Order F22-10

MINISTRY OF CITIZENS' SERVICES and MINISTRY OF FINANCE

Erika Syrotuck
Adjudicator

February 15, 2022

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Summary: An applicant made two requests for access to records under the *Freedom of Information and Protection of Privacy Act*, one to the Ministry of Citizens' Services and one to the Ministry of Finance, for records mentioning her name over a specified period of time. The adjudicator found that s. 25(1) (public interest disclosure) did not require the Ministries to disclose the information in dispute. The adjudicator also found that ss. 14 (solicitor-client privilege) and 15(1)(l) (harm to the security of a property or system) applied to the information in dispute. However, the adjudicator found that ss. 13(1) (advice or recommendations) and s. 22(1) (unreasonable invasion of a third party's personal privacy) applied to some but not all of the information in dispute.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 13(1), 13(2), 13(3), 14, 15(1)(l), 22(1), 22(2)(a), 22(2)(b), 22(2)(c), 22(2)(d), 22(2)(f), 22(2)(h), 22(3)(a), 22(3)(d), 22(3)(g), 22(3)(h), 22(4)(e), and 25(1)(a) and (b).

INTRODUCTION

[1] The applicant made two requests under the *Freedom of Information and Protection of Privacy Act* (FIPPA) for records mentioning her name: one to the Ministry of Citizens' Services (Citizens' Services) and the other to the Public Service Agency (PSA), an agency under the Ministry of Finance (together, the Ministries). The requests pertain to a period of about two years, during which she was an employee of the public service. In response, the Ministries provided approximately 60 pages of records but refused to disclose some information in the records under ss. 13(1) (advice or recommendations), 14 (solicitor-client privilege) and 22(1) (unreasonable invasion of a third party's personal privacy).

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministries' decisions.

[3] Mediation did not resolve the issues and the matter was sent to inquiry.

[4] The Ministries then located several hundred pages of additional responsive records. Given the large volume of new records, the registrar of inquiries sent the matter back to mediation under s. 55 of FIPPA.[1]

[5] After the matter was referred back to mediation, both Ministries reconsidered their decisions and withdrew their reliance on s. 14. The PSA continued to withhold some information under s. 22(1), while Citizens' Services continued to withhold some information under ss. 13(1) and 22(1).

[6] Then, the PSA located further responsive records in the form of audio recordings, which it withheld in their entirety under s. 22(1).

[7] Mediation was again unsuccessful, and the applicant asked that the inquiry resume.

[8] After this, the applicant requested that s. 25 (public interest disclosure) be added to the inquiry. The Ministries did not oppose this request and the registrar approved it. In addition, Citizens' Services requested that s. 14 be added back to two pages, and the registrar approved this request.

[9] Finally, the Ministries again reconsidered their decision to withhold information and, in doing so, disclosed further information to the applicant. At the same time, Citizens' Services sought to withhold a small amount of information under s. 15(1)(l) (harm to the security of a property or system). The applicant indicated that she was interested in this information and the registrar of inquiries added the issue to the inquiry.

[10] The Ministries made joint submissions in this inquiry.

ISSUES

[11] At this inquiry, I must decide the following issues:

1. Are the Ministries required to disclose the information in dispute because it is in the public interest under s. 25(1)?

2. Are the Ministries authorized to withhold the information in dispute under ss.13(1), 14 and 15(1)(l)?

3. Are the Ministries required to withhold the information in dispute under s. 22(1)?

[1] By letter dated March 16, 2020.

[12] Section 57(1) of FIPPA places the burden on the Ministries to prove that ss. 13(1), 14 and 15(1)(l) apply. Under s. 57(2), the burden is on the applicant to prove that the disclosure of any personal information in dispute would not be an unreasonable invasion of any third party's personal privacy under s. 22(1).

[13] Past orders have said that s. 57 is silent about the burden of proof with regards to s. 25 and therefore that it is in the interests of both parties to provide whatever evidence and argument they have to assist the adjudicator in making the s. 25 decision.[2] I will take the same approach in this inquiry.

DISCUSSION

Background

[14] The records at issue in this inquiry relate to the applicant's employment with Citizens' Services during a period of about two years. According to the Ministries, the applicant made serious allegations of harassment, discrimination and bullying and had a number of conflicts with other people in the workplace during her employment.[3]

[15] The PSA began an investigation into an after-hours incident of alleged sexual assault involving the applicant (Investigation).[4] After conducting interviews, the PSA shut down the Investigation because the applicant disclosed that the individual involved was not a provincial government employee.[5]

[16] After the Investigation, the applicant made a claim to WorkSafeBC relating to how the Investigation had been conducted. The OIPC permitted the applicant to submit the WorkSafeBC review officer's decision partially *in camera*.[6] The portion that is in open evidence shows that the WorkSafeBC review officer found that the meeting in which the PSA investigator interviewed the applicant about the sexual assault was a traumatic event.[7]

Records at issue

[17] The Ministries identified 673 pages of emails, text messages, instant messages and notes plus seven audio recordings in response to the applicant's request. The Ministries disclosed a significant portion of the records to the applicant. At issue in this inquiry are portions of records that range from single words to entire documents. The PSA withheld the audio recordings in their entirety.

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[2] Order F18-49, 2018 BCIPC 53 at para. 6, for example.
[3] Ministries' initial submissions at para. 8.
[4] Affidavit of the Senior Labour Relations Specialist with the Public Service Agency at para. 8.
[5] *Ibid*. at para. 12.
[6] Attached as an Exhibit to the applicant's response submissions.
[7] At page 7 of the WorkSafeBC review officer's decision.

[18] Some of the records relate to the Investigation, including witness interviews and audio recordings of those interviews.

[19] The balance of the records are about other workplace issues involving the applicant.

Section 25 – disclosure in the public interest

[20] Section 25 imposes a duty on a public body to disclose information when it is in the public interest to do so. The relevant provisions of s. 25 are:

> 25(1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information
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> > (a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or
> >
> > (b) the disclosure of which is, for any other reason, clearly in the public interest.
>
> (2) Subsection (1) applies despite any other provision of this Act.

[21] Under subsection (2), s. 25(1) overrides all of FIPPA's mandatory and discretionary exceptions to disclosure.[8] In doing so, s. 25(1) sets a high threshold that is only intended to apply in serious situations.[9]

[22] The applicant does not specify which of the s. 25(1) provisions she believes apply. I will first outline the relevant parts of her submissions before turning to whether s. 25(1)(a) or (b) apply.

