



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F22-56

CITY OF NORTH VANCOUVER

Erika Syrotuck
Adjudicator

November 8, 2022

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Summary: An applicant requested access to records, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), from the City of North Vancouver (City). The City provided the applicant with access to records but withheld some parts of the records under ss. 13(1) (advice or recommendations) and 22(1) (unreasonable invasion of a third party's personal privacy). The adjudicator found that the City was authorized to refuse to disclose the information under s. 13(1) and found that the City was required to refuse the applicant access to some but not all of the information in dispute under s. 22(1). The adjudicator ordered the City to disclose the remainder to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 ch 165, ss. 4(2), 13(1), 22(1), 22(2)(f), 22(3)(d), 22(3)(g), 22(3)(h), 22(4), and 22(5).

INTRODUCTION

[1] This inquiry is about the City of North Vancouver's (City) response to an applicant's access request for his own personal information under the *Freedom of Information and Protection of Privacy Act* (FIPPA). Specifically, the applicant requested assessments of his own job applications and records of investigations conducted by the City.¹

[2] In response to the applicant's access request, the City provided 139 pages of records, but withheld some information under ss. 13(1) (advice and recommendations) and 22(1) (unreasonable invasion of a third party's personal privacy).

¹ The applicant also asked whether any organizations had requested his personal information from the City, and if so what information was provided. The City did not provide any records in relation to that part of the request.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the City's response.

[4] During mediation by the OIPC, the City reconsidered its decision and released additional information to the applicant. However, mediation did not resolve the issues and the matter proceeded to inquiry.

ISSUES

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

1. Is the City authorized to refuse to disclose the information in dispute under s. 13(1)?
2. Is the City required to refuse to disclose the information in dispute under s. 22(1)?

[6] Section 57(1) says that it is up to the City to prove that the applicant has no right to access the information in dispute under s. 13(1). Under s. 57(2), the applicant has the burden of showing that disclosure of the information in dispute under s. 22(1) is not an unreasonable invasion of a third party's personal privacy.

[7] However, past OIPC orders have said that the public body bears the initial burden of showing that the information in dispute is "personal information" as defined in Schedule 1.²

DISCUSSION

Background

[8] At the relevant time, the applicant was an employee of the North Vancouver City Library (Library). The City has a formal agreement with the Library Board that the City's human resource staff will, from time to time, advise and assist the Library with employment and labour relations matters.³ It says that the records at issue in this inquiry were created or received while the City was assisting and advising the Library with employment matters relating to the applicant.

Information at issue

² For example, Order F20-18, 2020 BCIPC 20 (CanLII) at para 4.

³ The City says that this arrangement was formalized through the *City of North Vancouver/City Library Working Guidelines* adopted by City Council and the Library Board in 2008.

[9] Most of the information in dispute in this inquiry is about workplace investigations involving the applicant. This type of information is in approximately 40 pages of emails, interview notes, interview scripts and in two reports written by an external investigator.

[10] In addition, two pages of the records in dispute are evaluation sheets related to a job competition for which the applicant competed.⁴

Section 13(1) – advice or recommendations

[11] Section 13(1) allows a public body to refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister. 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.⁵

[12] First, I must determine whether disclosing the information at issue would reveal advice or recommendations under s. 13(1). If it would, the next step is to 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).

Would disclosing the information at issue reveal advice or recommendations prepared by or for a public body?

[13] The term “advice” is broader than “recommendations”⁶ and includes an opinion that involves exercising judgment and skill to weigh the significance of matters of fact.⁷ “Recommendations” include material relating to a suggested course of action that will ultimately be accepted or rejected by the person being advised.⁸ Section 13(1) also encompasses information that would allow an individual to make accurate inferences about any advice or recommendations.⁹

⁴ The applicant’s submissions indicate that he thinks the City should have provided more records relating to his job applications. However, whether the City adequately searched for records is not an issue in this inquiry.

⁵ *Insurance Corporation of British Columbia v. Automotive Retailers Association* 2013 BCSC 2025 at para 52.

⁶ *John Doe v Ontario (Finance)* 2014 SCC 36 [John Doe] at para 24.

⁷ *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 113.

⁸ *John Doe supra* note 6 at para 23.

⁹ Order F19-28, 2019 BCIPC 30 (CanLII) at para 14.

[14] The City withheld information in one email and the “recommendations” sections of both of the reports relating to a workplace investigation under s. 13(1).¹⁰

[15] The City says that the email is between the Library and City human resources employees about an employment matter involving the applicant. It says that the email is advice or recommendations because it includes a proposed course of action.

