



Order F22-17

## OFFICE OF THE PREMIER AND THE BC PUBLIC SERVICE AGENCY

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Investigator

April 14, 2022

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**Summary:** An applicant asked the Office of the Premier and the BC Public Service Agency (public bodies) for records related to a leave of absence without pay taken by a former named employee. The public bodies withheld some information in the records under s. 22(1) (unreasonable invasion of a third party’s personal privacy). The investigator found that s. 22(1) applied to all of the information in dispute and that the public bodies were required to withhold it.

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

### INTRODUCTION

[1] The applicant, who is a journalist, made two requests for records under s. 5 of the *Freedom of Information and Protection of Privacy Act* (FIPPA). He asked the Office of the Premier (Premier’s Office) and the BC Public Service Agency (PSA)<sup>1</sup> for records related to the leave of absence for a named employee within a specified date range.

[2] The Premier’s Office and the PSA each issued a separate decision. In this Order, I will refer to the Premier’s Office and the PSA collectively as the “public bodies.” The public bodies relied on s. 8(2) of FIPPA to neither confirm nor deny the existence of the records requested.

[3] During mediation, the public bodies withdrew their reliance on s. 8(2) of FIPPA and disclosed records in severed form. The public bodies withheld some information contained in the records under s. 22(1) (unreasonable invasion of a third party’s personal privacy) of FIPPA. The applicant asked the Office of the

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<sup>1</sup> The PSA is part of the Ministry of Finance.

Information and Privacy Commissioner (OIPC) to review the decisions of the public bodies. Mediation did not resolve either matter and they proceeded to a joint inquiry.

[4] The applicant and the public bodies made submissions in this inquiry.

## ISSUE

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

- Whether s. 22(1) of FIPPA requires the public bodies to withhold the information in dispute.

[6] Under s. 57(2) of FIPPA, the applicant has the burden of proving that disclosure of any personal information would not be an unreasonable invasion of third party personal privacy. However, the public body has the initial burden of proving that the information constitutes personal information.<sup>2</sup>

## DISCUSSION

[7] **Background** - The individual named in the applicant's access request is a former employee of the Premier's Office who took a general leave of absence without pay from the BC Public Service.<sup>3</sup>

[8] **Information in dispute** - The information in dispute in this inquiry is found in eight lines of text in the responsive records, which consist of a total of seven pages. The information in dispute is the dates of the employee's leave of absence without pay, their address and their BC Public Service employee identification number.

### ***Unreasonable invasion of a third party's personal privacy – s. 22(1)***

[9] Section 22(1) requires a public body to refuse to disclose information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. The approach to applying s. 22(1) of FIPPA is well established by numerous OIPC Orders, and I will follow it here.<sup>4</sup>

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<sup>2</sup> Order 03-41, 2003 BCIPC 49220 (CanLII), at paras. 9-11.

<sup>3</sup> The background is contained in the public bodies' initial submissions at paras. 15-16. The public bodies disclose the fact that the employee is a "former" employee and that the leave of absence was "without pay".

<sup>4</sup> Order 15-03, 2015 BCIPC 3 (CanLII), at para. 58.

**Personal information**

[10] Section 22(1) only applies to personal information. Therefore, the first step is to determine whether the disputed information in this case meets the definition of personal information under FIPPA.

[11] Schedule 1 of FIPPA defines “personal information” and “contact information” as follows:

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

"contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.

[12] Under these definitions, contact information is excluded from the definition of personal information. However, previous OIPC Orders<sup>5</sup> have articulated that determining whether information is contact information can depend on the context in which the information appears in the records.

[13] The public bodies submit that the information in dispute is personal information.<sup>6</sup> The applicant does not dispute this in his response submission.

[14] The address appears in a letter issued by the BC Public Service to the employee. The public bodies describe the address as the employee’s personal address.<sup>7</sup> The contents of the letter that has already been disclosed reveals that it was issued in the context of the employee and employer relationship. This context indicates that the purpose of the communication was in relation to a leave of absence requested by the employee. On the basis of this, I find that the communication was for a personal, not business purpose. As such, the address would not enable the employee to be contacted at their place of business. Accordingly, the address is not contact information. The employee’s personal address meets the definition of personal information.

[15] The first and last name of the employee who is the subject of the access request has been revealed in the responsive records that have already been disclosed. Therefore, I find that the address, the dates of the leave of absence without pay and the employee identification number can be connected to the named employee, and as such is information about an identifiable individual.

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<sup>5</sup> Order F21-69, 2021 BCIPC 80 (CanLII), at para. 40; Order F20-13, 2020 BCIPC 15 (CanLII), at para. 42; Order F08-03, 2008 BCIPC 13321 (CanLII), at para. 82; Order F14-45, 2014 BCIPC 48 (CanLII), at para. 41.