[23] The applicant's submissions with respect to s. 25(1) appear to be about the way the PSA conducted the Investigation. The applicant points to the Ombudsperson's report about the Ministry of Health's decision to fire several employees (*Misfire* report)[10] as an example of the public importance of ministries' investigations of employee misconduct.[11]

[24] As previously mentioned, the applicant provided a decision about a WorkSafeBC claim showing that the WorkSafeBC review officer found that the PSA's interview with the applicant about the sexual assault was a traumatic event. The part of the decision that is in open evidence shows that the review officer found that the applicant was not provided with advanced notice of the

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[8] Order F19-49, 2019 BCIPC 55 at para. 9.
[9] Order F15-27, 2015 BCIPC 29 at para. 29.
[10] *Misfire* can be found here: https://bcombudsperson.ca/assets/media/Referral-Report-Misfire.pdf.
[11] Applicant's response submissions, at para. 13 on page 9.

reason for the meeting, the investigator threatened the applicant with discipline or termination of her employment before proceeding to ask her a number of highly personal questions about the sexual assault which might be viewed as offensive, and the applicant did not indicate that the assault was related to her work or that she wanted the employer to be involved in any investigation of the assault.[12]

[25] In addition, the applicant submits that her interview during the Investigation was not impartial because of biased questioning.[13] The applicant also discusses how, without the records, she cannot understand the depth of systemic racism affecting the Investigation.[14]

Section 25(1)(a)

[26] In my view s. 25(1)(a) plainly does not apply. In order for s. 25(1)(a) to apply, the risk of significant harm to the environment or to the health and safety of the public or a group of people must be a prospective one. In other words, the risk must be about future harm.[15]

[27] In Order 02-38, former Commissioner Loukidelis described the types of information to which s. 25(1)(a) could apply as follows:

> The circumstances of each case will necessarily drive the determination, but information "about" a risk of significant harm to the environment or to the health or safety of the public or a group of people may include, but will not necessarily be limited to:
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> - information that discloses the existence of the risk,
> - information that describes the nature of the risk and the nature and extent of any harm that is anticipated if the risk comes to fruition and harm is caused,
> - information that allows the public to take or understand action necessary or possible to meet the risk or mitigate or avoid harm.[16]

[28] The BC Supreme Court has said that significant risks of disease, pestilence and contamination would trigger disclosure under s. 25(1)(a).[17]

[29] The Ministries say that the applicant's concerns seem to be about the questions asked of the applicant. The Ministries submit that they have already

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[12] Applicant's response submissions at para. 4 on pages 8 and 9. The OIPC accepted the decision partially *in camera.*
[13] *Ibid* at para. 17 on page 4.
[14] *Ibid* at para. 25 on page 5.
[15] Order F20-57, 2020 BCIPC 66 at para. 49.
[16] Order 02-38, 2002 CanLII 42472 (BC IPC) at para. 56.
[17] *Clubb v Saanich (Corporation of the District),* 1996 CanLII 8417 (BCSC) [*Clubb*] at para. 30.

disclosed this type of information, for example, the applicant has already received records relating to her own interview. The Ministries further submit that the information in dispute is not about a risk of significant harm to the health and safety of the public or a group of people.[18]

[30] None of the information at issue in this inquiry is the type of information or similar to the type of information outlined above. I do not see how the information in dispute, if disclosed, would reveal information about a significant risk of future harm to the environment or to the health and safety to the public or a group of people and the applicant has not adequately explained how it would. For this reason, I find that s. 25(1)(a) does not apply.

Section 25(1)(b)

[31] Section 25(1)(b) requires a public body to disclose information when it is clearly in the public interest. Past orders have interpreted "clearly in the public interest" to mean unmistakeably in the public interest, not just arguably so.[19] The information must be of clear gravity and present significance.[20] The term "public interest" is not so broad as to include anything that the public may be interested in learning nor is it defined by public curiosity.[21]

[32] The test for whether s. 25(1)(b) requires disclosure is whether a disinterested and reasonable observer, knowing the information and all of the circumstances would conclude that disclosure is plainly and obviously in the public interest.[22]

[33] Former Commissioner Denham set out several factors to consider when deciding if a matter is in the public interest, including whether disclosure would contribute to educating the public about a matter, and whether disclosure would contribute in a substantive way to the body of information that is already available about a matter.[23] The former Commissioner also said that a public body should consider the purpose of any relevant exceptions to access, including third party interests.[24]

[34] The Ministries submit that there is insufficient evidence to establish or indicate that there is a systemic pattern of behaviour on behalf of the government in relation to the applicant. They say that in some cases the applicant refused to

[18] Ministries' reply submissions, at para. 13.
[19] Order 02-38, 2002 CanLII 42472 (BC IPC) at para. 45.
[20] *Ibid* at para. 65.
[21] *Clubb supra* note 17 at para. 33.
[22] Investigation Report F16-02, 2016 BCIPC 36 at pp. 6, 26.
[23] *Ibid* at p. 27.
[24] Investigation Report F15-02, 2015 BCIPC 30 at p. 29.

pursue allegations further and in other cases, the employer directly dealt with concerns that had been raised.[25]

[35] The Ministries submit that the information in dispute would not contribute to the public's knowledge in the ways that Commissioner Denham identified.[26] In addition, the Ministries argue that although the applicant is clearly motivated by a desire to know what the withheld information may reveal, public interest is not defined by an applicant's curiosity.[27] The Ministries submit that any interest in the information at issue does not outweigh the vital interests protected by s. 22.[28]

[36] I do think that there is a general public interest in how ministries of the provincial government treat their employees and investigate allegations made by them, particularly when it comes to investigating sexual assault and the impact of systemic racism on that investigation.

[37] However, I do not think the specific information in dispute is of clear gravity so as to invoke the Ministries' duty under s. 25(1)(b). The specific information is about the applicant's conflicts and interactions with co-workers and is the information provided by third parties in relation to the Investigation. I do not see how this information, if disclosed, would contribute to the public's understanding about how ministries of the provincial government conduct workplace investigations. Information that may substantively contribute in this way has already been disclosed. For example, the PSA has disclosed the transcript of the applicant's own interview, which provides context for some of the issues identified in the WorkSafeBC proceeding.

[38] In conclusion, I do not find that a disinterested and reasonable observer, knowing the facts and circumstances would conclude that disclosure of the information in dispute is clearly in the public interest. I find that s. 25(1)(b) does not apply.

[39] As a result, s. 25(1) does not require the Ministries to disclose any information in dispute.

Section 13(1) – advice and recommendations

[40] Section 13(1) allows a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body or minister.

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[25] Ministries' reply submissions, at para. 19.
[26] *Ibid* at para. 18.
[27] *Ibid* at para. 17.
[28] *Ibid* at para. 21.

[41] The purpose of s. 13(1) is to prevent the harm that would occur if a public body's deliberative process was exposed to public scrutiny.[29]

[42] The term "advice" is broader than "recommendations"[30] and includes an opinion that involves exercising judgment and skill to weigh the significance of matters of fact.[31] "Recommendations" include material relating to a suggested course of action that will ultimately be accepted or rejected by the person being advised.[32] Section 13(1) also encompasses information that would allow an individual to make accurate inferences about any advice or recommendations.[33]

[43] The first step is to determine whether the information is advice or recommendations under s. 13(1). If it is, I must decide whether the information falls into any of the categories in s. 13(2) or whether it has been in existence for more than 10 years under s. 13(3). If ss. 13(2) or 13(3) apply to any of the information, that information cannot be withheld under s. 13(1).

