



Order F21-66

MINISTRY OF FINANCE

Erika Syrotuck
Adjudicator

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Summary: The applicant made a request under the *Freedom of Information and Protection of Privacy Act* for cabinet briefing notes and candidate profile and declaration forms for two named individuals within a specified date range. In response, the Ministry of Finance disclosed some information in the responsive records, but withheld other information under s. 22(1) (unreasonable invasion of a third party's personal privacy). The adjudicator found that s. 22(1) applied to some but not all of the information in dispute.

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

INTRODUCTION

[1] An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Ministry of Finance (Ministry) for Board Resourcing and Development Office cabinet briefing notes and candidate profile and declaration forms for two named individuals within a specified date range.

[2] The Ministry provided two candidate profile and declaration forms but withheld some of the information in them under s. 22(1) (unreasonable invasion of a third party's personal privacy). The Ministry says that it could not locate Cabinet briefing notes in the specified date range.¹

[3] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the Ministry's decision to refuse access to the records under s. 22(1). Mediation did not resolve the parties' dispute and the matter proceeded to inquiry.

¹ Ministry's initial submissions at para. 14.

[4] Both the applicant and the Ministry made submissions in this inquiry. The registrar of inquiries also invited the two named individuals to make submissions. They did not do so.

[5] During the inquiry, the Ministry reconsidered its application of s. 22(1) to the records in dispute and disclosed additional information to the applicant.²

[6] This inquiry is part of a set of five about similar requests made by the applicant. While there is some overlap in my reasons, all of the inquiries have different facts. The companion orders are F21-67, F21-68, F21-69, and F21-70.

ISSUE

[7] The issue in this inquiry is whether the Ministry is required to withhold the information in dispute under s. 22(1). Under s. 57(2) of FIPPA, the burden is on the applicant to prove that disclosure of the information in dispute is not an unreasonable invasion of a third party's personal privacy. However, the public body has the initial burden of proving that the information is personal information.³

DISCUSSION

Background⁴

[8] The Board Resourcing and Development Office was created in 2001. At the time, it was housed in the Office of the Premier.

[9] After moving through various ministries and program areas,⁵ the Board Resourcing and Development Office was moved to the Ministry of Finance and renamed the Crown Agencies and Board Resourcing Office in 2017 (I will refer to both iterations as the "Office"). The Office remains in the Ministry of Finance, but is now under the Crown Agency Secretariat.

[10] The Office oversees recruitment and recommendation of candidates for appointments to public sector organizations such as public post secondary institutions, health authorities, advisory boards, tribunals and certain types of Crown Corporations. In a similar vein, the Office assists public sector organizations in identifying the size, composition and key areas of skill and experience required for board and tribunal membership.

² Ministry's initial submissions at para. 8.

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

⁴ The background information comes from the Ministries initial submissions, paras. 17-26.

⁵ The Office was part of Government Communications and Public Engagement in the Ministry of Advanced Education, for example. See Ministry's initial submissions at paras. 19 and 20.

[11] Applicants for appointment to a public sector organization must complete a candidate profile and declaration form and submit it to the Office for consideration. The general practice is that all appointees to public sector boards and tribunals are individuals who are independent of management and have no material interest in the organization.⁶ Board and tribunal members must have the appropriate combination of skills, experience and personal attributes to support a public sector organization's mission.

[12] All board and tribunal appointments are officially approved, via an Order in Council, Minister's Order or Premier's letter, for example.

[13] Once appointed, the name, appointment term and biographical information of each director is published on the organization's website.

[14] Based on the applicant's submissions and access request, I understand that the two named individuals were appointed to the board of directors for the same public sector organization (Organization).

Records in dispute

[15] The records at issue are two completed candidate profile and declaration forms (Profiles); one submitted by each of the individuals named in the applicant's access request (Candidates). The Profiles are not identical to each other but both include the following sections:

- contact information;
- background;
- conflict of interest – disclosure statement;
- integrity and public accountability; and
- references.

[16] The Ministry has disclosed the headings, questions, and most of the template language on the Profiles. The information in dispute is some of the information provided by the Candidates, which I describe in further detail below.

Section 22 – unreasonable invasion of a third party's personal privacy

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

[18] The Ministry withheld the following information from the Profiles under s. 22(1):

⁶ Unless the governing legislation specifies otherwise.

