



Order F22-09

VANCOUVER POLICE DEPARTMENT

Jay Fedorak
Adjudicator

February 10, 2022

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Summary: The applicant requested copies of records relating to a call to the Vancouver Police Department (VPD) about him, including an audio recording of the call. The VPD disclosed records, including a transcript of the audio recording, but withheld some information under s. 22 (unreasonable invasion of privacy). The adjudicator found that the VPD had correctly applied s. 22 and ordered it to withhold the information

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(f), 22(3)(b).

INTRODUCTION

[1] The applicant requested copies of records relating to a call to the Vancouver Police Department (VPD) about him, including an audio recording of the call. The VPD disclosed records but withheld some information under s. 16(1) (harm to intergovernmental relations) and 22(1) (unreasonable invasion of privacy). The VPD withheld the audio recording in its entirety under s. 22(1).

[2] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the response of the VPD.

[3] Mediation did not resolve the matter and the request proceeded to an inquiry.

[4] The VPD subsequently informed the applicant and the OIPC that it was ceasing to rely on s. 16(1) and disclosed further information, including a transcript of the call, with only some information severed under s. 22(1).

[5] After the VPD made its initial submission to the inquiry, the applicant attempted to include s. 25 as an issue. The OIPC declined to include s. 25 as an

issue at the inquiry because the applicant failed to raise the issue at the appropriate time, failed to obtain the prior consent of the OIPC and failed to provide a valid explanation for not doing so. There must be a valid reason for introducing new issues at such a late stage, and there was no evidence to suggest that the circumstances of the request engage s. 25.

ISSUE

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

- Whether s. 22(1) requires the VPD to withhold information.

[7] Under section 57(2) of FIPPA, the applicant has the burden of proving that disclosure of the personal information at issue would not be an unreasonable invasion of the personal privacy of third parties under s. 22(1).¹

DISCUSSION

[8] **Background** – The applicant has frequently resided at a series of shelters in Vancouver. One morning an individual present at one of the shelters called 911 to report that the applicant was yelling at staff of the shelter and refusing to leave. The applicant requested records relating to the call, including an audio recording.

[9] **Records at issue** – The VPD provided the applicant with a copy of a Computer Aided Dispatch Record concerning the call and the action the police took. The VPD also retrieved the 911 audio recording and made a written transcript. The VPD has disclosed all of the information in the Computer Aided Dispatch Record and the written transcript, withholding only personal information about the caller including their name, address, telephone number and the recording of their voice. It has not disclosed the audio recording itself, on the grounds that the voice of the third party would disclose their identity.

Section 22(1) – unreasonable invasion of privacy

[10] Previous Orders have outlined the proper approach in applying s. 22(1) of FIPPA. Order F15-03 is one example where the adjudicator provided a clear and succinct explanation of this approach, as follows:

This section only applies to “personal information” as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is

¹ However, the public body has the initial burden to show that the information it is withholding under s. 22(1) is personal information. Order 03-41, 2002 BCIPC 49220 (CanLII), paras 9-11.

presumed to be an unreasonable invasion of a third party's personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy.²

[11] I take the same approach in my analysis of the application of s. 22(1) in the present case.

Step 1 – Is the information “personal information”?

[12] FIPPA defines “personal information” as recorded information about an identifiable individual, excluding “contact information.” It defines “contact information” 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.”³

[13] The information at issue is the name, telephone number, home address and voice of the third party. This constitutes information about an identifiable individual that is not contact information.

[14] Therefore, I find this information to be personal information.

Step 2 – Does s. 22(4) apply?

[15] Neither party raised the application of s. 22(4). I do not see how any of the provisions apply. Therefore, I find that s. 22(4) does not apply.

Step 3 – Does s. 22(3) apply?

[16] The relevant provision reads as follows:

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

- ...
- (b) 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 continue the investigation.

² F13-03, 2013 BCIPC 3, para. 58.

³ FIPPA provides definitions of key terms in Schedule 1.

[17] The VPD submits that the records at issue were compiled as part of an investigation into a possible violation of law. The VPD cites the mandate of the chief constable under s. 34(2) of the *Police Act* as including, “the prevention of crimes and offences against the law.”⁴ The present case involved a police investigation into a call that required police action to preserve the peace. The VPD submits that this constitutes policing and law enforcement in accordance with s. 22(3)(b).⁵ The VPD cites previous BC Orders that have found recordings of 911 calls to be part of law enforcement investigations and subject to s. 22(3)(b).⁶ The VPD indicates that the Computer Aided Dispatch Record documents the call and the action of the police dispatcher and police members as a result of the call.⁷

[18] The VPD submits that the audio recording includes contextual information about the third party that it cannot reasonably remove for the purpose of disclosing the remainder of the recording. It contains the voice of the third party, as well as indications of their emotions and personal reactions. The VPD has provided a transcript of the call without any of the personal information of the third party. The applicant received all of the information that related to him and the content of the complaint against him.⁸

[19] The applicant does not dispute that the information at issue was compiled as part of a police investigation.

