



Order F21-68

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* to the Ministry of Finance for cabinet briefing notes and candidate profile and declaration forms for a named individual within a specified date range. In response, the Ministry of Finance disclosed some information in the responsive records, but withheld other information under ss. 12(1) (Cabinet confidences) and 22(1) (unreasonable invasion of a third party's personal privacy). The adjudicator found that the Ministry of Finance was required to withhold the information in dispute under s. 12(1) and 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. 12(1), 12(2)(c), 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 the Board Resourcing Development Office cabinet briefing note and candidate profile and declaration for a named individual within a specified date range. The applicant's request indicates that the request is for records about the named individual's appointment to two different public sector organizations.

[2] In response, the Ministry provided 30 pages of records but withheld some information under ss. 12(1) (cabinet confidences) and 22(1) (unreasonable invasion of a third party's personal privacy).

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision. Mediation did not resolve the issues and the matter proceeded to inquiry.

[4] The named individual could not be contacted and therefore did not participate in the inquiry.¹

[5] During the inquiry, the Ministry reconsidered its application of ss. 12(1) and 22(1) to some information in dispute. As a result, it disclosed additional information to the applicant.²

[6] This inquiry is part of a set of five about similar requests by the applicant. The facts of each case are slightly different. Where it makes sense to do so, I have referred to my reasons in Order F21-67. The companion orders are F21-66, F21-67, F21-69, and F21-70.

ISSUES

[7] During this inquiry, I must decide whether the Ministry is required to withhold the information in dispute under ss. 12(1) and 22(1) of FIPPA. Under s. 57, the Ministry has the burden of proving that s. 12(1) applies; however, the applicant has the burden to show that disclosure of the personal information would not be an unreasonable invasion of a third party's personal privacy. 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

¹ Ministry's initial submissions at para. 6.

² *Ibid* at para. 8.

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

⁴ This background is drawn from the Ministry's initial submissions at paras. 18-27.

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.

organizations in identifying the size, composition and key areas of skill and experience required for board and tribunal membership.

[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, and the Ministry's submissions,⁷ I am satisfied that the named individual was appointed to two positions with two separate public sector organizations (Organizations).

Records at issue

[15] There are five records at issue.

[16] The first record is a completed candidate profile and declaration form (Profile); submitted by the individual named in the applicant's access request (Candidate).⁸

[17] The Profile includes the following sections:

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

[18] The Ministry has disclosed the headings, questions, and most of the template language on the Profile. The information in dispute is some of the information provided by the Candidate, which I have described in further detail below.

⁶ Unless the governing legislation specifies otherwise.

⁷ Ministry's initial submissions at paras. 58, 61, and 65.

⁸ The Ministry says it was unable to locate the Candidate's Profile for the second organization. See Ministry's initial submissions at para. 14.

[19] The other records at issue are the Candidate's resume and a "Consent for Disclosure of Criminal Record Information" form (criminal information check). The Ministry has withheld these records in their entirety.

[20] Finally, there are two Cabinet briefing notes (briefing notes). The Ministry has withheld the home addresses of the Candidate and of other individuals recommended for appointment under s. 22(1). Separately, the Ministry has withheld a small amount of information in each briefing note under s. 12(1).

[21] I will determine whether s. 12(1) applies to the information in the briefing notes before turning to s. 22(1).

Section 12 – cabinet confidences

[22] Section 12(1) of FIPPA requires a public body to refuse to disclose information that would reveal the substance of deliberations of the Executive Council (commonly known as Cabinet) or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees.

[23] Section 12(2) states that subsection (1) does not apply to:

(a) information in a record that has been in existence for 15 or more years,

(b) information in a record of a decision made by the Executive Council or any of its committees on an appeal under an Act, or

(c) information in a record the purpose of which is to present background explanations or analysis to the Executive Council or any of its committees for its consideration in making a decision if

(i) the decision has been made public,

ii) the decision has been implemented, or

(iii) 5 or more years have passed since the decision was made or considered.