- The Candidates' home and cellular telephone numbers, home addresses and birth dates;
- Some information about the Candidates' educational backgrounds, past employment, past and present directorships, and memberships in professional organizations;
- One Candidate's response to a question asking the Candidate to rate their ability to read and understand financial statements (self-assessed score);
- Part of a response to one question about a Candidate's conflict of interest;
- Responses to the all of integrity and public accountability questions on both of the Profiles; and
- The names, positions, addresses, and business telephone numbers of the Candidates' references (reference information).

[19] The Ministry says it disclosed all information that is publicly available in the Candidates' biographies.⁷

Personal information

[20] Since s. 22(1) only applies to personal information, the first step in the s. 22 analysis is to determine whether the information in dispute is personal information.

[21] Schedule 1 of FIPPA provides the following definitions of "personal information" and "contact information":

"personal information" means recorded information about an identifiable individual other than contact information;

"contact information" means 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;

[22] Under the above definitions, information that is "contact information" is not "personal information" for the purpose of FIPPA. Whether information is contact information depends on the context in which it appears.⁸

[23] The Ministry submits that the information in dispute is clearly not contact information as it is not information to enable individuals to be contacted in any sort of business context.⁹

⁷ Ministry's initial submissions at para. 48.

⁸ Order F20-13, 2020 BCIPC 15 at para. 42.

⁹ Ministry's initial submissions at para. 37.

[24] I have considered whether the reference information is contact information and I conclude that it is not. While the business phone numbers would allow the references to be contacted at their places of business, past orders, including recent orders, have found that information is only “contact information” for the purpose of FIPPA if, in the context of the record, it was used in the ordinary course of conducting the third party’s business affairs.¹⁰

[25] I find that the Candidates provided the reference information so that the Office could contact the references for the purpose of assessing the Candidates’ suitability for a position with the Organization. In my view, providing such a reference is not part of the ordinary course of conducting the references’ business affairs and therefore the information is not “contact information.”

[26] As a result, I find that the reference information is personal information because it is identifiable information about the references and it is the Candidates’ personal information because it shows who they chose to be their references. The rest of the information provided by the Candidates on the Profiles is clearly identifiable information about them. The Candidates and their references are all third parties under FIPPA.¹¹

[27] However, I find that additional template language that the Ministry has withheld under s. 22(1) is not personal information because it is not about an identifiable individual. For example, the template language asking for details is not about anyone. Similarly, the template language specifying the pieces of information that the Candidates were required to provide about their references is not about an identifiable individual. Since this information is not personal information, s. 22(1) does not apply.

[28] I now turn to whether disclosure of the personal information in dispute is an unreasonable invasion of a third party’s personal privacy.

Section 22(4)

[29] Section 22(4) sets out circumstances where disclosure is not an unreasonable invasion of a third party’s personal privacy. If any of the circumstances in s. 22(4) apply to the personal information in dispute, the public body is required to give the applicant access to that information.

¹⁰ Order F15-32, 2015 BCIPC 35 at para. 15; Order F20-52, 2020 BCIPC 61 at paras. 25-26; Order F20-08, 2020 BCIPC 9 at para. 52. See also Order F14-07, 2014 BCIPC 8 at para. 48 and F18-42, 2018 BCIPC 45 at para 10; these orders do not use language similar to “ordinary course of conducting the third party’s business affairs” but I find the reasoning to be consistent.

¹¹ Schedule 1 of FIPPA says that a third party, in relation to a request for access to a record means any person, group of persons or organization other than (a) the person who made the request, or (b) a public body.

Section 22(4)(e) – positions, functions and remuneration of an officer, employee or member of a public body

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

[31] The applicant submits that it is self-evident that the Profiles are about the Candidates' positions, functions or remuneration as a member of a public body.¹²

[32] The Ministry submits that it was careful to disclose any information about a third party's position, function or remuneration as an officer, employee or member of the public body or as a member of a minister's staff.¹³ The Ministry says that the withheld information does not include information about the functions or responsibilities of the position with the Organization.¹⁴

[33] The applicant's argument appears to be about the nature of the Profiles as a whole. However, s. 22 is about information, not records. While the Profiles as a whole are related to the Candidates' suitability for a position with a public body, the specific information dispute is not about the Candidates' positions, functions or remuneration as an officer, employee or member of a public body. For example, past employment with a private sector organization is not about a Candidate's position with a public body. I accept the Ministry's position that any information of this sort has already been disclosed.

[34] I find that s. 22(4)(e) does not apply to the personal information in dispute.