[44] The Ministries submit that the information in dispute under s. 13(1) falls squarely within the meaning and purpose of the provision, and therefore it applies.[34] The Ministries say that the information in dispute under s. 13(1) reveals deliberations and advice about human resources matters and draft communications.[35] More specifically, the Ministries say that the information at issue demonstrates their internal thinking on how to manage a series of workplace issues related to the applicant and other employees.[36]

[45] I do not understand the applicant to be saying that the information is not advice or recommendations. Rather, the applicant says that the information the Ministries are withholding under s. 13(1) is not accurate.[37]

[46] I find that most of the information the Ministries are withholding under s. 13(1) is advice or recommendations. More specifically, it is information that:

- sets out a suggested course of action;
- is an opinion on a set of circumstances;
- discusses consequences of a proposed course of action; or
- is a proposed response.

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[29] *Insurance Corporation of British Columbia v. Automotive Retailers Association* 2013 BCSC 2025 [*ICBC*] at para. 52.
[30] *John Doe v Ontario (Finance)* 2014 SCC 36 [*John Doe*] at para. 24.
[31] *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner),* 2002 BCCA 665 at para. 113.
[32] *John Doe supra* note 31 at para. 23.
[33] Order F19-28, 2019 BCIPC 30 at para. 14.
[34] Ministries' initial submissions at para. 19.
[35] *Ibid* at para. 17.
[36] *Ibid* at para. 18.
[37] Applicant's response submissions, pages 7-8.

[47] I find that these types of information clearly fit within the meaning of advice or recommendations within the meaning of s. 13(1). Whether the information is accurate is not relevant to a s. 13 analysis.

[48] However, a small amount of the information in dispute under s. 13(1) is not advice or recommendations. Some of this information is background information that can be severed from the advice.[38] This information is not intertwined with, or integral to, any advice or recommendations.[39]

[49] In addition, a small amount of information in one email is directive, rather than deliberative.[40] In this instance, the writer is instructing the recipient to do a particular thing. There does not appear to be a decision to make. As a result, this information does not fall within the ambit of s. 13(1).

[50] The Ministries submit that none of the information falls into the categories enumerated in s. 13(2) and I agree. In addition, s. 13(3) does not apply because the records have not been in existence for more than 10 years. Therefore, s. 13(1) applies to the information that I have concluded is advice or recommendations.

Section 14 – legal advice

[51] Section 14 allows a public body to refuse to disclose information that is subject to solicitor-client privilege. Section 14 encompasses both legal advice privilege and litigation privilege. Only legal advice privilege is at issue in this inquiry.

[52] Legal advice privilege applies to communications that:

i) are between solicitor and client;
ii) entail the seeking or giving of legal advice; and
iii) are intended to be confidential by the parties.[41]

[53] Legal advice privilege also extends beyond the actual requesting and providing of legal advice.[42] Courts have said that "[i]t is not necessary that the communication specifically request or offer advice, so long as it can be placed within the continuum of communication in which the solicitor tenders advice; it is not confined to telling the client the law and it includes advice as to what should

[38] A portion of the Citizens' Services records on page 402.
[39] For a similar finding, see Order F19-22, 2019 BCIPC 24 at para. 24.
[40] At page 342 of the Citizens' Services records.
[41] *Solosky v The Queen* 1979 CanLII 9 (SCC) at page 837.
[42] *Huang v Silvercorp Metals Inc.,* 2017 BCSC 795 at para. 83 citing *Canada (Public Safety and Emergency Preparedness) v. Canada (Information Commissioner*), 2013 FCA 104 (CanLII), 2013 FCA 104 at para. 28.

be done in the relevant legal context."[43] Legal advice privilege also extends to internal client communications that transmit or comment on privileged communications with lawyers.[44]

[54] Citizens' Services withheld most of the body of one email under s. 14. This email is the only information in dispute under s. 14. The Ministries say that the email at issue discusses legal advice provided by the Legal Services Branch (LSB) of the Ministry of Attorney General.[45]

[55] The Ministries did not provide me with the full email; I can only see the sender, recipients and the beginning and end of the message. The disclosed portion of the email shows that the author of the email is the Director, Health Planning and Programs (the Director) for the PSA. The recipients of the email are employees of Citizens' Services.

[56] The Ministries have provided affidavit evidence from the Director to show that s. 14 applies. The Director's evidence is that:

- The Deputy Minister of Citizens' Services contacted the PSA to request that the PSA investigate allegations concerning the applicant about an after-hours incident of sexual assault.[46]
- The PSA consulted LSB throughout the course of this matter.[47]
- The Director personally sought and received legal advice from a named LSB lawyer, which the Director then summarized in the email at issue.[48]
- The communications with LSB were for the purposes of obtaining legal advice and were intended to be confidential.[49]
- To the best of the Director's knowledge, the email has been treated in a confidential manner.[50]

[57] For the reasons that follow, I am satisfied that, if disclosed, the email at issue would reveal confidential legal advice from LSB to the Director.

[58] Although the email is between the Director and employees of Citizens' Services and it does not include LSB lawyers, I accept the Director's evidence that the email summarizes legal advice received from LSB. I note that the disclosed portion of the email supports the Director's evidence in this regard

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[43] *Bank of Montreal v Tortora* 2010 BCSC 1430 at para. 10 citing *Samson Indian Nation and Band v Canada* 1995 CanLII 3602 (FCA)
[44] *Ibid* at para. 12 citing *Mutual Life Assurance Co. of Canada v Canada (Deputy Attorney General)* [1988] OJ No. 1090 (Ont. SCJ).
[45] Ministries' reply submissions at paras 76 and 78.
[46] Affidavit of the Director, Health Planning and Programs, BC Public Service Agency at para. 5.
[47] *Ibid* at para. 6.
[48] *Ibid* at para. 7.
[49] *Ibid* at para. 8.
[50] *Ibid* at para 10.

because the sentences immediately preceding and following the withheld information reference communicating and working with legal counsel.

[59] In addition, based on the evidence of the Director and the nature of the Investigation, I am satisfied these communications were intended to be confidential.

[60] While it appears to me that LSB only communicated directly with the Director, in my view both the PSA and Citizens' Services were clients of LSB. This is because the PSA conducted the Investigation in its role of providing human resource services to ministries of the provincial government, in this case to Citizens' Services.[51] As mentioned above, legal advice privilege extends to communications between employees that comment on or transmit privileged communications. I am satisfied that the communications at issue are this type of internal client communications that would reveal legal advice from client to lawyer.

[61] I conclude that the email at issue is subject to legal advice privilege and, therefore, s. 14 applies.

Section 15(1)(l) – communications system

[62] Section 15(1)(l) allows a public body to refuse to disclose information if the disclosure could reasonably be expected to harm the security of any property or system, including a building, vehicle, a computer system or a communications system.