[24] The purpose of s. 12(1) is to widely protect the confidence of Cabinet communications.⁹ Explaining the rationale for protecting cabinet confidences, the Supreme Court of Canada has said that "[t]hose charged with the heavy responsibility of making government decisions must be free to discuss all aspects

⁹ *Aquasource Ltd. v. British Columbia (Freedom of Information and Protection of Privacy Commissioner)* 1998 CanLII 6444 (BC CA) [*Aquasource*] at para 41.

of the problems that come before them and to express all manner of views, without fear that what they read, say or act on will later be subject to public scrutiny”.¹⁰

[25] I will first decide if the requirements of s. 12(1) are met before turning to whether any circumstances in s. 12(2) apply.

12(1) – substance of deliberations

[26] In the context of s. 12(1), the phrase “substance of deliberations” refers to the body of information that the Cabinet or any of its committees considered (or would consider in the case of submissions not yet presented) in making a decision.¹¹

[27] The Ministry says that the information at issue in the briefing notes contain recommended speaking points for the Deputy Minister, which she relied on to provide oral advice to members of Cabinet regarding appointments to public sector organizations.¹²

[28] The Ministry says Cabinet deliberated on the appointment of the Candidate to the Organizations in two separate Cabinet meetings.¹³ The Ministry provided supporting documents *in camera* such as an “Orders in Council BRDO Summary” and Cabinet minutes, which the Ministry says record Cabinet approving orders in council for appointments, including the Candidate’s.¹⁴

[29] Based on the evidence provided by the Ministry, I am satisfied that the information at issue in the briefing notes would reveal the body of information that Cabinet considered regarding appointments to public sector organizations. Therefore, I find that the information at issue would reveal the substance of deliberations within the meaning of s. 12(1).

Section 12(2) – background analysis or explanations

[30] Section 12(2) sets out circumstances where s. 12(1) does not apply.

[31] The only factor under s. 12(2) that is potentially relevant is s. 12(2)(c). Section 12(2)(c) says that 12(1) does not apply where the purpose of the information is to provide background explanations or analysis to the Executive Council or its committees, and one of the criteria (i) through (iii) are met.

¹⁰ *Babcock v Canada (Attorney General)*, 2002 SCC 57 at para. 18.

¹¹ *Aquasource*, *supra* note 9 at para. 39.

¹² Ministry’s initial submissions at paras. 52, 56, and 63.

¹³ *Ibid* at paras. 55 and 62.

¹⁴ *Ibid* at paras. 58 and 65 and Exhibits A through F of the Affidavit of the Records Management Officer of Cabinet Operations, Office of the Premier, submitted *in camera*.

[32] “Background explanations” include everything factual that Cabinet used to make a decision, and “analysis” includes discussion about the background explanations but not analysis of policy options presented to Cabinet.¹⁵ Section 12(2)(c) does not apply to background explanations or analysis interwoven with the substance of deliberations.¹⁶

[33] The Ministry says that the information in dispute is not background explanations or analysis because the information in dispute relates to advice about the suitability of the recommended appointees.¹⁷

[34] In my view, s. 12(2)(c) plainly does not apply. The information in dispute is about the qualifications of the Candidate and other individuals. It is squarely the substance of deliberations and is not background explanations or analysis.

[35] As a result, I find s. 12(1) applies to the information in dispute.

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

[36] Section 22 requires a public body to refuse to disclose information to an applicant if disclosure would be an unreasonable invasion of a third party’s personal privacy.

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

- The Candidate’s home and cellular telephone numbers, home address and birth date;
- Some information about the Candidate’s current directorships, past and present community and civic activities and the Candidate’s memberships in professional organizations;
- The Candidate’s response to a question asking the Candidate to rate their ability to read and understand financial statements (self-assessed score);
- All answers, except one, to the questions under the conflict of interest section;
- All answers to the questions in the integrity and public accountability section; and
- The names, positions, addresses, email addresses and business telephone numbers of the Candidate’s references (reference information).