Section 22(3)

[35] Section 22(3) lists circumstances where disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. The next step in the analysis is to consider whether any of the circumstances apply. The Ministry submits that ss. 22(3)(a), (d), (f) and (g) apply and I will consider each in turn.

Section 22(3)(a) – medical, psychiatric or psychological history

[36] Section 22(3)(a) creates a presumption that disclosure of personal information relating to a medical, psychiatric or psychological history, diagnosis,

¹² Applicant's response submissions at para. 30.

¹³ Ministry's initial submissions at para. 41.

¹⁴ Ministry's reply submissions at para. 10.

condition, treatment or evaluation is an unreasonable invasion of a third party's personal privacy.

[37] The Ministry submits that s. 22(3)(a) applies to the response to a question that asks whether a candidate has any kind of disability that would affect their ability to serve as a board member and if so, whether the candidate requires an accommodation.¹⁵

[38] In my view, s. 22(3)(a) plainly applies to information revealing whether or not a candidate has a disability. Therefore, disclosure of this information is presumed to be an unreasonable invasion of the Candidates' personal privacy.

Section 22(3)(d) – employment, occupational or educational history

[39] Under s. 22(3)(d), disclosure of a third party's employment, occupational or educational history is presumed to be an unreasonable invasion of that third party's personal privacy.

[40] The Ministry submits that s. 22(3)(d) applies to information about the Candidates' educational background, past employment, past and present directorships, memberships in professional organizations and to the self-assessed score.¹⁶ The Ministry says that it was careful to disclose information that is already available through the Candidates' biographies.¹⁷

[41] In my view, most of this information plainly relates to the Candidates' employment, educational or occupational history. The information about the Candidates' educational background and past employment clearly relate to their educational and employment histories, respectively. Further, I find that information about the Candidates' positions as current or past directors or officers are the Candidates' occupational history. This information is about formal positions held by the Candidates.

[42] However, I find that s. 22(3)(d) does not apply to the balance of the personal information. For instance, in one of the Profiles, the Ministry has withheld information about the Candidate's memberships in professional organizations.¹⁸ However, the Ministry did not provide additional information or argument detailing why it believes this information is subject to s. 22(3)(d). This information is clearly not the Candidate's educational or employment history. Without further explanation, I am not satisfied that the information about this

¹⁵ Ministry's initial submissions at para. 45. I note that the wording of this question differs between the two Profiles. One asks whether the candidate has a disability that would "limit or prevent [the candidate] from carrying out their duties", but my analysis applies equally.

¹⁶ Ministry's initial submissions at para. 47.

¹⁷ Ministry's initial submissions at para. 48.

¹⁸ The other Candidate did not include any information under this section and the Ministry disclosed the blank space.

Candidate's memberships in professional organizations is their occupational history. For example, there is nothing to suggest that the Candidate was involved in these organizations beyond just their membership. Therefore, based on the information before me, I am not persuaded that this information is the Candidate's occupational history.

[43] Finally, I do not see, and the Ministry has not explained how one Candidate's response¹⁹ regarding their ability to read a financial statement relates to their employment, occupational or educational history under s. 22(3)(d). For example, this information in the context of the Profile does not relate to a particular past employment or educational endeavour. The question simply asks the Candidate to rate their ability on a scale of one to ten.

[44] For these reasons, I find that s. 22(3)(d) only applies to Candidates' educational background, past employment, and their past and present directorships. As a result, disclosure of this information is presumed to be an unreasonable invasion of the Candidates' personal privacy.

Section 22(3)(f) – third party's finances

[45] The Ministry submits that s. 22(3)(f) applies to information on two pages of each Profile. Section 22(3)(f) presumes that disclosure of personal information that describes a third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or creditworthiness is an unreasonable invasion of that third party's personal privacy.

[46] Although the Ministry has identified two pages on each Profile²⁰ that contain information about the third parties, only one question appears to have anything to do with a candidates' financial history or activities.²¹

[47] This question is part of a set of questions and asks whether a candidate has been charged with or convicted of an offence under a "federal statute including the *Income Tax Act*, the *Controlled Drugs and Substances Act*, or others." While the question mentions the *Income Tax Act* as an example, the question is about a charge or conviction under any federal statute. Therefore, I am not satisfied that the answer would reveal anything about the Candidates' financial history or activities.