[63] The words "could reasonably be expected to" mean that the public body must establish a reasonable expectation of probable harm.[52] This language tries to mark out a middle ground between that which is probable and that which is merely possible.[53] In order to establish that there is a reasonable expectation of probable harm, the public body must provide evidence "well beyond" or "considerably above" a mere possibility of harm in order to reach that middle ground.[54] There must be a direct link between the disclosure and the apprehended harm.[55]

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[51] See affidavit of the Executive Director, Information Management Branch, Ministry of Citizens' Services at paras. 12-14.
[52] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner),* 2014 SCC 31 at para. 54.
[53] *Ibid.*
[54] *Ibid.*
[55] *Merck Frosst Canada Ltd v Canada Health*, 2012 SCC 3 at para. 219. See also Order F17-15, 2007 CanLII 35476 (BCIPC) at para. 17.

[64] The information at issue under s. 15(1)(l) is a teleconference line phone number and access code.[56]

[65] The Ministries submit that a teleconferencing system is a "communications system" within the meaning of s. 15(1)(l) based on previous OIPC orders.[57]

[66] The Ministries also submit that disclosure of the teleconference information could allow an individual to gain unauthorized access to teleconference calls or meetings.[58] The Ministries point to past orders where the OIPC has found that s. 15(1)(l) applies to teleconference information.[59] The Ministries say that the information at issue in this inquiry is materially indistinguishable from those orders.[60]

[67] The Ministries also say that access under FIPPA is access to the world at large, and, if disclosed under s. 15(1)(l), the Ministries can assume that the information would be shared with the world.[61]

[68] The applicant submits that the access code can easily be changed. She also says that there is no guarantee that the teleconferencing information has not already been shared by an employee.[62] She notes the length of time that the code has been active and suggests that there is an increased likelihood that it has already been shared.[63]

[69] In response, the Ministries say that government employees have a duty of confidentiality, which prevents them from sharing teleconference information.[64] The Ministries confirm this code is still active and submit that it is for government security officials to decide when to change the code.[65]

[70] I find that a teleconferencing system is a communications system within the meaning of s. 15(1)(l) and disclosing the teleconference line phone number and access code could reasonably be expected to harm the security of the system. I see no basis to depart from past orders, which have consistently found that a teleconference phone number and/or access code could reasonably be

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[56] On pages 348 and 351 of the Citizens' Services records.
[57] Ministries' initial submissions on s. 15, para. 12, referencing Order F21-01.
[58] Ministries' initial submissions on s. 15, para 18.
[59] The Ministries reference Orders F15-32, F17-23 and F20-20. See Ministries' initial submissions on s. 15 at para. 21.
[60] Ministries' initial submissions on s. 15 para. 21.
[61] *Ibid* at para. 14.
[62] Applicant's response submissions on s. 15 at para. 8.
[63] *Ibid* at paras. 8 and 9.
[64] Unless the employee is authorized to disclose it, i.e. a public townhall. See Ministries' reply submissions on s. 15 at paras. 4 and 5.
[65] Affidavit of the Executive Director of the Information Security Branch and the Chief Information Security Officer for the Province of BC at para. 8 and Ministries' reply submissions on s. 15 at para. 9.

expected to harm the security of the teleconferencing system due to the risk of unauthorized access.[66]

[71] In my view, whether the code could be changed is irrelevant. The issue I must decide is whether the information at issue, in its current form and context, if disclosed, could reasonably be expected to cause harm. In this case, I have found that it could, and therefore that s. 15(1)(l) applies.

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

[72] Under s. 22(1), a public body must refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party's personal privacy.

[73] The Ministries have withheld a significant amount of information under s. 22(1), including information in emails, text messages, instant messages, handwritten notes, notes from interviews and audio recordings.[67]

Personal Information

[74] The first step in any s. 22 analysis is to determine whether the information in dispute is personal information.

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

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

[76] In my view, the information that the Ministries refused to disclose is about identifiable individuals. The information relates to workplace conflicts between the applicant and other employees and to the Investigation. The information is about the applicant, other employees of one of the Ministries or both. I note that some of the information does not directly identify an individual (i.e. by name), but given the context, it is reasonable to conclude that the applicant and/or other employees would be able to the identify the individual(s). Therefore, this information is also about an identifiable individual.

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[66] Order F15-32, 2015 BCIPC 35 at para. 12; Order F17-23, 2017 BCIPC 24 at para. 73; Order F20-08, 2020 BCIPC 9 at para. 72; Order F20-20, 2020 BCIPC 23, at para. 82.

[67] The Ministries submit that s. 22(3)(b) applies to the personal information in dispute on page 42 of the PSA records. However, the Ministries already disclosed this page to the applicant. I find that it is not in dispute and I will not consider it any further.

[77] However, information about an identifiable individual is not personal information if it is contact information.

[78] The Ministries submit that, in the present circumstances, individuals' names, position names or titles, business telephone numbers and business emails are not contact information. More specifically, the Ministries say that this information appears in the context of various conflicts and human resources matters and therefore cannot be characterized as contact information.[68]

[79] I find that in the context of a workplace investigation, none of the information is contact information.[69] Therefore, the information at issue is personal information.

[80] The personal information is about the applicant as well as about third parties, such as her co-workers and the PSA employees who conducted the Investigation.[70]

[81] The following information is only about third parties:

- names, email addresses and indirect references to employees other than the applicant;
- information about other employees' work;
- information about other employees' time away from the office and personal appointments; and
- the dates, times and locations of confidential meetings attended by other employees.

[82] In many cases, the personal information is simultaneously a third party's personal information and the applicant's personal information, such as:

- notes and audio recordings of other employees' interviews about the applicant;
- emails, instant messages and text messages between the applicant and other employees; and
- emails, notes, instant messages and text messages that do not include the applicant but are about her.

[83] In addition, PSA withheld the audio recording of the applicant's interview. I note that the PSA disclosed the interview notes and a transcript of the interview

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[68] Ministries' initial submissions, para. 32.
[69] For similar findings, see Order F20-13, 2020 BCIPC 15 at para. 42; and Order F20-08, 2020 BCIPC 9, at para 52.
[70] Under Schedule 1 of FIPPA, "third party" in relation to a request for access to a record or for correction of personal information, means any person, group of persons or organization other than (a) the person who made the request and (b) a public body.

to the applicant in response to the access request. While the names of every person on this recording and what they said has already been disclosed,[71] the very nature of an audio recording means that it includes additional personal information such as the tone and inflection of a person's voice and their emotional state.[72]

[84] I will now determine whether disclosure of the personal information is an unreasonable invasion of a third party's personal privacy.

Section 22(4)

[85] Having found that the information at issue is personal information, the next step is to determine whether disclosure of any of the information is not an unreasonable invasion of a third party's personal privacy under any of the circumstances listed in s. 22(4). If any of the circumstances in s. 22(4) apply to any personal information, s. 22(1) does not apply.