[16] The City says that the information at issue in the reports is the advice or recommendations of the external investigator who prepared them.

[17] The applicant did not specifically comment on whether the information is advice or recommendations, but his submissions indicate that he disagrees with how the City applied this exception.

[18] For the reasons that follow, I am satisfied that disclosing the information at issue would reveal advice or recommendations within the meaning of s. 13(1).

[19] First, the information in the reports is clearly recommendations prepared for the City. If disclosed, the information at issue would reveal what the investigator thinks the City should do in response to a workplace matter. It seems to me that the City was free to accept or reject the investigator’s suggestions, which as I set out above, indicates that the information at issue is “advice” within the meaning of s. 13(1).

[20] Turning to the email, I am satisfied that the withheld portion would reveal advice within the meaning of s. 13(1) because disclosing the email would reveal options that the Library employee developed about how to respond to the applicant. In my view, those options qualify as “advice” within the meaning of s. 13(1). Therefore, I am satisfied that, if disclosed, the withheld information would reveal advice developed for the Library, a “public body” as defined in FIPPA.¹¹

[21] For the reasons above, I am satisfied that all of the information in dispute under s. 13(1) is advice or recommendations within the meaning of that provision.

¹⁰ At pages 112, 126 and 131 of the records in dispute.

¹¹ Under the definitions in Schedule 1 of FIPPA, a “public body” includes a “local public body,” which in turn includes a “local government body.” A “library board as defined in the *Library Act*” is a “local government body” under subsection (m) of that definition. I am satisfied that The City of North Vancouver Library Board is a municipal library board under Part 2 of the *Library Act*, and is therefore a “library board” under subsection (a) of the definition in that act.

Does s. 13(2) or 13(3) apply?

[22] The next step is to determine whether any of the provisions in ss. 13(2) or (3) apply. If any of these circumstances apply, the information cannot be withheld.

[23] Section 13(2) sets out types of records and information that cannot be withheld under s. 13(1).

[24] The City says that none of the provisions in s. 13(2) apply, specifically s. 13(2)(a) and 13(2)(g). Section 13(2)(a) says that a public body cannot withhold “factual material” under s. 13(1). Section 13(2)(g) says that a public body must not refuse to disclose, under s. 13(1), a final report or final audit on the performance or efficiency of a public body or on any of its policies or its programs or activities. The applicant did not specifically address whether any of the provisions in s. 13(2) apply.

[25] After reviewing the information in dispute, I am satisfied that none of the provisions in s. 13(2) apply.

[26] Turning to s. 13(3), this section says that s. 13(1) does not apply to information in a record that has been in existence for 10 or more years.

[27] The City says that the information is not more than 10 years old and so s. 13(3) does not apply. The applicant did not dispute this.

[28] The dates of the records themselves clearly indicate that they are less than 10 years old. As a result, I find that 13(3) does not apply.

Conclusion s. 13(1)

[29] For the reasons above, I find that s. 13(1) authorizes the City to withhold the parts of the email and the two reports in dispute.

Section 22(1) – unreasonable invasion of a third party’s personal privacy

[30] Section 22(1) requires a public body to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy. The City withheld all of the remaining information in dispute under s. 22(1).

[31] Most of the information in dispute under s. 22(1) relates to the City’s investigations of workplace matters involving the applicant and includes:

- All or part of emails between third parties;¹²
- All or part of scripts that the City prepared for interviews with third parties;¹³
- Notes taken during the City's interviews with third parties;¹⁴ and
- Portions of both of the reports written by an external investigator.¹⁵

[32] In addition, there is some information in dispute on evaluation sheets relating to a job competition that the applicant was involved in.¹⁶ The City withheld third parties' names, rankings and qualitative comments about the third parties on the evaluation sheets under s. 22(1).

Is the information “personal information” under FIPPA?

[33] Since s. 22(1) only applies to personal information, the first step in the s. 22(1) analysis is to determine whether the information in dispute is “personal information” within the meaning of FIPPA.

[34] FIPPA defines “personal information” and “contact information” in the following way:

"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;

[35] Under the above definitions, information that is “contact information” is not “personal information” for the purpose of FIPPA. Whether information is “contact information” depends on the context in which it appears.¹⁷

[36] The City submits that the information in dispute is “personal information.” The City says that the evaluation sheets include the names, scores and evaluative comments about third parties. With regards to the information relating to workplace investigations, the City says that the information in dispute is both the applicant's and other third parties' personal information. It says this information is intertwined and cannot be separated.

¹² At pages 10, 11, 12, 13, 40, 41, 71 – 73, 75, 84, 133 and 134 of the records in dispute.