[48] In addition, there is space below the set of questions to provide details. In one of the Profiles, the Ministry disclosed blank space, indicating that the Candidate did not provide any details. In the other, the Ministry withheld the space below the set of questions. Without confirming or denying whether this

¹⁹ This question does not appear on the other Profile.

²⁰ Ministry's initial submissions at para. 50.

²¹ Or any of the other items listed under s. 22(3)(f).

Candidate provided details, I conclude that there is no personal information in this space that describes the Candidate's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or creditworthiness within the meaning of s. 22(3)(f).

[49] As a result, I conclude s. 22(3)(f) does not apply to this information.

[50] While not on the pages that the Ministry identified, there is further personal information on one of the Profiles that bears consideration under s. 22(3)(f). The Ministry has withheld some information about a Candidate's business interests.²² In my view, this information describes the Candidate's assets and therefore disclosure is presumed to be an unreasonable invasion of that Candidate's personal privacy under s. 22(3)(f).

Section 22(3)(g) – personal recommendations

[51] Section 22(3)(g) creates a presumption where the information consists of personal recommendations or evaluations, character references or personnel evaluations of a third party.

[52] The Ministry argued that s. 22(3)(g) applies to the reference information.²³

[53] The Ministry references Order 00-48 to support its position that reference check information falls under s. 22(3)(g).²⁴ However, I find Order 00-48 distinguishable from the present case because the information at issue in that case was the names of the references *and* their opinions about a third party.

[54] The information at issue in the present case does not include the references' opinions about the Candidates or any other information that is a personal recommendation or evaluation, character reference or personnel evaluation of a third party. Therefore, I conclude that s. 22(3)(g) does not apply.

Section 22(2)

[55] Section 22(2) says that when a public body decides whether disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, it must consider all relevant circumstances, including those listed in s. 22(2). Some circumstances weigh in favour of disclosure and some against. Relevant circumstances that weigh in favour of disclosure may rebut any applicable presumptions under s. 22(3).

²² Question 7(b) on p. 16 of the records in dispute. I note that the Profile does not define what it means by "interests".

²³ Ministry's initial submissions at para. 52.

²⁴ *Ibid* at para. 53 citing Order 00-48, 2000 CanLII 14413 (BCIPC), at 3.2.

[56] I have considered several enumerated circumstances and some additional circumstances. I will discuss each circumstance in turn.

Section 22(2)(a) – public scrutiny of a public body

[57] Section 22(2)(a) is about whether disclosure of the personal information in dispute is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny. Section 22(2)(a) recognizes that, where disclosure of the information in dispute would foster accountability of a public body, this may provide a foundation for finding that disclosure would not constitute an unreasonable invasion of a third party's personal privacy.²⁵ It is well established that the purpose of s. 22(2)(a) is to make public bodies accountable, not individual third parties.²⁶

[58] The applicant says that there can be no more basic and important public scrutiny of a public body than knowing whether the directors of a publicly appointed board are law-abiding citizens who have no conflicts of interest.²⁷ The applicant says that British Columbians have a right to see a fulsome conflict of interest statement for anyone who is responsible for strategic direction, policy and spending of any public body. Further, the applicant submits that the people of BC have a right to know whether a person appointed to a board has been charged or convicted of an offence in any jurisdiction or otherwise been involved in any unethical behaviour that may harm their ability to work on behalf of the public.²⁸ The applicant says that, "if the public does not know, how can it have trust and confidence in the board, its decisions, and by extension, the government?"²⁹

[59] The applicant also says that government board appointment processes tend to be controversial, due to the "tradition of rewarding political friends."³⁰ The applicant references some research on the topic, but it appears to be focussed on appointments by the federal government.³¹

[60] The Ministry says that disclosure of the personal information would at most subject the Candidates to public scrutiny. The Ministry says that past orders have held that information relating to an assessment of an individual's candidacy does not add anything meaningful to the public's understanding of its activities or whether the hiring practices are merit based.³²

²⁵ Order F05-18, 2005 CanLII 24734 (BC IPC) at para. 49.

²⁶ Order F18-47, 2018 BCIPC 50 at para. 32, for example.

²⁷ Applicant's response submissions at para. 28.

²⁸ *Ibid* at paras. 23 and 24.

²⁹ *Ibid* at para. 28.

³⁰ *Ibid* at para. 25.

³¹ *Ibid* at para. 26.

³² Ministry's initial submissions at paras. 56-60 and reply submissions at para. 13.

