of a third party’s personal privacy.

Analysis and findings on personal information

[68] I find most of the information at issue under s. 22 qualifies as personal information. I can see that some of the information is about the applicant and an identifiable third party involved in the alleged incident.⁶⁶ There is also a social worker’s assessment of the alleged incident to support coding the incident as a “section 13 concern.”⁶⁷ As well, some of the withheld information captures an identifiable social worker’s notes about her own actions taken on the file involving the applicant and her family.⁶⁸

[69] I am satisfied all of this information is about an identifiable individual and does not qualify as contact information since none of this information is the type of information identified in the definition of “contact information” nor is it for work contact purposes. Therefore, I conclude this information qualifies as personal information under s. 22.

[70] However, there is a small amount of information that is not about an identifiable individual, but about a named organization where this information is not linked to a particular individual.⁶⁹ Previous OIPC orders have held that this type of information does not qualify as personal information under s. 22.⁷⁰ In the

⁶⁴ Ministry submission dated September 24, 2021 at para. 69.

⁶⁵ ⁶⁵ Ministry submission dated September 24, 2021 at para. 72.

⁶⁶ Information located on p. 18 of the records.

⁶⁷ *Ibid.*

⁶⁸ Information located on p. 20 of the records.

⁶⁹ Information located on the top of p. 18 of the records.

⁷⁰ Order F17-39, 2017 BCIPC 43 (CanLII) at para. 75.

present case, it is not apparent from the record itself and the Ministry does not explain how the organization's name and other descriptive information is about any identifiable individual. I, therefore, find this information does not qualify as personal information and the Ministry cannot withhold this information under s. 22(1).

[71] I also find the two phone numbers withheld by the Ministry in this case does not qualify as personal information under s. 22. Whether the disclosure of information can reasonably be expected to identify an individual is a question of fact.⁷¹ Specifically, information may relate to an individual, but it will not qualify as personal information unless it about an *identifiable* individual.

[72] Previous OIPC orders have determined that information will be about an identifiable individual when the information can be linked or connected to a particular individual whose identity can be determined from the information alone or in combination with other available information.⁷² In Order F16-36, Adjudicator Alexander said that a caller's first name and cell phone number arguably is not personal information.⁷³ However, considering the circumstances, he found that the first name and cell phone number was about an identifiable individual because the applicant could determine the identity of the caller based on information already known and available to the applicant.⁷⁴

[73] In the present case, there are no individuals that are identifiable from the phone numbers alone or from information available elsewhere in the records or from other available sources. For instance, according to the Ministry's evidence, a common public online search did not result in linking the phone numbers to any identifiable persons.

[74] The Ministry argues that the individuals associated with these phone numbers are reasonably capable of identification because someone can simply call the phone numbers. However, the Ministry's own attempts to call these phone numbers did not result in identifying a particular individual.

[75] For one phone number, an unidentified woman answered the call. The Ministry did not provide any information about this woman's identity and there is no evidence that this woman would be willing to identify herself or would answer a future call at this number. For the other phone number, the Ministry was unsuccessful in reaching an individual at this number or obtaining any identifying information about an individual.

⁷¹ Order 03-42, 2003 CanLII 33644 (BC IPC) at para. 22.

⁷² *Ibid* at paras. 19-23. Order F09-21, 2009 CanLII 63565 (BC IPC) at para. 27. Order F21-40, 2021 BCIPC 48 (CanLII) at paras. 47-49.

⁷³ Order F16-36, 2016 BCIPC 40 (CanLII) at para. 18.

⁷⁴ *Ibid*.

[76] As a result, I find these two phone numbers do not qualify as personal information under s. 22 since this information is not reasonably capable of identifying a *particular* individual either alone or when combined with other available sources of information. I, therefore, conclude the Ministry cannot withhold this information under s. 22(1).

Section 22(4) – disclosure not an unreasonable invasion

[77] The second step in the s. 22 analysis is to determine whether the information that I find qualifies as personal information falls into any of the types of information or circumstances listed in s. 22(4). If it does, then the disclosure of the personal information is not an unreasonable invasion of a third party's personal privacy and the information cannot be withheld under s. 22(1).

