



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F23-02

BC HYDRO AND POWER AUTHORITY

Elizabeth Vranjkovic
Adjudicator

January 12, 2023

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Summary: The applicant requested a project status report about the Site C Clean Energy Project. BC Hydro and Power Authority (BC Hydro) disclosed the responsive record but withheld some information under s. 22(1) (unreasonable invasion of a third party's personal privacy) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator found that s. 22(1) applied to some of the information in dispute but ordered BC Hydro to disclose the information that it was not required to withhold under s. 22(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, ss. 22(1), 22(2), 22(2)(a), 22(2)(e), 22(2)(f), 22(3), 22(3)(b) and 22(4).

INTRODUCTION

[1] The applicant, a journalist, requested access to the most recent monthly project status report from Peace River Hydro Partners (PRHP) in relation to the Site C Clean Energy Project (Site C Project).

[2] BC Hydro and Power Authority (BC Hydro) provided the responsive record to the applicant but withheld some of the information in the record under ss. 17(1) (harm to financial or economic interests) and 22(1) (unreasonable invasion of a third party's personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

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

[4] After the inquiry commenced, BC Hydro withdrew its reliance on s. 17(1) and disclosed some of the information it was withholding under s. 22(1).¹ As a result, I conclude s. 17(1) and the newly disclosed information are no longer at issue in this inquiry.

PRELIMINARY MATTER

[5] In his inquiry submission, the applicant says that BC Hydro is violating the *Canadian Charter of Rights and Freedoms (Charter)*.² The applicant does not specify what provision of the *Charter* he believes BC Hydro is violating. BC Hydro objects to the applicant raising this issue for the first time in his inquiry submission.³

[6] As described in the notice of inquiry (notice) received by both parties, the investigator's fact report (fact report) sets out the issues for the inquiry. The notice also clearly states that parties may not add new issues into the inquiry without the OIPC's prior consent.⁴ Numerous previous orders have said that if a party wants to add a new inquiry issue, it must request and receive permission from the OIPC to do so.⁵ To allow otherwise would undermine the effectiveness of the mediation process which exists, in part, to assist the parties in identifying, defining and crystallizing the issues prior to inquiry.⁶

[7] The notice and fact report do not identify any *Charter* issues as inquiry issues. The applicant did not request permission to add any *Charter* issues or point to any exceptional circumstances that would justify doing so at this stage. I can see no exceptional circumstances that warrant adding an unspecified *Charter* issue at this late stage, and I decline to do so. I have focused my discussion below only on the evidence and submissions relevant to deciding the s. 22(1) issue.

ISSUE

[8] At this inquiry, I must decide whether BC Hydro is required to refuse to disclose the information in dispute under s. 22(1).

¹ Whenever I refer to section numbers in this order, I am referring to sections of FIPPA.

² *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being *Schedule B to the Canada Act 1982 (U.K.)*, 1982, c 11; Applicant's response submission at para 3.

³ Public body's reply submission at para 3.

⁴ Notice of Written Inquiry, June 30, 2022.

⁵ For example, see Order F12-07, 2012 BCIPC 10 at para 6; Order F10-27, 2010 BCIPC 55 at para 10; Decision F07-03, CanLII 30393 (BCIPC) at paras 6-11; and Decision F08-02, 2008 CanLII 1647 (BC IPC).

⁶ Order F15-15, 2015 BCIPC 16 at para 10; Decision F08-02, 2008 CanLII 1647 (BC IPC) at paras 28-30.

[9] Section 57(2) places the burden on the applicant to establish that disclosure of the information at issue would not unreasonably invade a third party's personal privacy. However, the public body has the initial burden of proving the information at issue qualifies as personal information under s. 22(1).⁷

DISCUSSION

Background and Information at Issue

[10] PRHP submitted progress reports to BC Hydro under the Main Civil Works Contract (Contract) for the Site C Project.⁸

[11] In June 2017, the applicant made the following access request:

Regarding Site C, the most-recent monthly project status report from Peace River Hydro Partners (Petrowest, Acciona, Samsung) and its subsidiaries and joint ventures, showing financial status, approved amendments, dollar amounts for submitted invoices to date and payment of invoices to date, a description of contract changes, task descriptions, value and status, schedule, design, construction, production, installation, operations and maintenance and opportunities, risks and challenges for all aspects of the project.