¹³ At pages 20, 24, 37 and 76 – 81 of the records in dispute.

¹⁴ At pages 14 -19, 21 – 23, 25, 26, 28 76 – 83 of the records in dispute.

¹⁵ The report at pages 126 – 127 of the records in dispute is a shorter “Executive Summary.” The report at pages 127 – 131 of the records in dispute is the full report.

¹⁶ Pages 2 – 3 of the records in dispute.

¹⁷ Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

[37] The applicant says that the City could delete the third parties' names and provide him with the information.

[38] For the reasons that follow, I find that the information is personal information but that some can be reasonably severed.

[39] First, I am satisfied that information in dispute on the job evaluation sheets is the personal information of third parties who applied for a job with the City. The City withheld the third parties' names, numerical rank, and qualitative comments about them. As a whole, this information is identifiable information about the third parties that is not "contact information".

[40] Turning to the information relating to the workplace investigations, for the most part, I am satisfied that is simultaneously the third parties' and the applicant's personal information. This is because it is identifiable information about interactions between the applicant and third parties in the workplace. While the reports do not actually use the parties' names, the applicant already knows the identity of the other third party because it is about a specific workplace incident in which the applicant and the third party were both present.

[41] In addition, a small amount of the information in the workplace investigation reports is the applicant's personal information alone.

[42] In the context, none of the information is "contact information."

[43] As a result, I find all of the information in dispute is "personal information."

[44] However, in this particular case, this is not the end of the analysis. This is because the applicant has argued that the City could delete the third parties' names and provide him with information. I think the applicant is saying that the information would no longer be personal information if the third parties' names were removed. Section 4(2) of FIPPA says that if, information can reasonably be severed, the applicant has a right of access to the remainder. In my view, s. 4(2) can apply to sever information, if disclosure would not reveal "personal information".

[45] So, in this inquiry the next question is: can the third party's name of the information be severed without revealing personal information?

[46] Starting with the job application sheets, it is my view that, if severed from the names, the numerical rankings alone are not identifiable information about the job applicants. Since the numerical rankings can be disclosed without revealing personal information, I find the applicant has the right to access them. I will not consider this information any further.

[47] However, I think that even if the names were removed from the emails, interview notes and interview scripts, the remaining information would still be about an identifiable individual. This is because there are a relatively small number of individuals involved and the applicant already knows at least some of their identities. Therefore, I do not think any of the names can be reasonably severed from the information in dispute without revealing personal information.

[48] I turn to whether disclosure of the personal information in dispute would be an unreasonable invasion of the third parties' personal privacy.

Section 22(4)

[49] The next step in the analysis is to determine whether any of the circumstances set out in s. 22(4) apply. Section 22(4) lists circumstances where disclosure is not considered to be an unreasonable invasion of a third party's personal privacy. In other words, if s. 22(4) applies to any personal information, the public body must disclose it.

[50] The City says that s. 22(4) does not apply to any personal information in dispute. The applicant's submissions do not directly address whether any circumstances in s. 22(4) apply.

[51] In my opinion, none of the personal information falls into any of the categories of information listed in s. 22(4).

Section 22(3)

[52] Section 22(3) sets out circumstances where disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy. The City says that ss. 22(3)(d), (g) and (h) apply. I will consider whether these or any other presumptions apply.

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

[53] Section 22(3)(d) says that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information relates to employment, occupational or educational history.

[54] The City says that s. 22(3)(d) applies to the personal information of the other job candidates' personal information on the evaluation sheet and to the personal information of the other individuals referenced in the records. The City did not elaborate any further.

[55] Past orders have found that personal information related to a workplace investigation, such as statements by witnesses, a complaint about an individual's workplace behaviour or an investigator's findings, is information that relates to the employment history of the person being investigated.¹⁸

[56] Some of the emails, interview scripts, and interview notes and all of the information at issue in the investigation reports is about an incident where the applicant and a third party each complained about the other's conduct. Since that third party was also the subject of an investigation, I find that the information relating to the third party in that context is that third party's employment history. Therefore, I find that disclosure of this information is presumed to be an unreasonable invasion of that third party's personal privacy under s. 22(3)(d).

[57] However, some of the third parties' personal information in the emails, interview scripts and interview notes was gathered in the context of investigating other individuals' workplace conduct. Consistent with past orders, I find that the interview notes and emails that contain third parties' objective, factual statements about what happened in the workplace are not their employment histories because they were not the subject of the investigation.¹⁹

[58] In addition, I find that s. 22(3)(d) applies to the information on the evaluation sheets. Past orders have found that information relating to a third party's job application, including interview scores and job competition results, is their employment history.²⁰ As a result, I am satisfied that the names of the candidates and the qualitative comments about their job applications are the candidates' employment histories.