[78] Section 22(4)(e) is relevant for this inquiry. Section 22(4)(e) provides that the disclosure of personal information about a public body employee's position, functions or remuneration is not an unreasonable invasion of that third party's personal privacy. This provision applies to third-party identifying information that relates to a third party's job duties in the normal course of work-related activities, namely objective factual information about what the third party did or said in the course of discharging their job duties.⁷⁵

[79] The information at issue consists of a social worker's notes about her own actions taken on the file involving the applicant and her family.⁷⁶ The Ministry acknowledges that this information is about a public body employee performing their job duty, but submits that s. 22(4)(e) does not apply because it is "simultaneously the personal information of third parties who are not public body employees."⁷⁷

[80] I find the information at issue contains objective, factual information about what a public body employee did in the normal course of carrying out their work functions. I conclude this information can be easily severed from any information that is not related to what the public body employee said and did in the ordinary course of work-related activities. As a result, I find s. 22(4)(e) applies to this information and its disclosure is not an unreasonable invasion of a third party's personal privacy. Therefore, the Ministry cannot withhold this information under s. 22(1).

⁷⁵ Order 01-53, 2001 CanLII 21607 at para. 40. Order F18-38, 2018 BCIPC 41 (CanLII) at para. 70.

⁷⁶ Information located on p. 20 of the records. I found some of this information must be withheld under s. 77(1), but that s. 77(2)(b) did not apply to the remaining information.

⁷⁷ Ministry's submission dated September 24, 2021 at para. 78.

[81] I have considered the other types of information and factors listed under s. 22(4) and find that none apply to the other information at issue.

Section 22(3) – presumptions in favour of withholding

[82] The third step in the s. 22 analysis is to determine whether any of the presumptions in s. 22(3) apply. Section 22(3) creates a rebuttable presumption that the disclosure of personal information of certain kinds or in certain circumstances would be an unreasonable invasion of third party personal privacy.⁷⁸

[83] The Ministry submits that disclosing the information at issue is presumed to be an unreasonable invasion of a third party's personal privacy because the personal information was compiled in the course of a child protection investigation which it says falls under s. 22(3)(b).⁷⁹ I will consider this presumption below.

[84] I have also considered the other presumptions under s. 22(3) and find none apply.

Part of investigation into a possible violation of law – s. 22(3)(b)

[85] Section 22(3)(b) creates a rebuttable presumption against disclosure where the personal information was “compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.”

[86] In Order 01-12, former Commissioner Loukidelis concluded that, for the purposes of s. 22(3)(b), the term “law” in FIPPA refers to “(1) a statute or regulation enacted by, or under the statutory authority of, the Legislature, Parliament or another legislature, (2) where a penalty or sanction could be imposed for violation of that law.”⁸⁰ I accept this definition of “law” for the purposes of s. 22(3)(b).

[87] The Ministry submits that s. 22(3)(b) applies to all of the information in dispute.⁸¹ It argues that s. 22(3)(b) applies to any information compiled in the course of a child protection investigation. In support of its position, it cites three

⁷⁸ *B.C. Teachers' Federation, Nanaimo District Teachers' Association et al. v. Information and Privacy Commissioner (B.C.) et al.*, 2006 BCSC 131 (CanLII) at para. 45.

⁷⁹ The Ministry also argued s. 22(3)(d) applies to information that is not at issue under s. 22 since I found this information could be withheld under s. 77(1). As a result, I will not consider s. 22(3)(d).

⁸⁰ Order 01-12, 2001 CanLII 21566 (BC IPC) at para. 17.

⁸¹ Ministry's submission dated September 24, 2021 at para. 91.

previous OIPC orders which it submits amounts to the OIPC accepting that child protection investigations under the *Act* meet the requirements of s. 22(3)(b).⁸²

[88] The applicant submits that s. 22(3)(b) does not apply because there is no open police investigation into the incident. The applicant says she received a phone call from a named RCMP officer who informed her, on the same day the incident occurred, that any investigations are over and no charges would be laid against her or the other individual. As a result, the applicant submits there is no ongoing police investigation and any information withheld under this presumption should be released to her.

Is there a possible violation of law?