[12] The responsive record is PRHP's May 2017 progress report. BC Hydro disclosed most of the information in the progress report but withheld the signatures of three PRHP employees who signed the progress report and some information provided by a member of the public (caller) who reported an environmental concern about the Site C Project.⁹ The disputed information provided by the caller consists of the caller's first name, part of the caller's address, and a description of where some of the caller's family members, who are identified by their relationship to the caller, live.¹⁰

Unreasonable Invasion of Personal Privacy – s. 22(1)

[13] Section 22 requires a public body to refuse to disclose personal information if its disclosure would be an unreasonable invasion of a third party's personal privacy.¹¹ Numerous orders have considered the application of s. 22, and I will apply those same principles here.¹²

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

⁸ Public body's initial submission at para 7.

⁹ Information located on pages i and 64-65 of the record.

¹⁰ Information located on pages 64-65 of the record.

¹¹ Schedule 1 of FIPPA says: "third party" in relation to a request for access to a record or for correction of personal information, means any person, group of persons, or organization other than (a) the person who made the request, or (b) a public body.

¹² See, for example, Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.

Personal information

[14] The first step in any s. 22 analysis is to determine if the information is personal information.

[15] Personal information is defined in FIPPA as “recorded information about an identifiable individual other than contact information.”¹³ Previous orders have said that 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.¹⁴

[16] 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.”¹⁵

[17] BC Hydro says that the information at issue is the personal information of third parties. Although the caller is not identified by his full name, BC Hydro says that because the “Peace region” is not heavily populated, residents in the area would likely be able to identify the caller from the disputed information.¹⁶

[18] The applicant does not say anything about whether the information at issue is personal information.

[19] I find that all of the information BC Hydro is refusing to disclose is about identifiable individuals and that none of it is contact information as defined by FIPPA.

[20] Specifically, I am satisfied that the caller and his family members are identifiable from the information provided by the caller. I also find that the employee signatures are about identifiable individuals because the employees’ names are next to the signatures and have already been disclosed. As a result, I find that all of this information is about identifiable individuals and qualifies as personal information.

Disclosure not an Unreasonable Invasion of Privacy – s. 22(4)

[21] The second step in the s. 22 analysis is to determine if the personal information falls into any of the types of information listed in s. 22(4). If so,

¹³ Schedule 1 of FIPPA.

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

¹⁵ Schedule 1 of FIPPA.

¹⁶ Public body’s initial submission at para 24.

disclosure would not be an unreasonable invasion of a third party's personal privacy.

[22] BC Hydro says that the personal information does not fall under s. 22(4), and more specifically, that s. 22(4)(e) does not apply to the signatures because PRHP employees are not public body employees.¹⁷ The applicant does not say anything about s. 22(4).

[23] I have considered the types of information and circumstances listed within s. 22(4), including s. 22(4)(e), and I am satisfied that none apply.

Presumptions of Unreasonable Invasion of Privacy – s. 22(3)

[24] The third step in the s. 22 analysis is to determine whether s. 22(3) applies to the personal information. If so, disclosure is presumed to be an unreasonable invasion of a third party's personal privacy.

[25] BC Hydro says that s. 22(3) does not apply, but also says that the caller reporting an environmental concern to PRHP is analogous to a call about an infraction or violation of law.¹⁸ I understand BC Hydro to be saying that the caller reporting an environmental concern is analogous to s. 22(3)(b). The applicant does not make any submissions about s. 22(3).

Investigation into possible violation of law, s. 22(3)(b)

[26] Section 22(3)(b) creates a rebuttable presumption against disclosure where the personal information was "compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[27] I can see from the progress report that the caller provided the location of a hawk's nest and that, in response, PRHP "doublechecked with the environment team" about the nest.¹⁹ BC Hydro has not adequately explained how s. 22(3)(b) applies to this situation and I am not satisfied that it does. Therefore, I find that s. 22(3)(b) does not apply.

[28] I have also considered all of the other presumptions in s. 22(3), and I find that none apply.

