



Order F22-15

CITY OF RICHMOND

Ian C. Davis
Adjudicator

March 31, 2022

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Summary: The applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the City of Richmond (City) for access to records relating to delays in the construction of a recreational centre. The City withheld the records and information under ss. 13(1) (advice or recommendations), 14 (solicitor-client privilege), 17(1) (harm to the financial or economic interests of a public body) and 22(1) (unreasonable invasion of a third party's personal privacy). The adjudicator dealt with s. 14 in Order F22-04. In this order, the adjudicator determined that the City is authorized to withhold some of the information under ss. 13(1) and 22(1), and the City is not authorized to withhold any information under s. 17(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 13(1), 13(2), 13(2)(i), 17(1), 22(1), 22(2), 22(3)(a), 22(3)(d) and 22(4).

INTRODUCTION

[1] The applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the City of Richmond (City) for access to “correspondence and internal reports discussing reasons for delays in the construction of the Minoru Centre for Active Living.”¹ The date range for the request is 2013-2019.

[2] In response, the City disclosed some records to the applicant, but withheld 3,865 pages of records in their entirety under several FIPPA exceptions to disclosure.² Specifically, the City refused access under ss. 13(1) (advice or recommendations), 14 (solicitor-client privilege), 17(1) (harm to the financial or economic interests of a public body), 21(1) (harm to business interests of a third party) and 22(1) (unreasonable invasion of a third party's personal privacy).

¹ Access request form stamped as having been received by the City on February 22, 2019.

² Investigator's Fact Report at para. 2.

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

[4] On January 12, 2022, I issued Order F22-04 in this inquiry. The City did not provide the disputed records for my review. For reasons set out in the order, I concluded that the City is authorized under s. 14 to refuse access to 288 of the 3,865 pages of records in dispute, but that it is not authorized under s. 14 to refuse access to the balance of the records. I ordered it under s. 44(1)(b) of FIPPA to produce to the OIPC the remaining records in dispute, so I could review them and decide if ss. 13(1), 17(1), 21(1) and 22(1) applied.

[5] In accordance with Order F22-04, the City produced the remaining records in dispute to the OIPC.³ With those records now available to review, I proceed in this order to resolve the remaining issues in this inquiry.

PRELIMINARY MATTER

Section 21(1) is no longer an inquiry issue

[6] The City made no submissions in this inquiry about the application of s. 21(1). After receiving the records in compliance with Order F22-04, I sought clarification from the City regarding s. 21(1).⁴ In response, the City stated that it "does not rely" on s. 21(1) "in respect of the records' contents."⁵ Given the City's position, I conclude that s. 21(1) is no longer an issue in this inquiry.⁶ There is no s. 21(1) severing for me to review.

ISSUES AND BURDEN OF PROOF

[7] The issues I will decide in this inquiry are whether the City is authorized under ss. 13(1) and 17(1), and required under s. 22(1), to refuse the applicant access to the information it is withholding under those sections.

[8] According to s. 57(1), the burden is on the City to prove that it is authorized to refuse the applicant access under ss. 13(1) and 17(1).

³ There is severing in the records package the City provided that does not reflect the City's inquiry position. To be clear, with respect to ss. 13(1) and 17(1), I have not based my review on the severing in the records, but rather the City's decision that these two sections apply to all of the disputed information. With respect to s. 22(1), I review the City's severing in the records package because it corresponds with the City's affidavit evidence about which information it is withholding under s. 22(1): Affidavit #1 of MY at Exhibit "D".

⁴ Email from the OIPC to the parties dated January 27, 2022.

⁵ Letter from the City to the applicant and the OIPC dated January 28, 2022.

⁶ The City did not elaborate on its decision to abandon reliance on s. 21(1) or the process it took in relation to s. 21(1). Based on the information before me, I assume and expect the City has complied with its duties under FIPPA regarding third parties and their interests.