[89] The first question I must address is whether there is a possible violation of law. Specifically, what is the relevant law? The applicant's submission and evidence indicate there was a police investigation as to whether an assault was committed by either the applicant or a named third party during the incident. An investigation into an alleged assault would fall under the *Criminal Code* of Canada. The *Criminal Code* is a federal enactment that carries penalties for committing an assault on another person, including the possibility of imprisonment.⁸³ As a result, I conclude an investigation into an alleged assault under the *Criminal Code* qualifies as a "possible violation of law" for the purposes of s. 22(3)(b) of FIPPA.

[90] With regards to the Ministry's claim that a child protection investigation falls under s. 22(3)(b), the Ministry does not specify what provision or offence under the *Act*, or another statute, it believes is possibly being violated. A Ministry social worker determined that the reported incident was "within s. 13(1)(a) of the [Act], being an allegation that a child has been, or is likely to be, physically harmed by the child's parent."⁸⁴ If the Ministry is arguing that the law being violated is s. 13(1)(a) of the *Act*, then there are no offence provisions under the *Act* that results in sanctions or penalties for allegedly putting a child in a situation where the child has been, or is likely to be, physically harmed by their parent.

[91] Based on my review of the *Act*, I conclude that while it may be an offence under another statute to abuse, harm, neglect or threaten a child (e.g. under the *Criminal Code*), the *Act* does not impose any sanctions or penalties against a person who has allegedly caused a child to be in need of protection. Considering the entirety of the *Act*, its purpose is on ensuring the safety and well-being of a child, which includes removal of the child from a harmful situation or

⁸² Ministry's submission dated September 24, 2021 at para. 90, citing Order 00-03, 2000 CanLII 8520 (BC IPC); Order F06-06, 2006 CanLII 17222 (BC IPC) and Order F18-38, 2018 BCIPC 41 (CanLII) at paras. 72-77.

⁸³ *Criminal Code*, RSC, 1985, c. C-46 at s. 265.

⁸⁴ Affidavit of C.C. at para. 14.

offering support services and assistance to the family, rather than punishing or penalizing any alleged wrongdoers.

[92] I accept that there may be circumstances where a child protection investigation results in an investigation into a possible violation of law, but that depends on the circumstances and facts of each case. For example, a child protection investigation may lead to the involvement of law enforcement and criminal charges against a person who has harmed, threatened or exploited a child. However, each case depends on its own facts and, contrary to the Ministry's position and reliance on past OIPC orders, I conclude there is no automatic or broad application of the presumption under s. 22(3)(b) to every child protection investigation under the *Act*.

Was the information compiled and identifiable as part of the investigation?

[93] Having found there was an investigation into a possible violation of the *Criminal Code's* assault provisions, the next question I need to consider is whether the information at issue was compiled and is identifiable as part of that investigation. The remaining information at issue under s. 22 is information about the alleged incident that I found could not be withheld under either ss. 77(1) or 77(2)(b) and includes a social worker's assessment of the incident.⁸⁵

[94] I do not find s. 22(3)(b) applies to this information since it was not compiled or identifiable as part of the police investigation into the matter. Rather, some of the information at issue is the caller's factual account and description of the incident. Without revealing any of the withheld information, I can say there is information in the records that persuades me that the police had already concluded their investigation into the alleged assault before the child protection report was made to the Ministry.⁸⁶ Therefore, I am not satisfied that any of this information was compiled by the police when it investigated the incident.

[95] The rest of the information at issue is a social worker's reasons for coding the incident as falling under s. 13(1)(a) of the *Act*, which applies where a child is allegedly put in a situation where the child has been, or is likely to be, physically harmed by their parent. It is clear that this information was not part of the police investigation, but comes from the social worker's own review of the incident to support a s. 13(1)(a) coding under the *Act*. Therefore, I conclude the presumption under s. 22(3)(b) does not apply to this information.

⁸⁵ Information located on p. 18 of the records.

⁸⁶ *Ibid.*

Section 22(2) – relevant circumstances

[96] The final step in the s. 22 analysis is to consider the impact of disclosing the personal information at issue in light of all relevant circumstances. Section 22(2) requires a public body to consider the circumstances listed under ss. 22(2)(a) to 22(2)(i) and any other relevant circumstances.