¹⁵ Order 48-1995, BCIPD No. 21 at para. 13. This approach was confirmed by the BC Court of Appeal in *Aquasource supra* note 9.

¹⁶ *Aquasource supra* note 9 at para. 50.

¹⁷ Ministry’s initial submissions, at para. 67.

[38] The Ministry withheld the Candidate's resume and the criminal information check in their entirety under s. 22(1).

[39] In addition, the Ministry withheld the Candidate's home address from both briefing notes under s. 22(1). In the second briefing note, the Ministry also withheld the home addresses of other individuals recommended for appointment.

Personal information

[40] 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.

[41] Under the definitions in schedule 1 of FIPPA:

"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;

[42] Under these definitions, if information is contact information, it is not personal information under FIPPA. Whether information is contact information depends on the context in which it appears.¹⁸

[43] 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.¹⁹

[44] 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.²⁰

[45] I find that the Candidate provided the reference information so that the Office could contact the references for the purpose assessing the Candidate's

¹⁸ Order F20-13, 2020 BCIPC 15 at para. 42.

¹⁹ Ministry's initial submissions at para. 78.

²⁰ 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.

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."

[46] As a result, I find that the reference information is personal information because it is identifiable information about the references and it is the Candidate's personal information because it shows who they chose to be their references. The rest of the information provided by the Candidate on the Profile is clearly identifiable information about them.

[47] 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 specifying the pieces of information that the Candidate was 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.

[48] Turning to the criminal information check, the Ministry has also withheld template language on this form. I find that the template language on the criminal information check is also not about an identifiable individual. It is language on the form that would be the same no matter who completed it. Therefore s. 22(1) does not apply to the template language.²¹

[49] In addition, some of the information on the criminal information check is not personal information because it is "contact information." Here, I am referring to the name, position and business address of a provincial government employee authorized to receive the results of the RCMP's information search.²² In my view, the purpose of this information is to enable the provincial government employee to be contacted at their place of business in the ordinary course of performing their job duties. As a result, I find it is contact information.

[50] Finally, the criminal information check also includes the name and work unit of the RCMP officer who completed the criminal information check. In my view, this is not "information to enable an individual at a place of business to be contacted." Rather, the purpose of this information in its context is to confirm that an identifiable RCMP officer completed the check. In short, the information was not provided to enable contact with the RCMP officer so it is not "contact information." Therefore, it is the RCMP officer's personal information.

²¹ Some of the template language has markings on it, that I find would disclose personal information, so in this case, it is about an identifiable individual.

²² The form says that authorization is under s. 8(1) of the federal *Privacy Act*. The authorization is for the RCMP to disclose the Candidate's personal information to a named provincial government employee.

[51] The remaining information on the criminal information check is clearly identifiable information about the Candidate such as their name, sex, home phone number, home address, birth date and driver's licence number. In addition, the result of the check is clearly about the Candidate.

[52] I now turn to whether disclosure of personal information is an unreasonable invasion of a third party's personal privacy. Under the definition of "third party" in FIPPA, the Candidate, their references, and the RCMP officer are all third parties because they are persons other than the person who made the request or a public body.²³

Section 22(4)

[53] 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, s. 22(1) does not apply.

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

[54] 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.

[55] The applicant submits that it is self evident that the Profile is about the Candidate's position, functions or remuneration as a member of a public body.²⁴

[56] 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 the minister's staff.²⁵ The Ministry says that the withheld information does not include information about the functions or responsibilities of the position with the Organization.²⁶

[57] The applicant's argument appears to be about the nature of the Profile as a whole. However, s. 22 is about information, not records. While the Profile as a whole is related to the Candidate's suitability for a position with a public body, at issue is whether the specific information in dispute is about the Candidate's

²³ 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."

²⁴ Applicant's response submissions at para. 30.

²⁵ Ministry's initial submissions at para. 82.