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

[86] Section 22(4)(e) is at issue in this inquiry. Under this section, disclosure of personal information about a third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff is not an unreasonable invasion of a third party's personal privacy.

[87] Further, s. 22(4)(e) applies to information that in some way relates to a third party's job duties in the normal course of work-related activities, that is, objective, factual statements about what employees did or said in the normal course of discharging their job duties but not qualitative assessments of those actions.[73]

[88] The Ministries submit that s. 22(4)(e) does not apply. The Ministries say that the personal information at issue has been recorded in the context of various workplace conflicts, and therefore is not about any employees' position function or remuneration under s. 22(4)(e).[74]

[89] In general, I find that the withheld information is not about the employees' job functions within the meaning of s. 22(4)(e). Most of the information in dispute does not fall under s. 22(4)(e) because it is about what happened in relation to

[71] I have compared the audio recording to the transcript. The transcript is not verbatim but it accurately reflects the content of the interview. For example, the transcript does exclude some exchanges, such as asking for the spelling of a person's name or asking someone to repeat themselves.
[72] Order F18-47, 2018 BCIPC 50 at para. 24.
[73] Order 01-53, 2001 CanLII 21607 at para. 40.
[74] Ministries initial submissions at para. 39.

workplace conflicts rather than in the normal course of discharging the applicant's and third parties' job duties.

[90] However, there is some personal information that is the kind of information that falls within the ambit of s. 22(4)(e) because it relates to a third party's job duties in the normal course of work-related activities. For example, s. 22(4)(e) applies to information that is related to an employee's position and is purely of an administrative nature.[75] In addition, some instant message conversations constitute employees carrying out normal job functions and do not appear to be related to any workplace conflict.[76] These types of personal information fall within 22(4)(e) and therefore disclosure is not an unreasonable invasion of the third parties' personal privacy. For these reasons, s. 22(1) does not apply to this information and I will not consider it any further.

Section 22(3)

[91] The next step is to determine if any of the circumstances in s. 22(3) apply. Section 22(3) lists circumstances where a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy.

[92] There are a number of circumstances under s. 22(3) that are potentially applicable and I will consider each in turn.

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

[93] While not raised by the parties, I find that s. 22(3)(a) applies to a small amount of information at issue. Under s. 22(3)(a), disclosure of personal information that relates 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.

[94] The records contain a small amount of personal information relating to a third party's medical leave.[77] Past orders have found that s. 22(3)(a) applies to this kind of information because it relates to that person's medical condition and treatment.[78] I make the same finding here.

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

[95] The Ministries submit that all of the personal information at issue relates to employment, occupational or educational history under s. 22(3)(d), and therefore

[75] Page 32 of the Citizens' Services records.
[76] Pages 30, 214, 237 - 238, of the Citizens' Services records, for example.
[77] In this case, listing the page numbers of the records containing personal information about a third party's medical leave would reveal information that s. 22(3)(a) presumes to be an unreasonable invasion of a third party's personal privacy, and so I decline to do so.
[78] Order F16-46, 2016 BCIPC 51 at para. 21, Order F15-60, 2015 BCIPC 64 at para. 31.

disclosure is presumed to be an unreasonable invasion of a third party's personal privacy.[79]

[96] Past orders have said that descriptive information about a third party's behaviour or actions in the course of a complaint investigation or disciplinary matter is information that relates to that third party's employment history.[80]

[97] With that in mind, I find that s. 22(3)(d) applies to the following information:

- Information relating to workplace conflicts between the applicant and another employee;[81]
- Information about the applicant's complaints about another employee;[82] and
- Information about how an allegation against a third party was addressed.[83]

[98] However, I find that the rest of the personal information is not a third party's employment history within the meaning of s. 22(3)(d).

[99] Some of the personal information is not a third party's employment history because the information is about the applicant's workplace conduct rather than a third party's workplace conduct. To illustrate this point, some of the instant message conversations between the applicant and another employee are about the applicant's issues in the workplace. This information relates to the applicant's employment history but not her co-worker's, because it is not about the co-worker's workplace conduct. In addition, information provided by third parties in the course of the Investigation is not their employment history because the third parties were not the subjects of the Investigation.[84] In other words, the Investigation was only into matters relating to the applicant, and therefore only relates to her employment history.

[100] In addition, some of the information in dispute is not related to employment history because it is not related to work. For example, some instant message conversations are of a personal or social nature. In my view, this is not the kind of information that constitutes anyone's employment history within the meaning of s. 22(3)(d).

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[79] Ministries' initial submissions, para. 44.
[80] Order F20-13, 2020 BCIPC 15, at para. 52; Order 01-53, 2001 CanLII 21607 at paras. 32-33.
[81] Pages 15-16 of the Citizens' Services records, for example. See Order F20-13, 2020 BCIPC 15 at para. 54 for a similar finding.
[82] Page 133 of the Citizens' Services records, for example. See Order 01-53, 2001 CanLII 21607 at para. 36 for a similar finding.
[83] Page 101 of the Citizens' Services records, for example.
[84] Order F20-13, 2020 BCIPC 15, at para. 55; Order 01-53 2001, CanLII 21706 (BC IPC) at para. 41.

[101] Finally, some of the information in dispute is the personal information of the employees who conducted the Investigation, including audio recordings of interviews they conducted with the applicant and other employees. The Ministries submit that the information about the investigators is their employment history and note that these employees were the subject the applicant's allegations.[85] Specifically, the Ministries submit that the audio recordings of the employees who conducted the Investigation relates to their employment history.[86]

[102] The information at issue is not about allegations against the investigators or descriptive information about their conduct in the workplace. The Ministry of Citizens' Services response to the applicant's complaint about how the Investigation was conducted has been disclosed[87] and indicates that the Ministries did not take any further steps to address it. Therefore, I find that, in this case, the personal information of the investigators who conducted the interviews is not their employment history within the meaning of s. 22(3)(d).

[103] As a result, s. 22(3)(d) applies to some but not all of the personal information in dispute.

Section 22(3)(g) – personal recommendations or evaluations about a third party

[104] Section 22(3(g) applies to personal information that consists of personal recommendations or evaluations, character references or personnel evaluations about a third party.

[105] Previous orders have stated that s. 22(3)(g) applies to an investigator's evaluative statements of a third party's performance in the workplace.[88] However, factual statements and evidence relating to allegations against a third party, including the allegations themselves, are not the kind of evaluative material covered by s. 22(3)(g).[89]

[106] The Ministries submit that s. 22(3)(g) applies. The Ministries say that some of the information in dispute consists of personal evaluations about third parties.[90] However, the Ministries do not specify which information they believe constitutes these evaluations.