<sup>6</sup> The public bodies’ initial submission, at paras. 32 and 42.

<sup>7</sup> The public bodies’ initial submission, at para. 17.

[16] In summary, I conclude that all of the information in dispute is personal information. I now turn to whether disclosure of the personal information in dispute would be an unreasonable invasion of the third party's personal privacy as contemplated by s. 22 of FIPPA.

### **Section 22(4)**

[17] The second step in a s. 22 analysis involves deciding if s. 22(4) applies. Section 22(4) describes circumstances or categories of personal information the disclosure of which is not an unreasonable invasion of personal privacy.

[18] The public bodies submit that there are no relevant provisions under s. 22(4) that apply here<sup>8</sup>. The applicant submits that four provisions listed under s. 22(4) are relevant, but did not specify which provision applied to each category of personal information in dispute.<sup>9</sup> The provisions relied on by the applicant read as follows:

22(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

...

(d) the disclosure is for a research or statistical purpose and is in accordance with section 33(3)(h),

(e) the information is about the 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,

...

(i) the disclosure, in respect of

(i) a licence, a permit or any other similar discretionary benefit, or

...

reveals any of the following with respect to the applicable item in subparagraph (i) or (ii):

(iii) the name of the third party to whom the item applies;

(iv) what the item grants or confers on the third party or authorizes the third party to do;

(v) the status of the item;

(vi) the date the item was conferred or granted;

(vii) the period of time the item is valid;

(viii) the date the item expires, or

(j) the disclosure, in respect of a discretionary benefit of a financial nature granted to a third party by a public body not including

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<sup>8</sup> The public bodies' initial submission, at para. 43.

<sup>9</sup> The applicant's response submission, at paras. 12-15.

personal information referred to in subsection (3) (c), reveals any of the following with respect to the benefit:

- (i) the name of the third party to whom the benefit applies;
- (ii) what the benefit grants to the third party;
- (iii) the date the benefit was granted;
- (iv) the period of time the benefit is valid;
- (v) the date the benefit ceases.

Section 22(4)(d) – research or statistical purpose

[19] Under s. 22(4)(d), public bodies may exercise the discretion to disclose personally identifiable information to support a bona fide research project in cases where a researcher meets the requirements of s. 33(3)(h) of FIPPA<sup>10</sup> and both parties have signed a research agreement, in which the necessary measures to protect the personal information involved are stipulated.

[20] The applicant claims that research of the employee named in the access request cannot reasonably be accomplished unless the information in dispute is disclosed in individually identifiable form.<sup>11</sup> On the basis of his submission, I understand that the applicant asserts that he is the researcher for the purposes of s. 22(4)(d). The public bodies argue that there is no evidence that disclosure of the disputed information would be in accordance with s. 33(3)(h) of FIPPA.<sup>12</sup>

[21] Proceeding on the basis that I accept that the applicant is the researcher, he has not demonstrated that the disclosure is for research or statistical purposes. While the applicant asserts in a general sense, that the research purpose cannot be accomplished unless the information is disclosed in individually identifiable form, he provides no argument or evidence to demonstrate this. Further, aside from simply asserting that s. 22(4)(d) applies, the applicant does not provide any evidence to demonstrate that there is a signed research agreement and that he is conducting research in accordance with s. 33(3)(h) of FIPPA.<sup>13</sup>

[22] In summary, I find that s. 22(4)(d) does not apply to any of the information in dispute.

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<sup>10</sup> In the applicant's response submission (at para. 12) and in the public bodies' reply submissions (at para. 13), they cite s. 35 of FIPPA in relation to s. 22(4)(d) of FIPPA. On November 25, 2021, amendments to FIPPA received royal assent. These amendments caused s. 35 of FIPPA to be renumbered to s. 33(3)(h) of FIPPA. The language of the latter is verbatim to the former.

<sup>11</sup> The applicant's response submission, at para. 13.

<sup>12</sup> The public bodies' reply submission, at para. 13.

<sup>13</sup> Order F21-62, 2021 BCIPC 71 (CanLII), at paras. 14-15.

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

[23] The applicant submits that the information in dispute is about the position, functions or remuneration of a member of a public body.<sup>14</sup> However, he provides no explanation as to how s. 22(4)(e) applies in this case. The public bodies refute that s. 22(4)(e) is relevant.

[24] Previous OIPC Orders<sup>15</sup> have determined that s. 22(4)(e) applies to identifying information that relates to a third party's duties in the normal course of work-related activities. On the basis of this definition, an employee's personal address could not conceivably fall under s. 22(4)(e).