²⁶ Ministry's reply submissions at para. 10.

position, functions or remuneration as an officer, employee or member of the Organization.

[58] I accept the Ministry's submission that any information falling under s. 22(4)(e) in the Profile has already been disclosed. As a result, I find that s. 22(4)(e) does not apply to any information in dispute.

Section 22(3)

[59] Section 22(3)(d) lists circumstances where disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. The Ministry submits that several presumptions apply and I will consider each in turn.

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

[60] Section 22(3)(a) creates a presumption that disclosure of personal information relating to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation is presumed to be an unreasonable invasion of a third party's personal privacy.

[61] The Ministry submits that s. 22(3)(a) applies to the Candidate's response to a question on the profile which asks whether the Candidate has a disability that may affect the Candidate's ability to serve as a board member and if so, whether the candidate requires an accommodation.²⁷

[62] In my view, s. 22(3)(a) plainly applies to information revealing whether or not a candidate has a disability. This information is presumed to be an unreasonable invasion of the Candidate's privacy.

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

[63] 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.

[64] The Ministry submits that s. 22(3)(d) applies to the personal information on the Profile about the Candidate's past and present directorships, past and present community and civic activities, and memberships in professional organizations, except for information that is available in the Candidate's public biography.²⁸ In addition, the Ministry says that s. 22(3)(d) applies to the Candidate's response regarding the self-assessed score of their ability to read financial statements.

²⁷ Ministry's initial submissions at para. 86.

²⁸ *Ibid* at para. 88. The Ministry also says it applies to publications, but I do not see any information of that sort.

[65] The Ministry also submits that s. 22(3)(d) applies to the Candidate's resume, which describes the Candidate's educational history, and employment and occupational experience.²⁹

[66] Starting with the information on the Profile, I find that the information about the Candidate's past and present directorships and the Candidate's past and present community and civic activities is the Candidate's occupational history. This information is about formal positions held by the Candidate.

[67] However, I do not think that the information about the Candidate's memberships in professional organizations falls under 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 the 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.

[68] In addition, the Ministry has not explained, and it is not apparent to me how the Candidate's response 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.

[69] Turning to the Candidate's resume, I find that some of it is clearly the Candidate's employment, occupational or educational history. Past orders have found that the contents of a resume are the sort of information to which s. 22(3)(d) applies.³⁰ I find that s. 22(3)(d) applies to information describing the Candidate's education, career highlights, and community and civic activities. I also find that it applies to the Candidate's business awards, as these specific awards clearly relate to the Candidate's occupational endeavours.

[70] However, I do not think it applies to information about the Candidate's personal awards and honours or philanthropy. The information, as it is presented on the Candidate's resume, is not related to any specific employment, occupational or educational endeavour. Therefore, I find that s. 22(3)(d) does not apply to this information.

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

²⁹ Ministry's initial submissions at para. 90.

³⁰ Order F14-41, 2014 BCIPC 44 at para. 47; Order F17-02, 2017 BCIPC 2 at para. 21.

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

[72] The Ministry says that s. 22(3)(f) applies to the Candidate's answers to questions under the conflict of interest section of the Profile.³¹ These questions ask a candidate to identify interests that may conflict with their duty as an appointee to the public sector organization. Some of the questions are financial in nature. For example, candidates are asked to identify any of their interests (i.e. shares, businesses or properties) and sources of financial remuneration they receive that may conflict with their duties. The Ministry says that since the answers are interrelated, disclosure of one response could indirectly lead to disclosure of another.³²

[73] I accept that information identifying a Candidate's interests and sources of remuneration would describe their assets and income, respectively. However, I cannot elaborate as it would confirm or deny whether the Candidate did provide this kind of information, and therefore would disclose the personal information in dispute. For this reason, all I can say is that I have determined whether the presumption under s. 22(3)(f) applies and weighed it accordingly.