[61] The Ministry further says that it is the job of the Office to determine whether a candidate is suitable for a board position and that citizens do not have a right to see a conflict of interest statement or the answers to the integrity and public accountability sections of the Profiles.³³

[62] I see two distinct arguments about the applicability of s. 22(2)(a).

[63] The first is whether or not disclosure of any of the information in dispute is desirable for the purpose of scrutinizing the Office's process of recruiting and recommending candidates for appointment to public sector organizations.³⁴

[64] I agree that personal information about the Candidates does not allow the public to scrutinize whether the Office's decision to recommend them for appointment to the Organization was merit based. This is particularly true because the personal information at issue is not about other applicants or the factors that led the Office to recommend this particular Candidate. My finding here is consistent with past orders on this issue.³⁵

[65] As a result, I conclude that disclosure of the Candidates' personal information is not desirable for public scrutiny of the Office.

[66] The second argument I see is whether disclosure of any of the information about the Candidates' personal history and attributes, including any conflicts of interest, is desirable for subjecting the activities of the Organization to public scrutiny.³⁶

[67] As previously mentioned, the Ministry withheld a partial response in the conflict of interest section of the Profile about one of the Candidate's business interests. The Profile also asks about the nature and extent of this conflict. In this regard, the Candidate declared that "Each business potentially does business with [the Organization]."

[68] In my view, knowing information about the Candidate's potential conflicts of interest with the Organization would assist the public in scrutinizing any dealings between the Organization and the businesses identified by the Candidate.³⁷ As a result, I find that s. 22(2)(a) is a circumstance weighing in

³³ Ministry's reply submissions at para. 11.

³⁴ I note that while the Office itself is not a public body, as previously mentioned, it is part of the Ministry of Finance, which is a public body under FIPPA. "Public body" is defined in Schedule 1 of FIPPA.

³⁵ Order F14-41, 2014 BCIPC 44 at para. 57, for example.

³⁶ I note that the Organization is a public body under FIPPA.

³⁷ I do not have any evidence about whether the Organization did, in fact, have any dealings with these businesses. I am mindful that the burden is on the applicant; however, in my view it is unfair

favour of disclosure of the personal information about the Candidate's declared conflicts of interest.

[69] However, I do not think that disclosure of the Candidates' answers to the questions in the integrity and public accountability section of the Profiles would foster accountability of the Organization.

[70] In this regard, the applicant submits the public has a right to know about any unethical past behaviour of an appointee. I understand the applicant to be arguing that it would be desirable for the public to know the answers to the questions in the integrity and public accountability section of the Profiles because past unethical behaviour may harm a candidate's ability to effectively serve the public as an appointee to a public sector organization.

[71] I do think that the higher up in an organization an individual is, the more the line between personal scrutiny and public body scrutiny becomes blurred. However, I am not persuaded that disclosure of the personal information in dispute is desirable for scrutiny of the Organization in the way the applicant suggests. I do not see enough of a link between information about past actions of the Candidates and the activities of the Organization. Without more, I am not satisfied that the Candidates' answers to the integrity and public accountability section of the Profiles would assist the public in scrutinizing the actions of the Organization.

[72] In conclusion on point, I find that disclosure of the Candidate's personal information about their conflicts of interest is desirable for public scrutiny of the Organization but the Candidates' responses to the integrity and public accountability questions are not.

[73] My overall conclusion about s. 22(2)(a) is that disclosure of the Candidate's personal information about their conflicts of interest are desirable for public scrutiny of the Organization. Therefore, I find that s. 22(2)(a) is a circumstance weighing in favour of disclosure of this information.

Section 22(2)(f) – supplied in confidence and expectation of public disclosure

[74] Under s. 22(2)(f), the public body must consider whether the personal information in dispute has been supplied in confidence. If it applies, this circumstance weighs in favour of withholding the information.

[75] The Ministry says that the information in dispute was supplied in confidence. In support of its argument, the Ministry points to template language

to expect the applicant to furnish this kind of evidence without knowing the names of the businesses.

on the Profiles that “all information provided to us will be considered as supplied in confidence.”³⁸ In addition, the Ministry points to several statements that indicate that the purpose of any disclosure of the Candidates’ personal information is to assess their suitability for a position. For example, the Profiles state the Office may disclose information to references or “such persons or organizations when such disclosure is necessary to evaluate my suitability for appointment”.³⁹

[76] I do not think that the template language, on its own, is a strong indicator of the Candidates’ subjective expectations of confidentiality. However, combined with the types of information the Candidates are required to provide on the Profiles, I find that the Candidates would have had some expectation that the information would not be shared other than for the specified purpose of assessing the Candidate’s suitability for a position. Therefore, subject to one exception which I detail below, I find that the information in dispute was supplied in confidence in accordance with s. 22(2)(f) and that it is a relevant circumstance weighing in favour of withholding the information.