[20] The VPD has demonstrated that it collected the personal information of the third party as part of an investigation into a possible violation of law. Police officers investigated a complaint of a person refusing to leave a shelter and acting aggressively with staff. Therefore, I find that s. 22(3)(b) applies and that disclosure of the personal information is presumed to be an unreasonable invasion of privacy.

Step 4 – Do the relevant circumstances in s. 22(2) rebut the presumption of unreasonable invasion of privacy?

[21] The relevant provision of s. 22(2) is as follows:

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

...

⁴ The *Police Act* [RSBC 1996] Chapter 367.

⁵ VPD’s initial submission, paras. 10-14.

⁶ VPD’s initial submission, paras. 15-16. Order F07-04, 2007 BCIPC 8 (CanLII) and Order F13-12, 2013 BCIPC 15 (CanLII).

⁷ VPD’s initial submission, para. 5.

⁸ VPD’s initial submission, paras. 23-25.

(f) the personal information has been supplied in confidence

[22] **Section 22(2)(f)** – The VPD submits that the third party supplied their personal information in confidence, in accordance with s. 22(2)(f). In support of its submission on this point, the VPD provides, *in camera*, passages from the response of the third party to a communication from the VPD asking them if they would consent to the disclosure of the audio recording to the applicant. It also notes that the third party refused to provide consent.⁹ The applicant does not refute the application of s. 22(2)(f).

[23] The VPD has persuaded me that the third party provided their personal information in confidence. It is clear from the third party's comments in their response to the VPD regarding disclosure of the audio recording that they do not want the applicant to have access to their personal information. The refusal of the third party to consent to disclosure of their personal information supports this conclusion.

[24] Therefore, I find that the third party supplied their personal information in confidence, and this supports the withholding of the information.

[25] **Other relevant circumstances** – The applicant argues that this case is one of a series involving homeless shelters “abusing” 911 calls. He submits that disclosure of the recording will prevent future instances of this abuse. He states:

Releasing the call, albeit severed, will spread like wildfire “through the ranks” forcing these elements to rethink their tactics and expressions in grooming their “weakest link” for their purposes (and obviously so they are not “it” in their game of behavioral “tag”) not unlike the Shawshank Redemption scene during the first night in jail.¹⁰

[26] The applicant has not explained how the 911 call in question represents an abuse of 911 calls. The best I can make out is that he believes there have been cases where these shelters have called for police assistance when it was not warranted. Nor has he indicated how disclosure of the recording would lead to a change in practice. His submission is neither clear nor persuasive on this point.

[27] Therefore, I find what the applicant says about homeless shelters abusing 911 calls is not a relevant circumstance in this case.

[28] The VPD submits that there are no other relevant circumstances in this case that support disclosure of the personal information at issue. The applicant

⁹ VPD's initial submission, paras. 29-30.

¹⁰ The Applicant's response submission, pp. 16-17.

has not identified any other circumstances that might apply. From my review of the records, I do not see any other relevant circumstances that might apply.

Conclusion on s. 22(1)

[29] I have found that the information in dispute is the personal information of the third party. There are no provisions in s. 22(4) that apply that would have excluded the application of s. 22(1).

[30] I have found that the personal information at issue was compiled as part of an investigation into a possible violation of law, in accordance with s. 22(3)(b). This means that disclosure of the personal information is presumed to be an unreasonable invasion of the personal privacy of the third party.

[31] I have found that there are no relevant circumstances that rebut the presumption that disclosure would be an unreasonable invasion of the personal privacy of the third party. I have found that the third party supplied their personal information in confidence in accordance with s. 22(2)(f). This supports withholding the information.

[32] I have also found that the applicant did not make a case that disclosure would not be an unreasonable invasion of the personal privacy of the third party. The burden of proof lies with the applicant on this point, and the applicant has not met their burden of proof.

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

CONCLUSION

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

- I require the VPD to withhold under s. 22(1) the personal information that it withheld under s. 22(1).

February 10, 2022

ORIGINAL SIGNED BY

Jay Fedorak, Adjudicator

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