[9] According to s. 57(2), the burden is on the applicant to prove that disclosure of the disputed information would not be an unreasonable invasion of a third party's personal privacy under s. 22(1). However, the public body has the initial burden of proving that the disputed information is personal information under s. 22(1).⁷

BACKGROUND

[10] In 2014, the City decided to build a new facility called the Minoru Centre for Active Living (Centre).⁸ The Centre is an aquatic, recreational and seniors' centre owned and operated by the City to support active living and wellness for all ages.

[11] Following a competitive procurement process, the City entered into a November 1, 2014 master agreement with Stuart Olson Construction Ltd. (Stuart Olson). Under that agreement, Stuart Olson agreed to provide construction management services to the City over a five-year term for selected City capital projects, including the Centre. The master agreement set out the process and terms under which the City and Stuart Olson would enter into separate contracts relating to each capital project.

[12] Subsequently, the City and Stuart Olson entered into a contract under which Stuart Olson agreed to construct the Centre and provide construction management services during construction (construction project).

[13] On February 22, 2019, the applicant made the access request at issue in this inquiry.

[14] The Centre opened in stages during 2019 and 2020. In early 2020, Stuart Olson commenced a lawsuit against the City in the Supreme Court of British Columbia.

RECORDS IN DISPUTE

[15] There are 3,577 pages of records in dispute (the initial 3,865 pages less the 288 pages of records I found in Order F22-04 that the City is authorized to withhold under s. 14). In general, the disputed records are emails and various kinds of other records relating to the construction project such as reports, schedules, spreadsheets, drawings, notices and tables.

⁷ Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9–11.

⁸ The information in this background section is based on the evidence, which I accept, in the Affidavit of MY at paras. 4-8.

SECTION 13 – ADVICE OR RECOMMENDATIONS

[16] The City is withholding all of the information in all 3,577 pages of records under s. 13(1).⁹ That section states that the head of a public body “may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.”

[17] The purpose of s. 13 is to allow for full and frank discussion of advice or recommendations on a proposed course of action by preventing the harm that would occur if the deliberative process of government decisions and policy-making were subject to excessive scrutiny.¹⁰

[18] The principles that apply to the s. 13 analysis are well-established and include the following:

- Section 13(1) applies not only to advice or recommendations, but also to information that would allow someone to accurately infer advice or recommendations.¹¹
- Recommendations involve “a suggested course of action that will ultimately be accepted or rejected by the person being advised” and can be express or inferred.¹²
- “Advice” has a broader meaning than “recommendations”.¹³ Advice includes providing an evaluative analysis of options or an opinion that involves exercising judgment and skill, even if the opinion does not include a communication about future action.¹⁴
- The compilation of factual information and weighing the significance of matters of fact is an integral component of an expert’s advice and informs the decision-making process. Thus, s. 13(1) applies to factual information compiled and selected by the expert using his or her expertise, judgment and skill to provide explanations necessary to the public body’s deliberative process.¹⁵

[19] The first step in the s. 13 analysis is to consider whether the disputed information would reveal advice or recommendations under s. 13(1). The second step is to consider whether the disputed information falls within s. 13(2), which

⁹ Letter from the City to the OIPC and the applicant dated January 28, 2022; City’s initial submissions at para. 22.

¹⁰ *John Doe v. Ontario (Finance)*, 2014 SCC 36 at paras. 43-44 [*John Doe*]; Order F15-61, 2015 BCIPC 67 (CanLII) at para. 28.

¹¹ Order 02-38, 2002 CanLII 42472 (BC IPC) at para. 135.

¹² *John Doe*, *supra* note 10 at paras. 23-24.

¹³ *John Doe*, *ibid* at para. 24.

¹⁴ *John Doe*, *ibid* at para. 26; *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at paras. 103 and 113 [*College*].

¹⁵ *College*, *ibid* at para. 111; *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at para. 94.

sets out various kinds of records and information that the head of a public body must not refuse to disclose under s. 13(1).

[20] Section 13(3) says that s. 13(1) does not apply to information in a record that has been in existence for 10 or more years. I am satisfied that the records are not that old, so s. 13(3) does not apply.

Would the disputed information reveal advice or recommendations?