[74] The Ministry also submits that some of the questions under the integrity and public accountability section may describe the Candidate's finances.³³ For example, one question asks whether the 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 Candidate's financial history or activities.³⁴

[75] The Ministry also withheld the space below the set of questions. Without confirming or denying whether the 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).

[76] While the Ministry did not specifically argue that s. 22(3)(f) applies to any information on the resume, I find that information about the Candidate's donations is information that describes the Candidate's financial history or

³¹ Ministry's initial submissions at paras. 93-94.

³² *Ibid* at para. 95.

³³ *Ibid* at para. 96.

³⁴ Or any of the other items listed under s. 22(3)(f).

activities. Past orders have made similar findings.³⁵ As a result, I find that s. 22(3)(f) applies to this information.

Section 22(3)(g) – personal recommendations

[77] 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.

[78] The Ministry argued that s. 22(3)(g) applies to the reference information.³⁶

[79] The Ministry references Order 00-48 to support its position that reference check information falls under s. 22(3)(g).³⁷ In Order 00-48, the reference check information that former Commissioner Loukidelis found to fall within s. 22(3)(g) is distinguishable from the present case because it contained the names of the references *and* their opinions about the candidates.

[80] The information at issue in the present case does not include the references' opinions about the Candidate 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)

[81] Section 22(2) describes circumstances that a public body must consider when determining whether disclosure is an unreasonable invasion of a third party's personal privacy. Some circumstances weigh in favour of disclosure and some against.

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

[82] In Order F21-67 I extensively discussed whether the candidate's responses to the conflict of interest and integrity and public accountability questions were desirable for public scrutiny of the Office and of the public sector organization.

[83] My analysis in Order F21-67 applies equally here.

[84] As a result, I make the same finding that disclosure of the Candidate's responses to the conflict of interest questions are desirable for public scrutiny of

³⁵ For similar findings see Order F17-39, 2017 BCIPC 43 at para. 101; Order F18-16, 2018 BCIPC 19 at para. 38.

³⁶ Ministry's initial submissions at para. 98.

³⁷ *Ibid* at para. 99.

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

[85] 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.

[86] The Ministry says that the Candidate provided the personal information in confidence. In support of its argument, the Ministry points to template language on the Profile that says “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 Candidate’s personal information is to assess their suitability for a position. For example, the Profile states that the Office may disclose information to references or “such persons or organizations when such disclosure is necessary to evaluate my suitability for appointment”.³⁹

[87] I do not think that the template language, on its own, is a strong indicator of the Candidate’s subjective expectations of confidentiality. However, combined with the types of information the Candidate was required to provide on the Profile, I agree that the Candidate 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. For clarity, this finding extends to the information on the Candidate’s resume and the criminal information check, due to the Ministry’s evidence that the Candidate submitted these documents as part of the Profile.⁴⁰

[88] I am not satisfied, however, that the Candidate supplied the information about their current directorships and past and present community and civic activities in confidence. This is because the Profile also states that, if appointed, the Office may publish a biography that contains some or all of the information in certain sections of the Profile including the Candidate’s professional and employment background.⁴¹ Therefore, the Candidate would have expected that the information in these sections of the Profile could have been shared publicly. Therefore, I find that s. 22(2)(f) is not a relevant circumstance with regards to this

³⁸ *Ibid* at para. 110.

³⁹ *Ibid* at para. 108.

⁴⁰ Affidavit of the Director, Operations for the Crown Agencies and Board Resourcing Office at para 17.

⁴¹ Ministry’s initial submissions at para. 109.

information. Further, I find that the fact that the Candidate supplied the information about their current directorships and past and present community and civic activities with the expectation that this information could be shared publicly is its own relevant circumstance, weighing in favour of disclosure.

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

[89] 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.

[90] The Ministry argues that the Candidate's responses to some of the integrity and public accountability questions could, depending on the answers, unfairly damage the Candidate's reputation.⁴² These questions ask whether the Candidate has been charged or convicted of a crime, disciplined by a professional association, had any improper dealings with government or promoted hate, for example.