[77] I am not satisfied, however, that the Candidates supplied their biographical information in confidence. This is because the Profiles state that the Office may publish a biography that contains some or all of the information in certain sections of the Profiles including the Candidates’ educational backgrounds, professional and employment backgrounds, and past and present directorships.⁴⁰ Therefore, the Candidates would have expected that any of this information could be shared publicly. Therefore, I find that s. 22(2)(f) is not a relevant circumstance with regards to this information. Further, I find that the fact that the Candidates supplied the biographical information with the expectation that it could be shared publicly is its own relevant circumstance, weighing in favour of disclosure.

Section 22(2)(h) – unfair damage to reputation

[78] Under s. 22(2)(h) the public body is required to consider whether disclosure of the personal information would unfairly damage the reputation of any person referred to in the record requested by the applicant. Where s. 22(2)(h) applies, it weighs in favour of withholding that information.

[79] The Ministry argues that the Candidates’ responses to some of the integrity and public accountability questions could, depending on the answers, unfairly damage the Candidates’ reputations.⁴¹ These questions ask whether the Candidates have been charged or convicted of a crime, disciplined by

³⁸ Ministry’s initial submissions at para. 65.

³⁹ *Ibid* at para. 64.

⁴⁰ *Ibid* at para. 63.

⁴¹ *Ibid* at para. 67.

a professional association, had any improper dealings with government or promoted hate, for example.

[80] I accept that, depending on the information in dispute, the Candidates' answers to these questions may damage their reputation, given the serious nature of the matters. However, for s. 22(2)(h) to apply, any damage to reputation must also be unfair. Whether any damage is unfair depends on the specific information in dispute and any relevant factual circumstances.

[81] Based on the information before me, I conclude that there is no information in dispute that would, if disclosed, unfairly damage the reputation of any person referred to in the records requested by the applicant. As a result, I find that s. 22(2)(h) is not a relevant circumstance. I cannot provide further details without revealing the information in dispute.

Sensitivity

[82] Sensitivity is not an enumerated factor under s. 22(2), however, many past orders have considered it as a relevant circumstance. Where information is sensitive, it is a circumstance weighing in favour of withholding the information.⁴² Conversely, where information is not sensitive, past orders have found that this weighs in favour of disclosure.⁴³

[83] The Ministry submits that some of the information is highly sensitive. For example, the Ministry says that personal information about potential conflicts of interest, whether an individual has been charged or convicted of an offence, or exercised unethical behaviour is highly sensitive personal information.⁴⁴

[84] I understand the Ministry to be arguing that the information in dispute under the conflict of interest and the integrity and public accountability sections of the Profiles is sensitive, and therefore that this should weigh in favour of withholding the information. I will consider each section separately, starting with the integrity and public accountability section.

[85] In my view, the questions in the integrity and public accountability section of the Profiles clearly ask about sensitive matters, such as whether a candidate has been charged or convicted of an offence under the *Criminal Code*, promoted hate or has had any improper dealings with government.⁴⁵

[86] While I think that the degree of sensitivity depends on the specific information provided, I find that the information is at least somewhat sensitive

⁴² Order F19-15, 2019 BCIPC 17 at para. 99, for example.

⁴³ Order F16-52, 2016 BCIPC 58 at para. 91, for example.

⁴⁴ Ministry's reply submissions at para. 14.

⁴⁵ The question does not specify which level or type of government.

regardless of the response provided. For example, an affirmative answer along with extensive details would almost certainly be more sensitive than a negative answer with no details. However, a negative answer is still somewhat sensitive because of the nature of the questions.

[87] Therefore, I find this is a factor weighing in favour of withholding the information in the integrity and public accountability sections of the Profiles, but explaining the exact degree to which I find the information to be sensitive could disclose the information in dispute, so I decline to do so.

[88] I turn now to the conflict of interest section. As I mentioned earlier, the Ministry has only withheld part of a Candidate's response to one question in the conflict of interest section of one Profile. I do not think this information is inherently sensitive and the Ministry has not provided further explanation regarding this particular information. In my view, it is not sensitive because of the lack of detail. I find this is a relevant circumstance weighing in favour of disclosure.