[25] Previous OIPC Orders<sup>16</sup> have found that employee identification numbers are not about an employee's function, position or remuneration. In fact, numerous OIPC Orders<sup>17</sup> have specifically found that as unique identifiers assigned to a specific employee, they constitute employment history, the disclosure of which is presumed to be an unreasonable invasion of a third party's personal privacy under s. 22(3)(d) of FIPPA.

[26] I also considered whether s. 22(4)(e) applies to the dates of the employee's leave of absence without pay. In my view this information is not about the employee's position or functions because it does not relate to their duties in the normal course of their work-related activities. In an employment context, remuneration would include an employee's receipt of compensation, disbursement or payment in exchange for the performance of work-related duties. The categorization of the dates as a leave of absence without pay in and of itself demonstrates that the employee received no remuneration for the leave of absence taken. On this basis, this information does not attract s. 22(4)(e).

[27] It is my view that none of the information in dispute relates to the third party's position, function, or remuneration as a BC Public Service employee.

Section 22(4)(i)(i) – discretionary benefit

[28] In order to determine whether this provision applies, it is necessary to consider whether that information is "in respect of a licence, a permit or any other similar discretionary benefit". The applicant submits that the former employee received a discretionary benefit through their employment.<sup>18</sup> As he did not otherwise specify, and it is obvious that a personal address and an employee

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<sup>14</sup> The applicant's response submission, at paras. 12-14.

<sup>15</sup> Order 01-53, 2001 BCIPC 56 (CanLII), at para. 40.

<sup>16</sup> Order 20-49, 2020 BCIPC 58 (CanLII), at para. 17.

<sup>17</sup> Order 21-09, 2021 BCIPC 13 (CanLII), at para. 39.

<sup>18</sup> The applicant's response submission, at para. 15.

identification number are not benefits, I understand that the applicant's argument is with respect to the dates of the named employee's leave of absence without pay. Therefore, the question is whether the dates of a leave of absence without pay is information about "a licence, a permit or any other similar discretionary benefit".

[29] The public bodies submit that s. 22(4)(i)(i) is not a relevant consideration because the leave dates are not information relating to a licence or permit.<sup>19</sup> The applicant's submission is about how he thinks it was improper that the employee eventually received severance pay.

[30] I agree with the public bodies that the leave dates are not information about a licence or a permit. I also conclude the information is not about "any other similar discretionary benefit". A leave of absence without pay is not similar to a licence or a permit. Further, the criteria that are listed in (iii) – (viii) must also be met in order for s. 22(4)(i)(i) to apply and those criteria are about the qualities the "item" must have. The term "item" as well as what the criteria in (iii)-(viii) describe clearly apply to licences and permits, but, in my view, they make no sense with regards to a leave of absence without pay.

[31] In summary, I find that s. 22(4)(i)(i) does not apply.

Section 22(4)(j) – discretionary benefit of a financial nature

[32] In reply,<sup>20</sup> the public bodies submit that "s. 22(4)(j) has no relevance to the withheld information as it is not "of a financial nature" as would be required in order for this section to apply." The applicant's submission consists of asserting the relevance of s. 22(4)(j) without specifying the information in dispute to which he argues this provision applies.<sup>21</sup> For the same reason I articulated under s. 22(4)(i)(i), I understand that the applicant's argument is with respect to the dates of the named employee's leave of absence without pay.

[33] The applicant has not demonstrated that the dates of the leave of absence is information of a financial nature. I cannot conceive of how the employee received any financial advantage or benefit from the BC Government because of their leave of absence without pay.

[34] In summary, I find that s. 22(4)(j) does not apply.

[35] The parties do not raise any other provisions of s. 22(4) and none of them appear to me to apply.

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<sup>19</sup> The public bodies' reply submission, at paras. 18-19.

<sup>20</sup> At para. 20.

<sup>21</sup> The applicant's reply submission, at para. 15.

### **Section 22(3)**

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

[36] The next step in a s. 22 analysis requires deciding if s. 22(3) applies. Section 22(3) lists circumstances where disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy.