[91] The Ministry also argues that disclosure of the type of personal information on the criminal information check could damage a candidate's reputation.⁴³

[92] I accept that, depending on the information in dispute, the Candidate's answers to the integrity and public accountability questions and the results of a criminal information check may damage their reputation, given the serious nature of these 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.

[93] 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. I cannot provide further reasons without revealing the information in dispute. Therefore, I conclude that s. 22(2)(h) is not a relevant circumstance.

Sensitivity

[94] 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.⁴⁴

⁴² *Ibid* at para. 112.

⁴³ *Ibid* at para. 113.

⁴⁴ Order F19-15, 2019 BCIPC 17 at para. 99, for example.

Conversely, where information is not sensitive, past orders have found that this weighs in favour of disclosure.⁴⁵

[95] 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.⁴⁶

[96] 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 Profile is sensitive, and therefore that this should weigh in favour of withholding the information.

[97] In my view, the questions in the integrity and public accountability section of the Profile 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.⁴⁷

[98] While I think that the degree of sensitivity depends on the specific information provided, I find that the information is at least somewhat sensitive 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. In a similar vein, the result of criminal information check is sensitive regardless of the outcome.

[99] Therefore, I find this is a factor weighing in favour of withholding the information in the integrity and public accountability section of the Profile and the outcome of the criminal information check, 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.

[100] I turn now to the conflict of interest section. I acknowledge that the Ministry says that information about conflicts of interests are sensitive but it has not provided adequate explanation about why these particular responses are sensitive. In my view, this information is not sensitive.

[101] 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 response with regards to the self-assessed score is sensitive. In my view, the personal information about the Candidate's memberships in professional organizations is not sensitive as it is the type of information that an individual would share freely. I also find

⁴⁵ Order F16-52, 2016 BCIPC 58 at para. 91, for example.

⁴⁶ Ministry's reply submissions at para. 14.

⁴⁷ The question does not specify which level or type of government.

that, in the context of signing off on the criminal information check, the RCMP officer's name and work unit is not sensitive. This weighs in favour of disclosure.

[102] Finally, I find that the Candidate's date of birth and driver's licence number are sensitive because they are often used to verify a person's identity.⁴⁸

[103] 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

[104] The Ministry submits that the potential for the information in the conflict of interest and integrity and public accountability sections of the Profile to be publicized may deter potential qualified and deserving applicants from applying.⁴⁹ This kind of argument is referred to as a "chilling effect."

[105] I do not think the effect on future candidates 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 invasion of the Candidate's personal privacy. I do not think what a hypothetical future candidate may or may not do is relevant to this determination.

[106] 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.

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

Information already disclosed

[108] As previously mentioned, the Ministry withheld some information on the Candidate's resume that it disclosed on the Profile. In my view, this factor weighs heavily in favour of disclosure.

Information already public

[109] The Ministry withheld some information on the resume about the Candidate's personal and business awards. Considering the specific awards,

⁴⁸ For similar findings see Order P09-01, 2009 CanLII 38705 (BCIPC) at para. 117 and, regarding the date of birth only, Order F19-37, 2019 BCIPC 41 at para. 59.

⁴⁹ Ministry's reply submissions at para. 20.

I conclude, on balance, that this information has already been made public. This weighs in favour of disclosure.

Conclusion – s. 22.

[110] As I mentioned above, there are four types of records with information that the public body has withheld under s. 22(1). I make the following conclusions with regard to each record.

Profile

[111] Starting with the information on the Profile, I find that s. 22(1) applies to the Candidate's home and cellular telephone numbers, home address, and birth date and to the reference information. No presumptions apply, and I found this information was supplied in confidence. I found that the Candidate's birth date is sensitive. There are no factors that weigh in favour of disclosure.

[112] In addition, I find that disclosing the answers to the questions in the integrity and public accountability section of the Profile would unreasonably invade the Candidate's 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.

[113] I find that disclosure of the remaining information on the Profile would not be an unreasonable invasion of the Candidate's personal privacy under s. 22(1).