Positions of the parties

[21] The City submits that all of the disputed information “in its entirety” or “as a whole” would reveal advice or recommendations within the meaning of s. 13(1).¹⁶ It says the disputed information is “an integral part of the ongoing continuum of advice, recommendations and consultation in relation to the project to construct the Centre.”¹⁷ It also says the disputed information includes background facts and information compiled by City staff using their expertise in relation to the construction project to prepare advice and recommendations for the City.¹⁸

[22] The applicant questions whether all of the disputed information would reveal advice or recommendations, particularly since the City applied s. 13(1) to the information “as a whole” rather than to the specific kinds of information in the records.¹⁹

[23] More generally, the applicant seeks transparency and accountability.²⁰ The applicant submits that the City owes its citizens a full explanation for the delays in construction of the Centre. The applicant says the City’s “blanket ban on publication of all documents related to this large, public project is an affront to democracy and public interest.”²¹ The applicant is also concerned about the financial aspects of construction of the Centre for taxpayers, as well as the physical safety of the Centre.

Analysis and findings

[24] Based on my review, I find that the information in the disputed records documents the course of communications relating to construction delays between the various parties involved in the construction project. The key parties involved are the City, Stuart Olson and a firm acting as administrator of the contract between the City and Stuart Olson (contract administrator). The kinds of

¹⁶ City’s initial submissions at paras. 14-22; Affidavit of MY at para. 14.

¹⁷ City’s initial submissions at para. 21.

¹⁸ City’s initial submissions at paras. 19 and 21; Affidavit of MY at para. 14.

¹⁹ Applicant’s submissions at p. 2.

²⁰ Applicant’s response submissions at pp. 1-4; applicant’s further submissions dated December 20, 2021 at p. 1.

²¹ Applicant’s submissions at pp. 3-4.

information in the records varies widely and includes, for example: facts, figures, dates, names, opinions, decisions, updates, questions, answers, reports and requests.

[25] In general, I am not persuaded by the City's arguments that the disputed information "in its entirety" or "as a whole" would reveal advice or recommendations. In my view, the information is so vast and varied that it cannot be lumped together and all treated as information that would reveal advice or recommendations.

[26] In particular, I am not persuaded that the disputed information in its entirety would reveal advice or recommendations because the City says it is "an integral part of the ongoing continuum of advice, recommendations and consultation" in relation to the construction project. The City does not cite, and I am not aware of, any authority establishing that s. 13(1) protects information that forms an "integral part" of an "ongoing continuum". I accept that advice and recommendations were provided during the construction project. However, that does not mean that all of the information in all 3,577 pages of records would reveal advice or recommendations. The City does not adequately explain, even in general terms, what advice or recommendations were provided during the project or how all of the specific information in dispute would reveal advice or recommendations.

[27] I am also not persuaded that the disputed information in its entirety would reveal advice or recommendations because it is background facts and information compiled by City experts advising the City. I do not see how the disputed information, which is extensive and varied, was selected or compiled by City experts using their judgment and skill. The records and information are not organized in a fashion that demonstrates expert selection or compilation. The records appear to me to simply be a collection of communications that were created during the course of the construction project and gathered in response to the access request. The City does not adequately explain how all of this information was expertly selected or compiled or how it would reveal advice or recommendations provided by City experts.

[28] I turn now to the specific information in the records, rather than the information "in its entirety" or "as a whole". Past OIPC orders clearly establish that FIPPA requires a detailed line-by-line, rather than record-by-record, approach under s. 13(1), even if that process is tedious and time-consuming.²² The City did not take that approach here. However, rather than ordering the City

²² See, for example, Order F18-31, 2018 BCIPC 34 at paras. 8-12, citing Order 324-1999, 1999 CanLII 4054 (BC IPC) at p. 7; Order 326-1999, 1999 CanLII 4353 (BC IPC).

to sever the records line-by-line and delaying these proceedings further,²³ I reviewed the records taking the detailed approach required by s. 13(1).