Relevant Circumstances – s. 22(2)

¹⁷ Public body's initial submission at para 20.

¹⁸ Public body's initial submission at para 22.

¹⁹ Page 65 of the record.

[29] The final step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including those listed in s. 22(2).

[30] BC Hydro says that s. 22(2)(a) does not apply and that ss. 22(2)(e) and 22(2)(f) weigh against disclosing the personal information. BC Hydro also says that disclosing the personal information provided by the caller would cause a chilling effect. With respect to the signatures, BC Hydro says that the context weighs against disclosure and that disclosure would add no value for the applicant.

[31] The applicant does not say anything about the circumstances listed in s. 22(2), but he says that the progress report is owned by the public because it was paid for with public funds.

[32] I will consider all of the circumstances raised by BC Hydro and the applicant in my s. 22(2) analysis. I will also consider whether there are any other circumstances, including those listed under s. 22(2), that may apply.

Public scrutiny of a public body, s. 22(2)(a)

[33] Section 22(2)(a) asks whether disclosure of personal information is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny. Section 22(2)(a) recognizes that where disclosure of the information in dispute would foster accountability of a public body, this may provide a foundation for finding that disclosure would not constitute an unreasonable invasion of a third party's personal privacy.²⁰

[34] BC Hydro says that s. 22(2)(a) does not apply because the personal information is not about BC Hydro and would not subject BC Hydro's activities to public scrutiny.²¹

[35] The personal information at issue does not reveal anything about the activities of BC Hydro. I do not see how disclosing any of the personal information would foster accountability of BC Hydro in the circumstances.

[36] For these reasons, I find that s. 22(2)(a) does not weigh in favour of disclosing the personal information.

Financial or other harm, s. 22(2)(e)

²⁰ Order F5-18, 2005 CanLII 24734 (BC IPC) at para 49.

²¹ Public body's initial submission at para 31.

[37] Section 22(2)(e) requires the public body to consider whether disclosure of personal information will unfairly expose a third party to financial or other harm. If so, this factor weighs in favour of withholding the personal information.

[38] BC Hydro says that disclosing the signatures could expose the employees to harm if “ill-intentioned individuals” misuse their signatures.²² BC Hydro refers to an Ontario Information and Privacy Commissioner guidance document which it says establishes that an individual’s signature can be used for identity theft and should not be disclosed.²³

[39] I have considered BC Hydro’s submissions on s. 22(2)(e) from the position that disclosure of information under FIPPA is to be regarded as disclosure to the world.²⁴ In considering BC Hydro’s arguments about what an “ill-intentioned” individual might do with the signatures, I am not suggesting that the applicant has any malicious intentions.

[40] In my view, BC Hydro’s submission about the consequences of disclosing the signatures are speculative. It is unclear to me, and BC Hydro has not adequately explained, how disclosing the signatures would allow someone to commit identity theft or otherwise expose the employees to financial or other harm.

[41] I have reviewed the guidance document that BC Hydro refers to. In relation to signatures, it simply says: “Do not put scanned copies of anyone’s signatures on your organization’s website.”²⁵

[42] The guidance document does not explain how signatures could be used for identity theft. The guidance document also contains a list of “key pieces” of identifying information which does not include signatures. For these reasons, I am not satisfied that the guidance document establishes that signatures can be used for identity theft or that they should be protected against disclosure under FIPPA.

[43] It is also not obvious to me that signatures should be withheld under s. 22(2)(e). There are, in my view, some combinations of information that obviously would allow someone to commit identity theft. For example, in Order F18-48, Adjudicator Francis found that disclosing the address, telephone number, date of birth, driver’s license number, height, weight and ethnicity of each third party could reasonably be expected to unfairly expose the third parties

²² Public body’s initial submission at para 28.

²³ Public body’s initial submission at para 28.

²⁴ Order 03-25, 2003 CanLII 49204 (BC IPC) at para 24.

²⁵ Ontario, Information and Privacy Commissioner, *Identity Theft: A Crime of Opportunity* (July 2014) at page 8, online: <https://www.ipc.on.ca/wp-content/uploads/Resources/id-theft-e.pdf>

to identity theft and financial loss for the purposes of s. 22(2)(e).²⁶ However, I do not see how disclosing signatures would allow someone to commit identity theft or otherwise unfairly expose the employees to financial or other harm.