[37] The public bodies submit that ss. 22(3)(d) applies generally to an employee's leave dates, relying on previous OIPC Orders where the adjudicator made this determination.<sup>22</sup> They also submit that a personal identifier for an employee is part of their employment history.<sup>23</sup>

[38] The applicant did not make a specific submission with respect to s. 22(3)(d) other than to proffer the general argument that circumstances exist in this case that rebut the presumption under this provision. Additionally, he cites OIPC Orders where the presumption under s. 22(3)(d) was successfully rebutted, but neither explained nor demonstrated how the Orders he cites are relevant to the circumstances and the information in dispute in this case. The applicant also asserts that the former employee was not on vacation or sick leave during their absence from the BC Public Service, instead involved in a political campaign.<sup>24</sup>

[39] It is plain and obvious that an employee's personal address does not attract s. 22(3)(d) of FIPPA. However, numerous OIPC Orders<sup>25</sup> have found that a person's employee number or personal identifiers for an employee can form part of their employment history under s. 22(3)(d). In this case, the employee identification number was created during the course of and in the context of the individual's employment. Consistent with past Orders, I conclude that s. 22(3)(d) applies to the employee identification number.

[40] Previous OIPC Orders<sup>26</sup> have found that s. 22(3)(d) applies to details about employees' leave from work. In my view, the disclosure of the specific dates of the leave of absence would be revelatory of the named individual's employment history. For this reason, I find that s. 22(3)(d) applies.

[41] In summary, I find that s. 22(3)(d) applies to the date of the leave of absence without pay and the employee identification number. As a result, disclosure of this information is presumed to be an unreasonable invasion of the named employee's personal privacy.

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<sup>22</sup> The public bodies' initial submission, at paras 50 and 52.

<sup>23</sup> The public bodies' initial submission, at para. 51-52.

<sup>24</sup> The applicant's response submission, at para. 10.

<sup>25</sup> Order F20-49, 2020 BCIPC 28 (CanLII), at para. 20.

<sup>26</sup> Order F15-13, 2015 BCIPC 13 (CanLII), at para. 37; Order F15-63, 2015 BCIPC 69 (CanLII), at para. 38.



### **Section 22(2)**

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

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

[43] 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. In a circumstance where disclosure of the information in dispute would foster accountability of a public body, there may be a basis for finding that disclosure would not constitute an unreasonable invasion of a third party's personal privacy.

[44] The applicant submits that records about the named third party's employment fall under s. 22(2)(a). He states:

The public has a right to know precisely how and why [a named employee] was paid such a sum with scarce public funds. It appears that he exploited a loophole in the system of leave for employees and may not actually be entitled to the sum he collected. If that is true, the funds should be returned to the public treasury. The exact dates of his leave are necessary for the public to fully understand the decisions of the previous Premier's office and whether any rules, regulations or laws were broken.<sup>27</sup>

[45] The public bodies submit that the BC government "has disclosed sufficient information to allow for public scrutiny of government activities in this instance."<sup>28</sup> They further argue that disclosure would only subject the former employee to public scrutiny and as such s. 22(2)(a) does not favor disclosure.<sup>29</sup>

[46] Information in the records that have already been disclosed in response to this access request reveal roughly when the employee's leave of absence without pay commenced. In his submissions, the applicant does not explain how disclosure of the employee's specific leave dates, their personal address and their employee identification number "is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny."

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<sup>27</sup> The applicant's response submission, at para. 3.

<sup>28</sup> The public bodies' initial submission, at para. 55.

<sup>29</sup> The public bodies' initial submission, at para. 56.

[47] The applicant has not demonstrated how disclosure of the information in dispute would enable him to support or refute his assertion about alleged impropriety on the part of the BC government. In summary, I find that s. 22(2)(a) is not a relevant circumstance here because disclosure would not assist the public by subjecting the government of BC to public scrutiny.

[48] I find that there are no other relevant circumstances under s. 22(2), listed or otherwise, that weigh in favour of disclosure and rebut the presumption under s. 22(3)(d) of FIPPA.

### **Conclusion on s. 22**

[49] In conclusion, I find that all of the information in dispute constitutes personal information as defined by FIPPA. I find that none of the provisions in s. 22(4) apply that would serve to exclude the application of s. 22(1).

[50] I find that the dates of the leave of absence without pay and the employee personal identification number constitute the employment history of the employee as described in s. 22(3)(d). As such their disclosure is presumed to be an unreasonable invasion of a third party's personal privacy.

[51] I find that there are no relevant factors under s. 22(2), listed or otherwise, that serve to rebut the presumption that disclosure would not be an unreasonable invasion of privacy. In my view, the applicant failed to make a case that disclosure of the personal information in dispute would not be an unreasonable invasion of third party personal privacy.

[52] I find that s. 22(1) applies to the personal information in dispute and the public bodies must withhold it.

### **CONCLUSION**

[53] For the reasons given above, under s. 58(2)(c), I require the Office of the Premier and the BC Public Service Agency to refuse access, under s. 22(1), to the personal information it withheld under s. 22(1).

April 14, 2022.

### **ORIGINAL SIGNED BY**

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Olivia Comeau, Investigator

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