[29] Based on what I can glean from the records, combined with the City's submissions, I accept that some of the disputed information would reveal advice or recommendations developed by or for the City. This information is expert suggestions, opinions, analysis, deliberations and recommended courses of action developed internally within and for the City or between the contract administrator and the City.²⁴ Without revealing specifics, I am satisfied on the face of the records that this information relates to decisions that had to be made during the course of the construction project relating to various matters ranging from the causes of construction delays to the details of how to draft certain documents. I accept that this information forms part of the deliberative processes that s. 13(1) is intended to protect.

[30] However, in my view, the balance of the disputed information does not reveal advice or recommendations within the meaning of s. 13(1). This information includes a significant amount of factual information, including updates, scheduling and progress reports.²⁵ It also includes directives, factual questions or requests, factual responses, notices and decisions already made.²⁶ I find that none of this information would reveal advice or recommendations within the meaning of s. 13(1).

[31] Further, much of the remaining information is in emails and other documents between third parties, primarily including Stuart Olson and the contract administrator, or between third parties and the City. I find that this information constitutes the City and third parties presenting and defending their respective interests and positions regarding various issues that arose during the construction project. Based on my understanding of the documents, the parties are not providing advice or recommendations to each other. I am not persuaded that this information constitutes, or would reveal, advice or recommendations

²³ I recognize that, when a public body fails to sever records "as required by" FIPPA, the commissioner may make an order under s. 54.1 requiring the public body to sever the records in accordance with the commissioner's directions. I determined not to make such an order in this case because it would prejudice the applicant by creating further unacceptable delay of at least 30 days (see FIPPA, s. 54.1(2)).

²⁴ Records at pp. 2-3, 7, 105, 311, 404-405, 415, 533, 558-559, 574-575, 791, 1173-1175, 1292, 1339, 1358, 1362, 1366, 1399, 1415-1416, 1423, 1446, 1459, 1493, 1522, 1752, 1771, 1847, 1881-1888, 1928, 1952, 2098, 2305, 2353-2356, 2383, 2393-2394, 2436, 2445-2453, 2475, 2478-2479, 2519-2520, 2525-2526, 2536, 2544, 2599, 2608-2609, 2971, 2975, 3245, 3255-3258, 3295-3296, 3344-3345, 3375-3376, 3391, 3506, 3519, 3550-3552, 3578-3579, 3638-3645, 3653-3656, 3724-3727, 3741-3746, 3750-3772 and 3814.

²⁵ For example, Records at pp. 5, 110-305, 314-371, 412, 461-524, 791, 1190-1196, 1292, 1367-1382, 1448-1458, 1482-1492, 1796-1809, 2148-2163, 2223-2233, 2352, 2454-2465, 2578-2587, 3295, 3299-3311 and 3318-3326.

²⁶ For example, Records at pp. 105, 406, 533, 1292, 1425, 1428, 1460, 2135, 2402, 2435-2436, 2978-2979, 3317, 3392-3393, 3464-3496 and 3697-3711.

developed by or for the City. At any rate, some of the information is between third parties only, so it would not reveal advice or recommendations developed by or for *the City*.²⁷

[32] For the reasons provided above, I conclude that some, but not all, of the disputed information would reveal advice or recommendations under s. 13(1).

Do any of the exceptions in s. 13(2) apply?

[33] The next step is to consider whether any of the information that I found above would reveal advice or recommendations falls within s. 13(2). Section 13(2) sets out various kinds of records and information that the head of a public body must not refuse to disclose under s. 13(1).

[34] The parties did not make submissions about s. 13(2). However, the City's position, even if it did not say so explicitly, is clearly that none of the exceptions in s. 13(2) apply.

[35] I reviewed the records in light of s. 13(2). Based on the evidence before me, including the records themselves, I am satisfied that none of the exceptions in s. 13(2) apply. I considered whether one of the records²⁸ is a "technical study" relating to a project of the public body under s. 13(2)(i), but concluded it is not. The most I can say about the record is that it was developed by a third party for the City and provides an analysis of the causes of construction delays on the project. Past orders interpret a "technical study" as an application of specialized engineering, mechanical or scientific expertise.²⁹ This record provides expert analysis, but I find that the analysis is not "technical" in the sense required by s. 13(2)(i) because it does not apply scientific or technical knowledge.