[44] For the reasons outlined above, I find that s. 22(2)(e) does not weigh in favour of withholding the employee signatures.

Supplied in confidence, s. 22(2)(f)

[45] Section 22(2)(f) asks whether the personal information has been supplied in confidence. If so, this factor weighs in favour of withholding the information. In order for s. 22(2)(f) to apply, there must be evidence that an individual supplied the information and that they did so under an objectively reasonable expectation of confidentiality, at the time the information was provided.²⁷

[46] BC Hydro says that the progress report was supplied to BC Hydro in confidence because it is captured by the confidentiality clause of the Contract.²⁸ With respect to the signatures, BC Hydro says that the employees would be aware of the confidentiality clause in the Contract and would have an expectation of confidentiality.²⁹

[47] Here, the personal information was supplied by the caller and the employees to PRHP, which in turn supplied the personal information to BC Hydro. I will first consider the supply of personal information by the caller and the employees to PRHP. I will then consider the supply from PRHP to BC Hydro.

[48] With respect to the personal information provided by the caller, there is no evidence before me about whether the caller supplied personal information under an objectively reasonable expectation of confidentiality. I have considered that the caller provided personal information to PRHP, which is not a public body, for the purpose of ensuring it was aware of an environmental concern. In this context, I am satisfied that it is more likely than not that the caller expected that the personal information would be held in confidence and not disclosed any further. As a result, I am satisfied that the caller supplied personal information in confidence to PRHP.

[49] With respect to the PHRP employees' signatures, there is no evidence before me from the employees about whether they supplied their signatures in confidence when they signed the PHRP progress report or whether they were in fact aware of the confidentiality clause. Without more, I am not satisfied that the

²⁶ Order F18-48, 2018 BCIPC 51 at para 23.

²⁷ Order F11-05, 2011 BCIPC 5 (CanLII) at para 41, citing and adopting the analysis in Order 01-36, 2001 CanLII 21590 (BC IPC) at paras 23-26 regarding s. 21(1)(b).

²⁸ Public body's initial submission at paras 26-27.

²⁹ Public body's reply submission at para 8.

employees supplied their signatures in confidence to PHRP when they signed the progress report.

[50] I turn now to whether PRHP supplied the personal information in confidence to BC Hydro. In my view, the confidentiality clause indicates that PRHP and BC Hydro had a mutual understanding and expectation that when PRHP supplied the information in the progress report to BC Hydro it was doing so in confidence and BC Hydro was accepting it on that basis. For that reason, I am satisfied that the personal information in the progress report was supplied in confidence to BC Hydro.

[51] To summarize, I find that personal information provided by the caller was supplied in confidence. With respect to the PRHP employees' signatures, I am not persuaded that the employees supplied their signatures in confidence when they signed the progress report. However, in light of my finding that PRHP supplied the personal information in the progress report in confidence to BC Hydro, I am satisfied that, overall, the PRHP employees' signatures were supplied in confidence.

[52] Overall, I find that s. 22(2)(f) weighs against disclosing the personal information.

Chilling effect

[53] BC Hydro says that disclosing the caller's identity may cause people to hesitate to report concerns and therefore negatively impact the protection of the environment and wildlife.³⁰

[54] This type of "chilling effect" argument has been considered and rejected in numerous orders.³¹ I am similarly not persuaded by the argument in this case. BC Hydro has simply asserted that a chilling effect would occur, without providing evidence in support of that conclusion.

[55] Moreover, I do not think the potential future effect of disclosure is a relevant circumstance. The question I must answer is whether disclosure of the specific information in dispute would be an unreasonable invasion of the privacy of the caller or his family members. The potential for a future chilling effect does not reveal anything about the impact of disclosure on a third party's personal privacy.

³⁰ Public body's initial submission at para 22.

³¹ See for example: Order 01-26, 2001 CanLII 21580 (BC IPC) at paras. 42-44; Order 03-34, 2003 CanLII 49213 (BC IPC) at para. 42; Order 02-02, 2002 CanLII 42427 (BC IPC) at paras. 45-46; Order 04-33, 2004 CanLII 43765 (BC IPC) at para. 41.