[59] In conclusion, I find s. 22(3)(d) applies to some but not all of the third parties' personal information in dispute.

Section 22(3)(g) – personal recommendations or evaluations, character references or personnel evaluations about a third party

[60] Section 22(3)(g) creates a presumption that it is an unreasonable invasion of a third party's personal privacy to disclose personal information consisting of personal recommendations or evaluations, character references or personnel evaluations about the third party. Past orders say that s. 22(3)(g) applies to formal evaluations of a third party such as a formal performance review, job reference, or an investigator's findings about an employee's behaviour in the context of a workplace investigation.²¹

¹⁸ Order 01-53, 2001 CanLII 21607 (BCIPC) at paras 32 and 41; Order F20-13, 2020 BCIPC 15 (CanLII) at para 55.

¹⁹ Order F20-13, 2020 BCIPC 15 (CanLII) at para 55.

²⁰ Order F16-28, 2016 BCIPC 30 (CanLII) at para 94.

²¹ Order F21-08, 2021 BCIPC 12 (CanLII) at para 138, for example.

[61] In its submissions, the City says that s. 22(3)(g) applies to the information in dispute, including the written comments on the evaluation sheet. On its table of records that the City provided along with its submissions, the City indicated that that s. 22(3)(g) applied to an email and portions of the reports.

[62] As I mentioned above, many past orders have found that s. 22(3)(g) applies to an investigator's evaluative comments about a third party's behaviour in the workplace.²² Consistent with these orders, I find that the investigator's conclusions about the third party's workplace behaviour in the reports falls under s. 22(3)(g).

[63] I also find that the evaluator's comments on the evaluation sheets fall within the scope of s. 22(3)(g). Recently, another OIPC adjudicator found that assessors' evaluations and notes about the qualifications and interview performance of third-party candidates constituted "personal evaluations" about those candidates.²³ Similarly, I find that the evaluator's comments in this case are the kind of formal assessment that constitutes a "personal evaluation" of each of the job applicants.

[64] However, I do not see how s. 22(3)(g) applies to the email. It does not contain the kind of formal evaluative material contemplated by s. 22(3)(g).

[65] In conclusion, s. 22(3)(g) applies to the conclusions of the investigator in the report and to the evaluator's comments on the evaluation sheets. Therefore, disclosure of this information is presumed to be an unreasonable invasion of a third party's personal privacy.

Section 22(3)(h) – disclosure would reveal the identity of a third party

[66] Section 22(3)(h) protects the identity of the third party who supplied the kind of information covered by s. 22(3)(g) in confidence.²⁴

[67] In this case, I have found that s. 22(3)(g) applies to the investigator's conclusions about a third party's workplace behaviour in the reports. However, the identity of the investigator has been disclosed. Therefore, there is no information in the reports to which s. 22(3)(h) could apply.²⁵

[68] With regards to the evaluation sheets, the identity of the assessor is not apparent from the records or the City's submissions. Also, there is nothing that indicates to me that the evaluator supplied their comments in confidence. Since

²² Order F16-28, 2016 BCIPC 30 (CanLII) at para 96;

²³ Order F22-22, 2022 BCIPC 24 (CanLII) at para 36.

²⁴ Order F16-46, 2016 BCIPC 51 (CanLII) at para 36. Section 22(3)(h) was amended in November 2021. This statement applies to both versions.

²⁵ For a similar finding see Order F16-46, 2016 BCIPC 51 (CanLII) at para 36.

s. 22(3)(h) is meant to protect the identity of a third party who provided the personal evaluations and I am not satisfied that disclosure would reveal that information, I find it does not apply.

[69] For these reasons, I am not satisfied that s. 22(3)(h) applies to any information in dispute.

Section 22(2)

[70] Section 22(2) says that, in determining whether disclosure of personal information is an unreasonable invasion of a third party's personal privacy, a public body must consider all the relevant circumstances, including those listed in s. 22(2)(a) through (i). It is at this stage that any presumptions can be rebutted. The City says that s. 22(2)(f) is relevant. In addition, I have considered the fact that the information in dispute is the applicant's personal information as a relevant circumstance.

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

[71] Section 22(2)(f) says that whether personal information has been supplied in confidence is a relevant circumstance. Where it applies, s. 22(2)(f) favours withholding the information in dispute.