[97] The Ministry submits that some of the information was supplied in confidence for the purposes of s. 22(2)(f) and that the disclosure of the information at issue may unfairly damage the reputation of a third party in accordance with s. 22(2)(h). It also submits an additional factor, not identified under s. 22(2), is the sensitivity of some of the withheld information since it says this information is about child protection matters.

[98] The applicant says she is most concerned with understanding the allegation brought against her and gaining a “whole picture of the accusation.”⁸⁷ I infer the applicant to be saying that a relevant circumstance is that the information at issue may assist her in understanding why a child protection investigation was undertaken by the Ministry regarding her and her child.

[99] I will consider all these above-noted circumstances in my s. 22(2) analysis. I have also considered whether there are any other circumstances, including those listed under s. 22(2), that may apply. Based on my review of the withheld information, I find there are no other relevant circumstances for consideration.

Supplied in confidence – s. 22(2)(f)

[100] Section 22(2)(f) requires a public body to consider whether the personal information at issue was supplied in confidence. The Ministry submits that the person who made the child protection report disclosed information in confidence. It argues that information about child protection matters is highly sensitive and it is, therefore, reasonable to conclude that those who provide it and those who receive such information do so in confidence.

[101] Some of the information at issue reveals what the caller said when they made the child protection report to the Ministry. I am not satisfied that the caller provided this information in confidence to the Ministry since it only reveals non-contentious or factual information about the applicant and the incident. There is nothing inherently confidential or “highly sensitive” about this information as argued by the Ministry.

⁸⁷ Applicant’s submission dated November 10, 2021 at p. 3.

[102] The rest of the information at issue is a social worker's reasons for coding the incident as falling under s. 13(1)(a) of the *Act*. Section 22(2)(f) requires that the information be *supplied* in confidence and not generated by a Ministry employee.⁸⁸ It is clear from the information itself that this information was created, inputted or observed by the social worker who is a Ministry employee. Therefore, I find this information was not supplied in confidence in accordance with s. 22(2)(f).

[103] For the reasons given, I find s. 22(2)(f) is not a factor that weighs in favour of withholding the information at issue.

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

[104] Section 22(2)(h) requires a public body to consider whether disclosure of personal information may unfairly damage a third party's reputation. The Ministry submits that s. 22(2)(h) applies to "the personal information about the third party identified on page 18 of the Records."⁸⁹ It says this third party is not participating in the inquiry and the personal information about this third party "is entirely hearsay."⁹⁰

[105] Based on the materials before me, I am not satisfied s. 22(2)(h) applies to the information at issue. The Ministry does not sufficiently explain or provide evidence as to how the withheld information may cause unfair reputational harm to any third parties. It is also not clear from reviewing the information at issue that disclosure may unfairly damage a third party's reputation since, in my opinion, none of the information in the records at issue reflects poorly on any third parties.

[106] For instance, some of the information at issue on p. 18 of the records describes a third party's actions. This description does not cast that third party in a negative light; therefore, it is unclear how disclosing this information would cause this third party any reputational harm. I, therefore, find s. 22(2)(h) is not a factor that weighs in favour of withholding any of the information at issue.

Sensitivity of the information

[107] Previous OIPC orders have considered the sensitivity of the personal information at issue and where the sensitivity of the information is high (e.g., medical or other intimate information), withholding the information should be favoured.⁹¹ However, where the information is of a non-sensitive nature or

⁸⁸ Order F18-38, 2018 BCIPC 41 (CanLII) at para. 88.

⁸⁹ Ministry's submission dated September 24, 2021 at para. 104.

⁹⁰ *Ibid* at para. 105.

⁹¹ Order F16-52, 2016 BCIPC 58 at para. 87.

that sensitivity is reduced by the circumstances, then this factor may weigh in favour of disclosure.⁹²

[108] The Ministry submits that the personal information and identities of third parties implicated by the child protection report is highly sensitive personal information; therefore, it says this is a factor that “weighs heavily in favour of withholding much of the information in dispute.”⁹³

[109] I find none of the information at issue reveals any sensitive or intimate details about any third parties. The information at issue describes the caller’s description of the incident, but this information is not sensitive or consists of factual information already known to the applicant as she was directly involved in the event. Therefore, I find this is a circumstance that does not weigh against disclosure.