[107] In my opinion, s. 22(3)(g) does not apply. None of the information in dispute is an investigator's evaluative statement about a third party's performance in the workplace. As I mentioned earlier, the third parties were not

[85] Ministries' initial submissions, para. 39.
[86] *Ibid* para. 40 citing Order F18-47, 2018 BCIPC 50 at para. 24.
[87] Citizens' Service records at pages 459-460.
[88] Order F16-12, 2016 BCIPC 14 at para. 28.
[89] Order 01-53, 2001 CanLII 21607 (BCIPC) at paras. 44-45.
[90] Ministries' initial submissions, para. 46.

the subjects of the Investigation. In any case, the records in dispute do not include any sort of formal report or conclusion about the Investigation. In fact, the Ministries' evidence is that it shut down the Investigation after concluding that the sexual assault did not involve another provincial government employee. Any comments on a third party's work performance lack the formality of a personal evaluation within the meaning of s. 22(3)(g).

[108] As a result, I conclude that none of the personal information at issue is the kind of evaluative material contemplated by s. 22(3)(g). Therefore, it does not apply.

Section 22(3)(h) – content of a personal recommendation or evaluation supplied by a third party

[109] The Ministries submit that s. 22(3)(h) applies. Under this section, disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if:

> (h) the disclosure could reasonably be expected to reveal the content of a personal recommendation or evaluation, a character reference or a personnel evaluation supplied by the third party in confidence and the applicant could reasonably be expected to know the identity of the third party[91]

[110] The purpose of s. 22(3)(h) is to protect the identity of a person who provided, in confidence, the type of information described in s. 22(3)(g).[92]

[111] The Ministries say that, with respect to any personal evaluations, including evaluations about the applicant, the applicant could reasonably be expected to identify the party that provided the evaluation.[93] Again, the Ministries do not specify which information they believe is subject to s. 22(3)(h).

[112] Above, I found that none of the information at issue constitutes a personal evaluation within the meaning of s. 22(3)(g). Similarly, I find that none of the information provided by third parties during the Investigation has the formality of a personal recommendation or evaluation, character reference or personnel evaluation within the meaning of s. 22(3)(h).[94] I find that s. 22(3)(h) does not apply.

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[91] Section 22(3)(h) was amended during the inquiry. My analysis applies equally to the amended version.
[92] Order F16-46, 2016 BCIPC 51 at para. 36; Order 01-53, 2001 CanLII 21607 (BCIPC) at para. 47.
[93] Ministries' initial submissions at para. 46.
[94] For a similar finding, see Order F20-13, 2020 BCIPC 15 at para. 61.

Section 22(2)

[113] Under s. 22(2), I must consider all the relevant circumstances, including those enumerated in ss. 22(2)(a) through (i). The Ministries and the applicant have identified a number of circumstances – some enumerated in s. 22(2) and some not – and I will consider each in turn.

Section 22(2)(a) – subjecting a public body to public scrutiny

[114] 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, this may provide a foundation for finding that disclosure would not constitute an unreasonable invasion of a third party's personal privacy.[95]

[115] I understand the applicant to be saying that s. 22(2)(a) applies for the same reasons she put forth in her s. 25 argument. Primarily, she says that there is a public interest in how ministries of the provincial government investigate sexual assault and that the PSA conducted the Investigation in a biased way. The applicant provided a WorkSafeBC Review Officer's decision, which the OIPC accepted partially *in camera*, showing that the review officer found that the applicant's interview with the PSA was a traumatic event.

[116] I understand the applicant to be saying that disclosure is desirable for the purpose of subjecting the way that the PSA conducted the Investigation to public scrutiny. The Ministries have disclosed the notes taken during the PSA's interview of the applicant and the transcript of the that interview. The remaining personal information related to the Investigation is largely the personal information that other employees provided during the course of the Investigation. I am not satisfied that disclosure of this information is desirable for public scrutiny of how the PSA conducted the Investigation. For this reason, I am not satisfied that s. 22(2)(a) is a factor weighing in favour of disclosure.

Section 22(2)(b) – disclosure likely to promote public health and safety

[117] The applicant submits that s. 22(2)(b) is a relevant circumstance weighing in favour of disclosure. Section 22(2)(b) applies where the disclosure is likely to promote public health and safety or to promote the protection of the environment.

[118] The applicant points to several issues broadly relating to public health – systemic racism, gender equity, and investigations into sexual harassment and sexual assault, for example – however, the applicant does not adequately explain how disclosure of the specific information at issue is likely to promote public

[95] Order F05-18 2005 CanLII 24734 (BC IPC) at para. 49.

health and safety. As a result, I am not persuaded that s. 22(2)(b) is a relevant circumstance weighing in favour of disclosure.

Section 22(2)(c) – fair determination of the applicant's rights

[119] The applicant points to s. 22(2)(c) as a circumstance in weighing in favour of disclosure. Section 22(2)(c) is applies where the personal information is relevant to a fair determination of the applicant's rights.

[120] The following four criteria must be met in order for this circumstance to apply:

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;

2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;

3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and

4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.[96]

[121] The Ministries submit that there is insufficient evidence to find that the information in dispute is necessary or relevant to a fair determination of any legal rights the applicant may have in an ongoing or contemplated proceeding.[97]

[122] It is unclear what the applicant is arguing with regards to s. 22(2)(c). The applicant mentions several avenues through which a proceeding could occur, for example under the *Public Interest Disclosure Act*.[98] She also says that the Office of the Human Rights Commissioner may benefit from having some of the records in dispute, specifically the audio recording of her interview.[99]

[123] The applicant's submissions do not satisfy me that there is a proceeding either underway or contemplated. Further, the applicant has not adequately explained how the personal information has some bearing on, or significance for the determination of any right or how the personal information is necessary to prepare for a particular proceeding or to ensure a fair hearing. In short, I am not satisfied that any of the four criteria are met.

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[96] Order 01-07, 2001 CanLII 21561 (BCIPC) at para. 31.
[97] Ministries' reply submissions, para. 37.
[98] Applicant's response submissions, at para. 1 on page 8.
[99] *Ibid* at para. 24 on page 10.

[124] I am not satisfied that s. 22(2)(c) is a relevant circumstance weighing favour of disclosure of the information in dispute.

Section 22(2)(d) – disclosure assists in researching or validating claims, disputes or grievances of aboriginal people

[125] Section 22(2)(d) identifies as a relevant circumstance whether the disclosure will "assist in researching or validating the claims, disputes or grievances of aboriginal people."[100]

[126] The applicant says that she seeks to "contribute to Reconciliation through the specifics of [her] case", for example by having a timeline of the actions taken against her "evaluated by a neutral party for metrics."[101]

[127] In my view, the applicant's submissions do not identify how disclosure will assist in "researching or validating the claims, disputes or grievances of aboriginal people." In short, the applicant's arguments are too general to satisfy me that s. 22(2)(d) as a relevant circumstance in this inquiry.

Section 22(2)(f) – supplied in confidence

[128] Section 22(2)(f) lists whether the personal information has been supplied in confidence as a relevant circumstance. If it applies, s. 22(2)(f) favours withholding the information in dispute.