Conclusion regarding s. 13(1)

[36] For the reasons provided above, I conclude that the City is authorized under s. 13(1) to withhold the information I found above would reveal advice or recommendations. The City is not authorized under s. 13(1) to withhold the balance of the disputed information. I will only consider below the information that is not already protected by s. 13(1).

²⁷ For example, Records at pp. 1914-1920 and 2489-2490. Even if these reports can be said to be advice or recommendations developed indirectly for the City, I would find that they must be disclosed because they are technical studies applying scientific and engineering expertise in relation to a City project within the meaning of s. 13(2)(i).

²⁸ Records at pp. 3749-3772.

²⁹ See, for example, Order F14-37, 2014 BCIPC 40 at paras. 62-64; Order F19-10, 2019 BCIPC 12 at paras. 12-26.

SECTION 17 – HARM TO FINANCIAL OR ECONOMIC INTERESTS

[37] The City is also withholding all of the information in all 3,577 pages of records under s. 17(1).³⁰ That section states:

(1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British Columbia or the ability of that government to manage the economy, including the following information:

- (a) trade secrets of a public body or the government of British Columbia;
- (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;
- (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;
- (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
- (e) information about negotiations carried on by or for a public body or the government of British Columbia;
- (f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia.

[38] Past orders establish that ss. 17(1)(a) through (f) are examples of the types of information the disclosure of which may result in harm, and that they are not standalone provisions. Ultimately, the City must show that disclosure of the disputed information could reasonably be expected to harm its financial or economic interests.³¹

[39] The standard the City must satisfy under s. 17(1) is a “reasonable expectation of harm”. This standard is a “middle ground between that which is probable and that which is merely possible.”³² The City is not required to prove that the alleged harm will occur, or even that the harm is more likely than not to

³⁰ City's initial submissions at para. 31.

³¹ For the principles set out in this paragraph, see Order F19-10, 2019 BCIPC 12 at para. 28 and the cases cited there.

³² *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para. 201.

occur, if the disputed information is disclosed.³³ It need only prove that there is a “reasonable basis for believing that harm will result” from disclosure.³⁴

[40] Further, the release of the information itself must give rise to a reasonable expectation of harm.³⁵ There must be a clear and direct connection between the disclosure of specific information and the harm that is alleged.³⁶

Positions of the parties

[41] The City submits:

Disclosing the Records could reasonably be expected to harm the City’s ability to defend itself against the Stuart Olson lawsuit. This is because disclosure of the Records will disclose, in considerable detail, the City’s assessment over time of the evolving and deteriorating situation with Stuart Olson, which would offer deep insight into the City’s confidential analysis of the issue and its strategy for litigation.

In other words, disclosing the Records would reveal to the public and those adverse in interest to the City (including, notably, Stuart Olson) confidential information about the City’s otherwise confidential internal knowledge and thinking on the full range of issues connected to the Stuart Olson lawsuit. This would harm the City’s defence of the lawsuit and also would harm the City’s negotiating position with respect to the lawsuit. Put another way, disclosure of the records would harm the City’s financial interests by forcing the City to litigate the Stuart Olson claim with the City’s internal thinking being known to the whole world, including the party suing the City for significant damages.

For the reasons set out above, the City respectfully submits that it is authorized to withhold the Records in their entirety under s. 17(1).³⁷

[42] The City provided affidavit evidence in support of its position from MY, the City’s Manager of Capital Buildings Project Development. MY makes essentially the same points as set out in the City’s submissions above. In short, MY says that all of the disputed information relates to the lawsuit with Stuart Olson and disclosure of that information would harm the City’s interests in defending the lawsuit or negotiating a settlement.³⁸

³³ *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 at para. 93.

³⁴ *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 170 v. British Columbia (Information and Privacy Commissioner)*, 2018 BCSC 1080 at para. 42.

³⁵ *British Columbia (Minister of Citizens’ Services) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875 at para. 43.

³⁶ See, for example, Order F19-10, 2019 BCIPC 12 at para. 31.