The applicant’s motive for requesting the personal information

[110] An access applicant’s motivation or purpose for wanting the personal information at issue may be a relevant circumstance that weighs in favour or against disclosure.⁹⁴ In the present case, the applicant submits that she is trying to understand why a child protection investigation was undertaken by the Ministry regarding her and her child. The applicant says that she is seeking the information because she needs to know what she was accused of and the “content of the allegation” brought against her.⁹⁵

[111] I find the fact that the applicant has some unanswered questions about the allegations against her is a factor that weighs in favour of disclosure. It is not clear from the responsive records or the parties’ submissions that the Ministry addressed the applicant’s questions and concerns. There may have been other communications or discussions between the parties about those matters, but I do not have that evidence before me.

Conclusion on s. 22(1)

[112] To summarize, I find two phone numbers withheld by the Ministry on a page of handwritten notes does not qualify as “personal information” under FIPPA.⁹⁶ There are no individuals that are identifiable from this information alone or from information available elsewhere in the records or from other available

⁹² *Ibid* at paras. 87-91 and 93.

⁹³ Ministry’s submission dated September 24, 2021 at para. 107.

⁹⁴ Order F14-32, 2014 BCIPC 35 (CanLII) at paras. 39-41.

⁹⁵ Applicant’s submission at p. 3.

⁹⁶ Information located on p. 15 of the records.

sources. Therefore, the Ministry is not authorized to withhold this information under s. 22(1).

[113] For the information that does qualify as “personal information”, I find s. 22(4)(e) applies to a social worker’s notes about her actions taken on the file.⁹⁷ This information only describes what a public body employee did in the ordinary course of work-related activities related to the applicant and is easily severable from the records. Under s. 22(4)(e), the disclosure of this information is not an unreasonable invasion of a third party’s personal privacy and the Ministry may not withhold that information under s. 22(1).

[114] The remaining information at issue is information given by the caller when they made the child protection report to the Ministry and a social worker’s reasons for coding the incident as falling under s. 13(1)(a) of the *Act*.⁹⁸ I find there are no s. 22(3) presumptions that apply to this information, including s. 22(3)(b) since there is no evidence that the personal information at issue was compiled and is identifiable as part of an investigation into a possible violation of law.

[115] Considering all the relevant circumstances, I am satisfied that disclosing the information at issue would not be an unreasonable invasion of a third party’s personal privacy. There were no s. 22(2) factors that weighed in favour of withholding this information. In particular, I conclude this information was not supplied in confidence in accordance with s. 22(2)(f). There was also no evidence that disclosing this information would unfairly damage a third party’s reputation under s. 22(2)(h).

[116] Rather, I find disclosing this information may assist the applicant to understand the allegations made against her. In reaching this conclusion, I have taken into account that the information does not disclose any sensitive information or details about a third party. Therefore, for the reasons given, I conclude the Ministry may not withhold this information under s. 22(1).

CONCLUSION

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

1. Subject to item 3 below, I require the Ministry to refuse access to parts of the records that it is required to withhold under s. 77(1) of the *Act*.

⁹⁷ Information located on p. 20 of the records.

⁹⁸ Information located on p. 18 of the records.

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2. In accordance with item 3 below, I require the Ministry to give the applicant access to parts of the records that it is not authorized or required to withhold under s. 77(2)(b) of the *Act* or s. 22(1) of FIPPA.
 3. The Ministry is not authorized or required by s. 22(1) of FIPPA or ss. 77(1) and 77(2)(b) of the *Act*, to withhold the information highlighted in a copy of the records provided to the Ministry with this order.
 4. I require the Ministry to give the applicant a copy of the records with the highlighted information unredacted. The Ministry must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, along with a copy of the relevant records.

[118] Under s. 59 of FIPPA, the Ministry is required to give the applicant access to the information it is not authorized or required to withhold by January 27, 2022.

December 16, 2021

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

OIPC File No.: F19-78920