[129] The Ministries submit that many of the records in dispute were supplied by third parties during the Investigation, as demonstrated by the Ministries' evidence and, in some cases, the records themselves.[102] In addition, the Ministries argue that information about human resources issues and workplace conflicts is sensitive and ordinarily provided confidentially.[103]

[130] I am satisfied that the personal information that the third parties supplied during the course of the Investigation was supplied in confidence. The Ministries have provided evidence from the PSA employee who conducted the interviews stating that all workplace investigations are conducted confidentially.[104] Further, it is clear from the interview notes, and audio recordings themselves that the PSA conducted the interviews in confidence. In addition, the Ministries have identified some records, such as text and instant messages, that third parties supplied during the course of the Investigation.[105] I accept that the third parties supplied

[100] During the inquiry s. 22(2)(d) was amended. My analysis applies equally to the amended version.
[101] Applicant's response submissions at para. 4 on page 6.
[102] Ministries' initial submissions at para. 50.
[103] *Ibid* at para. 49 citing Order F17-01, 2017 BCIPC 1 at para 61.
[104] Senior Labour Relations Specialist affidavit at para. 7.
[105] Ministries' initial submissions at para. 50.

the personal information in these records in confidence. As a result, I find that s. 22(2)(f) applies to this personal information.

[131] However, not all the information in dispute is related to the Investigation. Some of the personal information relates to other workplace matters involving the applicant. In this regard, the Executive Director of the Information Management Branch (Executive Director) says that managers at Citizens' Services treated all communications relating to the applicant's workplace matters as confidential because they were about sensitive and sometimes personal matters.[106] In addition, the Executive Director says that they personally received many communications on a confidential basis about incidents or matters involving the applicant.[107]

[132] While the Executive Director did not identify specific records, there are some instances where the records themselves indicate that the information was supplied in confidence.[108] In addition, I am satisfied that some information was supplied in confidence based on the nature of the information itself.[109] In these circumstances, I find that s. 22(2)(f) favours withholding the information.

[133] However, many of the records are instant messages between the applicant and a co-worker. There is nothing to suggest that the co-worker supplied this information in confidence to the applicant. With regards to the applicant's part of the conversations and other information in dispute that originated from the applicant, I find that s. 22(2)(f) does not apply. Past orders have found that s. 22(2)(f) does not apply to information supplied by the applicant, even in the context of a workplace investigation.[110] I make the same finding here.

[134] In summary, I find that s. 22(2)(f) applies to all of the personal information supplied by third parties during the course of the Investigation, but only to some of the information relating to other workplace matters.

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

[135] The Ministries submit that s. 22(2)(h) applies to some of the information in dispute. This section requires a public body to consider whether disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant. If it applies, this is a circumstance weighing in favour of withholding the information in dispute.

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[106] By affidavit at paras. 8-9.
[107] *Ibid.* at para. 10.
[108] Page 15-16 of the Citizens' Services records, for example.
[109] Pages 88 and 101 of the Citizens' Services records, for example.
[110] Order F14-10, 2014 BCIPC 12 at para 30.

[136] The Ministries say that the records at issue contain some unflattering and, in some cases, very serious allegations about third parties' behaviour.[111]

[137] I accept that some of the information contains serious allegations about third parties' behaviour and that this may damage their reputation.[112] In some cases, I do think this damage to reputation would be unfair since it is clear the allegations have not been investigated and the third parties have not had an opportunity to respond to the allegations.[113] I find that s. 22(2)(h) applies to this information and weighs against disclosure.

[138] However, in some cases, I am not satisfied that the damage to reputation would be unfair.[114] I cannot say more without revealing the information in dispute.

Sensitivity

[139] The Ministries argue that the sensitivity of the information in dispute, in particular the allegations against third parties, weighs against disclosure.[115]

[140] I have already found that, in some cases, disclosure may unfairly damage the reputation of a third party in part due to the nature of the allegations discussed in the records. In these circumstances, I am not satisfied that the allegations warrant treatment as a separate circumstance because I have already considered their sensitivity in concluding that s. 22(2)(h) applies.

[141] With regards to the remainder of the allegations, I conclude that sensitivity is a factor weighing against disclosure.

Applicant's knowledge

[142] While not enumerated in s. 22(2), past orders have considered whether the applicant's knowledge of the information weighs for or against disclosure.[116]

[143] The applicant says that her supervisor provided her with her own confidential human resources file to review.[117] I understand from the applicant's submissions that the human resources file contained information about some of the conflicts that the records in this inquiry also pertain to, which is at least partially why she decided to make requests under FIPPA for the records at issue in this inquiry. The Ministries say that the standards of conduct for provincial

[111] Ministries' initial submissions, para. 51.
[112] Page 131-133, 137 of the Citizens' Services records, for example.
[113] For a similar finding, see Order F17-05, 2017 BCIPC 6, at para. 52.
[114] Page 101 of the Citizens' Services records, for example.
[115] Ministries' initial submissions at para. 53.
[116] Order F18-48, 2018 BCIPC 51 at para. 27; Order F20-22, 2020 BCIPC 26 at para. 51.
[117] Applicant's response submissions, at para. 1 on page 1 under "Discussion".

government employees impose a duty of confidentiality upon the applicant not to disclose information that she received through her employment.[118]

[144] The applicant has not provided enough detail for me to determine which records she was permitted to review or if any of those records are at issue in this inquiry. For this reason, I am not persuaded that any knowledge of the personal information she gained by reviewing her human resources file weighs in favour of disclosure of the personal information in dispute. I make this determination without deciding on the merits of the Ministries' position about the standards of conduct.

[145] In addition, the Ministries say that the applicant had an implied undertaking of confidentiality with regards to any information provided to her through the WorkSafeBC proceedings. I am not able to determine exactly which parts of the disputed personal information, if any, the applicant gained knowledge of through the WorkSafeBC proceedings.[119] I am unable to conclude that this is a factor.

[146] However, the applicant's knowledge does weigh in favour of disclosure with regards to some of the information in dispute.

[147] First, the Ministries withheld several emails, text messages and instant messages where the applicant was one of the parties involved in the communication. The applicant obviously knows the personal information exchanged during these interactions and this weighs in favour of disclosure. Similarly, the applicant's knowledge weighs in favour of disclosure of records which reflect specific conversations that applicant had with a third party, even though the applicant was not a party to the written records.[120]

[148] In addition, the applicant was told during her own interview that the investigator had copies of text messages sent between the applicant and a co-worker during non-work hours. Therefore, she not only knows the content of these text messages but also that the messages were provided during the Investigation. In my view, this weighs strongly in favour of disclosure.

[149] In addition, the PSA interviewed the applicant as part of its Investigation and the Ministries have withheld the audio recording of this interview under s. 22(1). In my view, the applicant's knowledge weighs in favour of disclosure of this record.