³⁷ City’s initial submissions at paras. 29-31 (reference to evidence omitted).

³⁸ Affidavit of MY at paras. 15-17.

[43] The applicant generally questions the City's application of the FIPPA exceptions, but did not make submissions specifically about s. 17(1).

Analysis and findings

[44] I note at the outset that the City's s. 17(1) argument alleges harm to its financial or economic interests *in the context of litigation*. The City says it is concerned about having to "litigate the Stuart Olson claim with the City's internal thinking being known to the whole world", including Stuart Olson. Litigation privilege under s. 14 of FIPPA addresses these kinds of concerns. It protects a party's ability to conduct litigation without outside interference.³⁹ However, the City stated explicitly in this inquiry that it is not relying on litigation privilege.⁴⁰

[45] Turning to s. 17(1) specifically, I accept that the litigation with Stuart Olson presents a risk of harm to the City's financial interests. This is because, if Stuart Olson's legal claims succeeds, the City will have to pay damages or a settlement.⁴¹ However, that risk exists regardless of disclosure of the records under FIPPA. If the City is found liable for damages or agrees to a settlement, it may have to pay. The question here is not whether *the litigation* could reasonably be expected to harm the City's financial interests.

[46] Rather, the question is whether *disclosure of the disputed information under FIPPA* could reasonably be expected to cause the City financial or economic harm. The City claims that disclosure of the disputed information under FIPPA could reasonably be expected to weaken its litigation position and strengthen Stuart Olson's position, resulting in an increased risk of the City having to pay, or pay more, in damages or for a settlement. This increased risk or additional payment is the specific harm alleged under s. 17(1).

[47] For the reasons provided below, I am not persuaded that disclosure of the disputed information under FIPPA could reasonably be expected to harm the City's financial or economic interests as alleged.

[48] Firstly, I am not persuaded that the disputed information is the kind of information that could reasonably be expected to provide Stuart Olson with a litigation advantage. I already found above that information reflecting the City's analysis, advice and deliberations is protected by s. 13(1). Most of the records I am now considering under s. 17(1) are routine construction project documents, like schedules and notices. I do not see, and the City does not adequately explain, how these records contain the City's "confidential analysis" or provide any "deep insight" into the City's litigation position or strategy. None of that is clear to me from the records themselves.

³⁹ See *Blank v. Canada (Minister of Justice)*, 2006 SCC 39.

⁴⁰ City's further submissions dated December 3 and 7, 2021.

⁴¹ Affidavit of MY at Exhibit "A" (Stuart Olson's notice of civil claim).

[49] Further, I am not persuaded that release of the disputed information itself would give rise to a reasonable expectation of the alleged harm. The vast majority of the records were created by or sent to a third party, primarily Stuart Olson and the contract administrator. As a result, one or more third parties already know about and have access to the disputed information. I do not see how the disputed information is, as the City claims, “confidential”. In my view, the cause of any possible financial harm to the City is pre-existing third-party knowledge of the disputed information, not disclosure of the information under FIPPA.

[50] Ultimately, in my view, the City’s evidence and submissions are far too general and lacking in detail to establish the requisite connection between the specific information in dispute and the alleged harm, or that release of the information itself gives rise to a reasonable expectation of the alleged harm. In my view, the disputed information is not the kind of information that could reasonably be expected to provide Stuart Olson with a litigation advantage. Further, even if it is, one or more third parties already know the disputed information, so the source of any harm to the City’s financial or economic interests is not the release of the information under FIPPA.

[51] For these reasons, I conclude that s. 17(1) does not apply to any of the disputed information. The City is not authorized to withhold any of the disputed information under s. 17(1).

SECTION 22 – THIRD-PARTY PERSONAL PRIVACY

[52] Finally, the City is withholding some of the information in the records under s. 22(1). That section states that a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy.

[53] The City submits that s. 22(1) applies to some of the disputed information.⁴² Based on my review of the City’s evidence⁴³ and the records, I find that the information the City is withholding under s. 22(1) is:

- employee scheduling information about time off from work (leave information),⁴⁴
- two email addresses and a cell phone number,⁴⁵
- employee medical information,⁴⁶

⁴² City’s initial submissions at paras. 33-41.