[72] The City says that the personal information has been supplied in confidence. Specifically, it says that maintaining confidentiality during workplace investigations is important to protect the rights of the individuals involved in the process. It also says the job application process is conducted in confidence. The applicant did not specifically address this issue.

[73] For the reasons that follow, I find that most of the personal information in dispute was supplied in confidence.

[74] First, I am persuaded that the personal information supplied by the third parties who were part of the job competition supplied that information in confidence. In my view, job applicants typically expect that the personal information they supply in the course of a job application process would be kept confidential. Since the evaluator's comments, if disclosed, would reveal personal information provided by the third parties in the job competition process, I find that s. 22(2)(f) applies to the comments.

[75] I am also satisfied that the personal information supplied by the third parties in the emails and interview notes during the course of the workplace investigations was supplied in confidence. In my opinion, the tone and content of the records and the nature of the workplace issues support the City's submission that the third parties supplied the personal information with the expectation that it

would be treated confidentially. Similarly, I find that the investigation reports refer to information that was supplied in confidence, and therefore that s. 22(2)(f) also applies to this information.

[76] However, not all of the information in dispute was supplied in confidence. For example, some of the information in the workplace investigation reports is factual information about the applicant. Therefore, I find that s. 22(2)(f) does not apply, because this personal information was not “supplied”.

[77] For the reasons above, I find that s. 22(2)(f) applies to all of the personal information that was supplied by third parties in the records at issue.

Applicant’s personal information

[78] Many past orders have found that, where the personal information is the applicant’s personal information, this weighs in favour of disclosure.²⁶

[79] Neither the applicant nor the City specifically addressed this issue.

[80] I find that the information relating to the workplace investigations is the applicant’s personal information because it is about him and his interactions with third parties in the workplace. Some of this information is the applicant’s personal information alone and some of it is intertwined with information about the third parties. I find that the fact that this information is the applicant’s personal information is a relevant circumstance weighing in favour of disclosure.

Conclusion on s. 22(1)

[81] Beginning with the job evaluation sheets, I found above that the applicant is entitled to the numerical rankings on the job evaluation sheets because the disclosure of the rankings alone would not reveal personal information about third parties. The remainder of the information is the third parties’ employment histories and is subject to s. 22(3)(g). I also found it was supplied in confidence. No circumstances weigh in favour of disclosure. I find that disclosure would be an unreasonable invasion of the third parties’ personal privacy and therefore, under s. 22(1), the City must not disclose it.

[82] Turning to the information relating to workplace investigations, I find that, for the most part, disclosure of the personal information in the reports, emails, interview scripts, and interview notes would be an unreasonable invasion of a third party’s personal privacy. I found that some of this personal information was subject to ss. 22(3)(d) or (g) and the information supplied by third parties was supplied in confidence. In the circumstances of this case, the fact that the personal information is also the applicant’s personal information does not

²⁶ Order F14-47, 2014 BCIPC 51 (CanLII) at para 36, for example.

outweigh the other factors. I find that s. 22(1) applies and that the City must withhold this personal information.

[83] However, I find s. 22(1) does not apply to some of the information in the reports because it is only about the applicant. No presumptions under s. 22(3) apply. This information was not “supplied” because it is factual statements about the applicant, and therefore s. 22(2)(f) does not apply. The fact that it is the applicant’s personal information weighs in favour of disclosure. As a result, I find that disclosure would not be an unreasonable invasion of any third party’s personal privacy.

Section 22(5) – summary of personal information supplied in confidence about the applicant

[84] Whenever there is information that was supplied in confidence about an applicant, a public body must consider whether it can prepare a summary of the information under s. 22(5). Under s. 22(5)(a), the public body must give a summary of personal information supplied in confidence about the applicant unless the summary cannot be prepared without disclosing the identity of the third party who supplied the information.

[85] Neither party specifically addressed whether the City could prepare such a summary under s. 22(5).

[86] I have decided that, given the small number of third parties involved in the investigations, it would not be possible for the City to summarize the information supplied in confidence without disclosing the identity of the third parties who supplied the information. It is my view that, given that the applicant clearly knows the identities of some of the third parties involved, summarizing the information would allow the applicant to infer the specific information that each third party provided.

CONCLUSION

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

1. I confirm the City’s decision to refuse access to the information in dispute under s. 13(1).
2. Subject to item 3, I require the City to refuse access to parts of the records in dispute under s. 22(1).

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3. I require the City to give the applicant access to the information I have highlighted in blue on pages 2, 3, 125, and 128 in the copy of the records that I have provided to the City along with this order.
 4. The City must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the pages described at item 3 above.

[88] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by December 21, 2022.

November 8, 2022

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

OIPC File No.: F20-84194