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[118] Ministries' response submissions at para. 48.
[119] The applicant has provided the review officer's decision, which was received partially *in camera* by the OIPC. I note that part of the review officer's decision that is in open evidence indicates that the Ministries provided the transcript of the applicant's interview, but that has already been disclosed to the applicant.
[120] For example, pages 114, 116-117, 119-120, 137-138, 141, 168, 246-248, 324 and 414 of the Citizens' Services records.

Applicant's personal information

[150] A significant portion of the information in dispute is the applicant's personal information. Past orders have stated that it would only be in rare circumstances that disclosure to an applicant of their own personal information would be an unreasonable invasion of a third party's personal privacy.[121] In my view, this is a factor that weighs in favour of disclosure.

Section 22 – conclusion

[151] I found that s. 22(1) does not apply to some personal information because it is subject to s. 22(4)(e).[122] My conclusions with regards to the remaining personal information in dispute are as follows.

[152] For the most part, where the applicant knows the information exchanged in text and instant messages and emails because she was one of the parties involved, and the conversation is about her, I find that s. 22(1) does not apply.[123] However, where the conversation is about a co-worker, I find that this is a factor that outweighs the applicant's knowledge and that s. 22(1) applies.[124]

[153] Further, the applicant was involved in some communications that were later supplied in confidence, within the meaning of s. 22(2)(f), by a third party. I find that s. 22(1) applies to communications where disclosure of the records would reveal that a third party supplied communications with the applicant in confidence.[125] However, where the applicant knows the information was supplied, I find that the applicant's knowledge outweighs s. 22(2)(f) and therefore s. 22(1) does not apply.[126]

[154] I also find that s. 22(1) does not apply to records which reflect or are about specific conversations that the applicant had with a third party, even though the applicant was not a party to the written records.[127] The applicant's knowledge and the fact that they are about her outweigh any other factors.

[155] I have also determined that s. 22(1) does not apply to the audio recording of the applicant's interview. The applicant knows the information because she

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[121] Order F10-10, 2010 BCIPC 17 at para. 37
[122] For example, pages 30, 32, 123-124 (part), 129 -130, 155, 214, and 237-238 of the Citizens' Services records.
[123] For example, pages 1, 112-113, 122 (part), 123 (part) 125-126 (part), 127, 134, 149 (part), 154, 163-164 (part), 194-195 (bottom), 209, 215, 216, 219 (top), and 233 of the Citizens' Services records.
[124] For example, pages 122 (part), 123 (part), 125-126 (part), 139 (bottom), 140, 149 (part) 163 (part), 194-195 (top), 212, 219 (bottom), and 220 of the Citizens' Services records.
[125] For example, pages 1, 9 -17 of the PSA records.
[126] For example, pages 24-32 of the PSA records and 393-401 of the Citizens' Services records.
[127] For example, pages 114-115, 116-117, 119-120, 137-138, 141, 168, 246-248, 324 and 414 of the Citizens' Services records.

was there and because the transcript and notes have been disclosed in response to her access request. Further, as the applicant was the subject of the Investigation, the information is about her. The only information in dispute in this record is the voice of the employees who conducted the Investigation. Considering all of the above, I find that disclosure of the audio recording would not be an unreasonable invasion of a third party's personal privacy.

[156] However, I find that disclosure of all of the other personal information would be an unreasonable invasion of a third party's personal privacy.

[157] First, I find that s. 22(1) applies to the remaining personal information supplied by the third parties about the applicant during the Investigation. None of the s. 22(3) presumptions apply. As I noted earlier, this information is simultaneously the applicant's and third parties' personal information, a factor which may necessitate requiring the Ministries to withhold the information.[128] These records are about the applicant, which weighs in favour of disclosure. However, the third parties supplied this information in confidence, which weighs against. After weighing these factors, I have decided that s. 22(1) applies to personal information supplied by third parties during the Investigation including the interview notes, audio recordings of other employees' interviews and the remaining emails related to the Investigation.[129]

[158] Next, I find that s. 22(1) applies to the information relating to the applicant's allegations about third parties.[130] Obviously, the applicant knows this information, however, this factor does not rebut the s. 22(3)(d) presumption when combined with my finding that disclosure may unfairly damage a third party's reputation under s. 22(2)(h) or that it is sensitive.

[159] Finally, I conclude that s. 22(1) applies to the personal information that is presumed to be an unreasonable invasion of a third party's personal privacy because it is medical information under s. 22(3)(a) and the remaining information that relates to a third party's employment history under s. 22(3)(d).[131] I found that some of this information was supplied in confidence. In addition, some of this information is about the applicant, but this does not outweigh the other factors.

[160] As a result, s. 22(1) applies to some but not all of the personal information at issue.

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[128] For a similar finding, see Order F14-47, 2014 BCIPC 51 at para. 36.
[129] For example, pages 9-17, 43-126, 150-161 of the PSA records, and 252-266, 286-288, 309-317, 325-332, 347 of the Citizens' Services records.
[130] Including those in her own communications, for example at pages 125, 135-136, 137, 139 (top), 141, 246, of the Citizens' Services records.
[131] For example, pages 6, 15-16, 213, 234, 239, 334 of the Citizens' Services Records.

Section 22(5)

[161] When a public body refuses to disclose information supplied in confidence about an applicant under s. 22, s. 22(5) requires the public body to provide the applicant with a summary of the information unless a summary cannot be prepared without disclosing the identity of the third party who supplied the personal information.

[162] Above, I found that the Ministries are required to withhold information supplied in confidence about the applicant. Given the applicant's knowledge of the events to which the withheld information relates, I am persuaded that a summary of this information would disclose the identity of the third parties who supplied it. Therefore, the Ministries are not required to provide a summary under s. 22(5).

CONCLUSION

[163] For the reasons above, under s. 58 of FIPPA,

1. I confirm that the Ministry of Citizens' Services and the Ministry of Finance have performed their duty under s. 25(1). Section 25(1) does not require the Ministries to disclose any information in dispute.

2. Subject to item 5 below, I confirm the decision of the Ministry of Citizens' Services, in part, to refuse access to the parts of the records in dispute under s. 13(1).

3. I confirm the decision of the Ministry of Citizens' Services to refuse access to the parts of the records in dispute under ss. 14 and 15(1)(l).

4. Subject to item 5 below, I require the Ministry of Finance and the Ministry of Citizens' Services to refuse access to the parts of the records in dispute under s. 22(1).

5. I require the Ministry of Finance and the Ministry of Citizens' Services to give the applicant access to the audio recording of the applicant's interview and the parts of the records that I have highlighted in a copy of the records given to the Ministries along with this order.

6. The Ministry of Citizens' Services and the Ministry of Finance must concurrently copy the OIPC registrar of inquiries when they provide the applicant access to the records described in item 5.

[164] Under s. 59(1), the Ministries must comply with this order by March 30, 2022.

February 15, 2022

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

OIPC File Nos.: F18-76966 & F18-76968