⁴³ Affidavit of MY at Exhibit “D”.

⁴⁴ Records at pp. 81-82, 110, 232, 314, 471 and 3352.

⁴⁵ Records at pp. 573, 1705 and 2728.

⁴⁶ Records at p. 3642.

- a brief description of an employee’s work situation,⁴⁷ and
- information in an email from a third party to the City.⁴⁸

[54] The City submits that this information relates to employment history, so it is presumed to be an unreasonable invasion of a third party’s personal privacy under s. 22(3)(d). The City says that no relevant circumstances weigh in favour of disclosure, so the information must be withheld.

[55] The applicant questions the City’s position, but did not make submissions on the specifics of the s. 22 analysis.

[56] The analytical approach to s. 22 is well established.⁴⁹ I apply it below.

Is the disputed information “personal information”?

[57] Section 22(1) only applies to personal information, so the first step is to determine whether the disputed information is personal information.

[58] FIPPA defines personal information as “recorded information about an identifiable individual other than contact information”.⁵⁰ Information is “about an identifiable individual” when it is “reasonably capable of identifying an individual, either alone or when combined with other available sources of information.”⁵¹

[59] FIPPA 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”.⁵² Whether information is contact information depends on the context, but it is generally the kind of information commonly found in an employee directory or on a business card.⁵³

[60] I find that one of the email addresses and the cell phone number are contact information and not personal information.⁵⁴ This information appears on records clearly relating to business. I find that this information is being used to enable individuals at places of business to be contacted, so it is contact information and not personal information.

[61] I accept that the balance of the information is personal information. The other email address appears, based on the context, to be used as a personal,

⁴⁷ Records at p. 767.

⁴⁸ Records at pp. 670-679, 1209-1218, 3581-3591 and 3657-3667 (duplicates).

⁴⁹ See, for example, Order F15-03, 2015 BCIPC 3 at para. 58.

⁵⁰ Schedule 1 of FIPPA.

⁵¹ Order F19-13, 2019 BCIPC 15 at para. 16 citing Order F18-11, 2018 BCIPC 14 at para. 32.

⁵² Schedule 1 of FIPPA.

⁵³ Order F08-03, 2008 CanLII 13321 (BC IPC) at para. 82.

⁵⁴ Records at pp. 1705 and 2728.

rather than work, address. The leave information, medical information and the description of a work situation is all about particular identifiable employees. The email from a third party partly describes the individual's work history and it also presents the individual's opinions, so I accept this information is about that individual.

No unreasonable invasion of privacy – s. 22(4)

[62] The next step is to analyze s. 22(4), which sets out various circumstances in which disclosure of personal information is not an unreasonable invasion of a third party's personal privacy. Neither party made submissions specifically about s. 22(4).

[63] I have considered the disputed personal information in light of s. 22(4) and find that it does not apply.

Presumptions of unreasonable invasion of privacy – s. 22(3)

[64] The third step in the s. 22 analysis is to determine if any of the presumptions in s. 22(3) apply. Section 22(3) sets out various circumstances in which a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy. In this case, the relevant subsections read as follows:

- (1) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
 - (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment, or evaluation, ...
 - (d) the personal information relates to employment, occupational or educational history

[65] I find that some of the personal information in dispute relates to a medical treatment or evaluation, so its disclosure is presumed to be an unreasonable invasion of third-party personal privacy under s. 22(3)(a). None of the other disputed personal information relates to anything medical, psychiatric or psychological, so s. 22(3)(a) does not apply.

[66] As for s. 22(3)(d), I find that it applies to the leave information. Past orders establish that s. 22(3)(d) applies to information about an employee's vacation or sick leave.⁵⁵ I am satisfied that the leave information here would reveal when

⁵⁵ See, for example, Order F16-46, 2016 BCIPC 51 at para. 28; Order F15-17, 2015 BCIPC 18 at paras. 34-38.

employees took time off from work, either as vacation or some other kind of leave, so s. 22(3)(d) applies.