[114] Specifically, I find that disclosing the personal information about the Candidate's directorships and past and present community activities would not be an unreasonable invasion of their personal privacy. As noted, this information was subject to s. 22(3)(d), however, the Candidate supplied it with the knowledge that it could be shared publicly. After weighing these factors, I find s. 22(1) does not apply.

[115] I also find that it is not an unreasonable invasion of the Candidate's personal privacy to disclose their memberships in professional associations or the self-assessed score. I found that this information was supplied in confidence under s. 22(2)(f) but that it is not sensitive. I find that this information is not subject to s. 22(1).

[116] Further, I find that s. 22(1) does not apply to the withheld responses to the questions under the conflict of interest section of the Profile.⁵⁰ I found that, depending on the responses, s. 22(3)(f) may apply but that I cannot state my conclusion without revealing the information in dispute. I did conclude that this

⁵⁰ For clarity, the answers to question 9 (a), (b) and (c), 10 and 14.

information was supplied in confidence in accordance with s. 22(2)(f). However, I found that this information is desirable for public scrutiny of the Organization and that it is not sensitive, which in my view outweighs the other factor(s).

Briefing notes

[117] The Ministry withheld the Candidate's home address and the addresses of other individuals recommended for appointment under s. 22(1).

[118] In my view, s. 22(1) applies to this personal information. I found that the Candidate supplied their address on the Profile in confidence. In my view, that finding extends to the briefing notes as I find that it is reasonable to conclude that the Profile was the source of the Candidate's address. I also find it reasonable to conclude that the other individuals provided their address in the same fashion i.e. confidentially on their candidate profile and declaration forms.

[119] In any case, there are no factors that weigh in favour of disclosing the Candidate's and other individuals' addresses. I find that s. 22(1) applies.

Resume

[120] I conclude that s. 22(1) only applies to some information on the Candidate's resume.

[121] While disclosure of some of the information is presumed to be an unreasonable invasion of the Candidate's privacy under s. 22(3)(d) and it was supplied in confidence, in some cases other factors outweigh this. For example, some of the information subject to 22(3)(d) has been disclosed elsewhere in the records, or it is information to which I have already found that s. 22(1) does not apply. In these circumstances, I find that disclosure would not be an unreasonable invasion of the Candidate's privacy.

[122] Further, I find that the information about the Candidate's personal and business awards are the types of information that have already been publicized. For this reason, I find that disclosure is not an unreasonable invasion of the Candidate's personal privacy, despite the fact that the Candidate supplied the resume in confidence and that s. 22(3)(d) applies to the business awards.

[123] Given that the name of the Candidate is already available in the records, I do not find that disclosing it again on the resume is an unreasonable invasion of the Candidate's personal privacy.

[124] For the remaining information, I conclude that s. 22(1) applies. For example, there are no circumstances that outweigh the fact that the Candidate supplied the remaining information on the resume in confidence or the fact that the information about the Candidate's donations is subject to s. 22(3)(f).

Criminal information check

[125] With regards to the criminal information check, I found that the template language and the information about the provincial government employee were not personal information and therefore that s. 22(1) does not apply.

[126] I conclude that disclosure of the name and work unit of the RCMP officer is not an unreasonable invasion of a third party's personal privacy. It is not sensitive. Therefore, this information must be disclosed.

[127] I find that s. 22(1) applies to the Candidate's middle name, sex, home phone number, home address, birth date and driver's licence number as well as the results of the criminal information check. Some of this information is sensitive. There are no factors that weigh in favour of disclosure.

CONCLUSION

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

1. I require the Ministry of Finance to refuse to disclose the parts of the records in dispute under s. 12(1).
2. Subject to item 3, I require the Ministry of Finance to refuse to disclose parts of the records in dispute under s. 22(1).
3. 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.
4. The Ministry of Finance must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant when it provides the applicant access to the parts of the records described in item 3.

[129] 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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