[56] I find that the potential chilling effect does not weigh against disclosing the personal information provided by the caller.

Context of signatures

[57] BC Hydro says it is important to consider the context in which the signatures appear.³² Specifically, BC Hydro says that the progress report is a confidential record, not intended for public dissemination, and not signed by individuals who may routinely sign documents of a public nature.³³

[58] BC Hydro has simply asserted that the employees may not routinely sign documents of a public nature without providing evidence in support of that assertion. Without more, I am not satisfied that this weighs against disclosing the signatures.

[59] In my view, considering the context in which the signatures appear includes considering that the employees signed the progress report in the course of their employment. Previous OIPC orders have found that it is not an unreasonable invasion of personal privacy to disclose information about employees acting in a professional or employment capacity and that this conclusion applies equally to private and public sector employees.³⁴ I make a similar finding here and I find that the context in which the signatures appear weighs in favour of disclosing the signatures.

Value added by signatures

[60] BC Hydro says that disclosing the signatures adds no value for the applicant because the employees' names have already been disclosed.³⁵

[61] The applicant did not respond to this argument. In my view, it may have been helpful for the applicant to explain what, if any, value the signatures hold for him in response to BC Hydro's position that the signatures hold no value for him.

[62] I have considered that BC Hydro says that a signature "is more than just the name of the individual" and "is often used as a means of verifying that a document has been signed by the correct individual..."³⁶ I do not see, and BC Hydro does not explain, how to reconcile this submission with its position that the signatures do not add value.

³² Public body's initial submission at para 18.

³³ Public body's initial submission at para 19.

³⁴ Order F18-42, 2018 BCIPC 45 at para 22; Order F10-44, 2010 BCIPC 23 at para 44; 2008 CanLII 13321 at para 83.

³⁵ The information in this paragraph is from the public body's initial submission at paras 29-30.

³⁶ Public body's initial submission at para 18.

[63] Moreover, the signatures are accompanied by the following explanation:

The signatures below indicate that this document has been reviewed and accepted; and demonstrate that the signatories are aware of all the requirements contained herein, and are committed to ensuring their provision.³⁷

[64] In my view, this explanation indicates that the signatures appear for a purpose. As a result, I am not satisfied that the signatures add no value. I find that this factor does not weigh against disclosing the signatures.

Progress report paid for by public funds

[65] The applicant says that the progress report is ultimately owned by the public because it was paid for with scarce public funds.³⁸

[66] In my view, this is not a relevant non-enumerated circumstance under s. 22(2). The question I must answer is whether disclosing personal information would be an unreasonable invasion of a third party's personal privacy. The source of funding for reports containing personal information does not reveal anything about the impact of disclosure on a third party's personal privacy. I find that this does not weigh for or against disclosing the personal information.

Conclusion, s. 22(1)

[67] I find that all of the information at issue is the personal information of third parties.

[68] With respect to the employee signatures, I find that the context in which the signatures appear weighs in favour of disclosing the signatures and outweighs s. 22(2)(f). As a result, I find that disclosing the signatures would not be an unreasonable invasion of the employees' personal privacy. BC Hydro is not required or authorized to withhold this information under s. 22(1).

[69] I find that there are no relevant circumstances weighing in favour of disclosing the personal information provided by the caller and s. 22(2)(f) weighs against disclosing this information. I find that disclosing this information would be an unreasonable invasion of the personal privacy of the caller and his family members. BC Hydro must withhold this information under s. 22(1).

CONCLUSION

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

³⁷ Page i of the record.

³⁸ Applicant's response submission at paras 10 and 13.

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1. Subject to item 2 below, I confirm, in part, BC Hydro's decision to refuse to disclose information to the applicant under s. 22(1) of FIPPA.
 2. I require BC Hydro to give the applicant access to the information I have highlighted on page i in the copy of the record provided to the public body with this order.
 3. BC Hydro must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the record it provides to the applicant.

Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by February 23, 2023.

January 12, 2023

ORIGINAL SIGNED BY

Elizabeth Vranjkovic, Adjudicator

OIPC File No.: F17-72353