[89] With regards to the other information in dispute, I find that some of it is not sensitive. For example, I do not think that the Candidate's self-assessed score about their ability to read and understand financial statements is sensitive. In addition, some of the information about one of the Candidate's memberships in professional organizations is clearly not sensitive as it is the type of information that an individual would share freely. This weighs in favour of disclosure.

[90] Finally, I find that the Candidates' dates of birth are sensitive because an individual's date of birth is often used to verify their identity.⁴⁶

[91] As a result, I find that the sensitivity of the information is a relevant factor for some of the information in dispute, in some cases weighing for, and in some cases weighing against disclosure.

Effect on future candidates

[92] The Ministry submits that the potential for the information in the conflict of interest and integrity and public accountability sections of the Profiles to be publicized may deter potential qualified and deserving applicants from applying.⁴⁷ This kind of argument is often referred to as a "chilling effect."

[93] I understand the Ministry's point. However, I do not think it is a relevant circumstance in the present case. My task in this inquiry is to determine whether disclosure of the specific information in dispute would be an unreasonable

⁴⁶ For similar findings see Order P09-01, 2009 CanLII 38705 (BCIPC) at para 117 and Order F19-37, 2019 BCIPC 41 at para. 59.

⁴⁷ Ministry's reply submissions at para. 20.

invasion of the Candidates' personal privacy. I do not think what a hypothetical future candidate may or may not do is relevant to this determination.

[94] In addition, the provisions of s. 22 itself should assuage this concern. This section only allows disclosure of information that is not an unreasonable invasion of a third party's personal privacy. My decision is based on the specific information in dispute in this case. Future cases about information on different profiles will be decided on their own merits.

[95] As a result, I find that the effect on future candidates is not a relevant circumstance.

Conclusion on s. 22

[96] With regards to the personal information, I find that s. 22(1) applies to some but not all of it. I will explain my findings with regard to the specific personal information below in light of any relevant circumstances and presumptions that apply.

[97] First, I find that s. 22(1) applies to the Candidates' home and cellular telephone numbers, home addresses, and birth dates and the reference information. No presumptions apply, and I found this information was supplied in confidence. I found that the Candidates' birth dates are sensitive. There are no factors weighing in favour of disclosure.

[98] In addition, I find that disclosing the answers to the questions in the integrity and public accountability section of the Profiles would unreasonably invade the Candidates' personal privacy. The information was supplied in confidence and is sensitive. In addition, s. 22(3)(a) applies to information about whether or not a candidate has a disability that may affect their ability to serve as a board member.

[99] Some of the personal information about one of the Candidate's memberships in professional organizations is not sensitive. The only other relevant circumstance is that this information was supplied in confidence. Weighing these two factors, I find that s. 22(1) does not apply. However, I find that s. 22(1) applies to the remaining personal information about the Candidate's memberships.

[100] I find that the remainder of the information is not subject to s. 22(1).

[101] While the information about the Candidates' educational backgrounds, past employment, and past and present directorships is their occupational, employment or educational history under s. 22(3)(d), the fact that the Candidates supplied this information with the knowledge that it could be shared publicly rebuts this presumption.

[102] Next, I find that disclosure of a small amount of information about one of the Candidate's business interests is not an unreasonable invasion of that Candidate's personal privacy. I found that this information is subject to s. 22(3)(f) because it describes one of the Candidates' assets and that this information was supplied in confidence. However, I also found that disclosure of this information is desirable for public scrutiny of the Organization. I further concluded that it was not sensitive. Weighing all these factors, I conclude that s. 22(1) does not apply.

[103] Finally, in my view, disclosing the self-assessed score is not an unreasonable invasion of the Candidate's personal privacy. The self-assessed score is not sensitive, which outweighs the fact that it was supplied in confidence.

CONCLUSION

[104] Based on the reasons above, I make the following order under s. 58 of FIPPA:

1. Subject to item 2, I require the Ministry of Finance to refuse to disclose parts of the records in dispute under s. 22(1).
2. The Ministry of Finance is required to give the applicant access to the parts of the records in dispute that I have highlighted in a copy of the records provided to the Ministry along with this order.
3. The Ministry of Finance must concurrently copy the OIPC registrar of inquiries when it provides the applicant access to the parts of the records described in item 2.

[105] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by February 2, 2022.

December 22, 2021

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

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