[67] I also find that parts of the email from a third party to the City describes the third party's work experience, so s. 22(3)(d) applies to that information. However, I find that s. 22(3)(d) does not apply to the rest of the email. I would characterize the rest of the email as the third party providing his (apparently unsolicited) opinions to the City in support of his position on a matter relating to the construction project. The third party is drawing on his work experience and expertise to provide his opinions, but I am not persuaded that his opinions relate to employment "history" within the meaning of s. 22(3)(d).

[68] The other personal information in dispute is a personal email address and a brief description of an employee's work situation. In my view, s. 22(3)(d) clearly does not apply to the email address because it is not a work email and does not relate to work "history". I also find that s. 22(3)(d) does not apply to the description because it describes the temporary condition of a work situation that is not part of the employee's work "history".

All relevant circumstances – s. 22(2)

[69] The final step in the analysis is to determine whether disclosure of the disputed information would be an unreasonable invasion of a third party's personal privacy, considering all relevant circumstances including those listed in s. 22(2). It is at this stage that the presumptions under s. 22(3) may or may not be rebutted.

[70] The City submits that none of the relevant circumstances favour disclosure of the disputed personal information.⁵⁶ The applicant did not provide detailed submissions on this aspect of the analysis.

[71] In my view, it would unreasonably invade a third party's personal privacy to disclose the medical information, the leave information, the personal email address and parts of an email describing a third party's work experience. I considered the factors listed in s. 22(2) and the sensitivity of the information. I see no basis to rebut the s. 22(3) presumptions that I found apply to the medical information, the leave information and the work experience information. As for the email address, I accept that it is being used as a personal and private email address, so disclosing it would unreasonably invade the third party's privacy.

[72] However, I am not persuaded that it would unreasonably invade a third party's personal privacy to disclose the rest of the third party's email and the brief description of an employee's work situation. No s. 22(3) presumptions apply to this information and I do not consider the information sensitive. In my view, no

⁵⁶ City's initial submissions at para. 40.

s. 22(2) factors weigh in favour of withholding this information. Ultimately, I am not persuaded that disclosing this information would unreasonably invade a third party's personal privacy.

[73] For the reasons provided, I conclude that the City is required to refuse access to some, but not all, of the information it is withholding under s. 22(1).

SECTION 4(2) – REASONABLE SEVERING

[74] Section 4(2) of FIPPA states that, if information excepted from disclosure can reasonably be severed from a record, an applicant has a right of access to the remainder of the record.

[75] Relying on past OIPC orders, the City submits that the records cannot reasonably be severed because this would result in records consisting of “disconnected words or snippets of sentences that would be misleading or unintelligible”.⁵⁷

[76] Based on my review of the records, I find that reasonable severing is clearly possible in this case. I am satisfied that the information that I found above is excepted from disclosure under ss. 13(1) and 22(1) can reasonably be severed from the records, leaving a significant amount of information that conveys meaning regarding the construction project.⁵⁸

CONCLUSION

[77] For the reasons given above, under s. 58(2) of FIPPA, I make the following orders:

1. I confirm, in part, the City's decision to refuse the applicant access to the disputed information under s. 13(1). The City is authorized under s. 13(1) to refuse access to the information I have highlighted in a copy of the records that will be provided to the City with this order.
2. I require the City to refuse access to the information it withheld under s. 22(1) that I have highlighted in a copy of the records that will be provided to the City with this order.
3. I require the City to give the applicant access to the information that I have not highlighted in the copy of the records that will be sent to the City with this order. The City must concurrently copy the OIPC registrar of inquiries on its cover letter or email to the applicant, together with a copy of the records.

⁵⁷ City's initial submissions at para. 43.

⁵⁸ For a similar finding, see, for example, Order F19-19, 2019 BCIPC 21 at paras. 59-61.

Pursuant to s. 59(1) of FIPPA, the City is required to comply with this order by May 16, 2022.

March 31, 2022

ORIGINAL SIGNED BY

Ian C. Davis, Adjudicator

OIPC File No.: F19-80261