



Order F23-04

BRITISH COLUMBIA SECURITIES COMMISSION

Celia Francis
Adjudicator

January 25, 2023

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Summary: An applicant requested records from the British Columbia Securities Commission (BCSC) under the *Freedom of Information and Protection of Privacy Act* (FIPPA). BCSC disclosed some records in full and others in severed form, applying ss. 13(1) (advice or recommendations), 15(1)(d) (disclosure would reveal the identity of a confidential source of law enforcement information, 21(1) (harm to third-party business interest) and 22(1) (unreasonable invasion of third-party personal privacy) to the withheld information. The adjudicator found that s. 13(1) and 15(1)(d) applied to some information and ordered BCSC to withhold this information. The adjudicator found that ss. 21(1) and 22(1) did not apply to any of the information and ordered BCSC to disclose this information.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 13(1), 13(2)(n), 15(1)(d), 15(4)(a), 21(1)(a)(ii), 21(1)(b), 22(1), 22(2)(f), 22(2)(g), 22(2)(h), 22(3)(b), 22(3)(f), 22(3)(i).

INTRODUCTION

[1] This order concerns an applicant's request to the British Columbia Securities Commission (BCSC) under the *Freedom of Information and Protection of Privacy Act* (FIPPA) for various records. These include records related to a complaint that the applicant made to BCSC about a third-party business.

[2] BCSC disclosed some of the responsive records and withheld and severed others under ss. 13(1) (advice or recommendations), 15(1)(d) (disclosure would reveal the identity of a confidential source of law enforcement information, 21(1) (harm to third-party business interest) and 22(1) (unreasonable invasion of third-party personal privacy).

[3] The applicant requested a review of BCSC's decision by the Office of the Information and Privacy Commissioner (OIPC).¹ Mediation by the OIPC led to the disclosure of more information but did not resolve the review. The matter then proceeded to inquiry. The OIPC received submissions from BCSC and the applicant.

ISSUES

[4] The issues to be decided in this inquiry are whether BCSC is authorized by ss. 13(1) and 15(1)(d) and required by ss. 21(1) and 22(1) to withhold information.

[5] Under s. 57(1) of FIPPA, BCSC has the burden of proof respecting ss. 13(1), 15(1)(d) and 21(1).

[6] Under s. 57(2) of FIPPA, the applicant has the burden of proof respecting s. 22(1). However, BCSC has the initial burden of proving the information at issue qualifies as personal information.²

DISCUSSION

Background

[7] BCSC administers and enforces the *Securities Act* and is responsible for regulating capital markets in this province. It investigates complaints of alleged misconduct under the *Securities Act* and may make enforcement orders and order administrative penalties under s. 162 of that Act.³

[8] BCSC's enforcement staff investigated the applicant's complaint that a third-party individual and third-party business violated the *Securities Act*. BCSC then closed the complaint.⁴

Information in dispute

[9] The records in dispute consist of the following:

- emails and notes of telephone calls between the BCSC investigator and
 - o the applicant;
 - o the third party who was the subject of the complaint; and
 - o other third parties (potential investors or witnesses in the investigation).

¹ The applicant also complained about the adequacy of BCSC's search for records. The OIPC dealt with this complaint separately; para. 6, Investigator's Fact Report for this inquiry.

² Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9–11.

³ BCSC's initial submission, paras. 1-4. *Securities Act*, RSBC 1996, c. 418.

⁴ Affidavit of BCSC investigator.

- an audio recording of a voice mail message from a third-party
- a note to file of a call between the BCSC investigator, the Director of Enforcement and the Case Assessment Manager.

[10] There are 17 records in dispute totalling 42 pages.

Advice or recommendations – s. 13(1)

[11] BCSC applied s. 13(1) to some information in the telephone notes. This section reads as follows:

13(1) 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.

[12] The courts have said that the purpose of exempting advice or recommendations is “to preserve an effective and neutral public service so as to permit public servants to provide full, free and frank advice”,⁵ recognizing that some degree of deliberative secrecy fosters the decision-making process.⁶ They have interpreted the term “advice” to include an expression of opinion on policy-related matters⁷ and expert opinion on matters of fact on which a public body must make a decision for future action.⁸ They have also found that advice includes policy options prepared in the course of the decision-making process.⁹ Previous orders have found that a public body is authorized to refuse access to information, not only when it directly reveals advice or recommendations, but also when it would enable an individual to draw accurate inferences about advice or recommendations.¹⁰

[13] Order F21-16¹¹ sets out the process for determining if s. 13(1) applies:

The s. 13 analysis involves two steps. First, I must determine if disclosure of the information in dispute would reveal advice or recommendations developed by or for the public body. If it would, then I must determine whether the information falls into any of the categories listed in ss. [sic] 13(2) or 13(3). If it does, the public body cannot refuse to disclose it.

⁵ *John Doe v. Ontario (Finance)*, 2014 SCC 36 [John Doe], at paras. 34, 43, 46, 47.

⁶ *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [College of Physicians], para. 105.

⁷ *John Doe*, para. 46.

⁸ *College of Physicians*, para. 113.

⁹ *John Doe*, para. 35.

¹⁰ See, for example, Order F15-60, 2015 BCIPC 64 (CanLII), at para. 12. See also Order F16-32, 2016 BCIPC 35 (CanLII). Order F15-52, 2015 BCIPC 55 (CanLII), also discusses the scope and purpose of s. 13(1).

¹¹ Order F21-16, 2021 BCIPC 21 (CanLII).

Section 13(2) lists categories of information that public bodies cannot withhold under s. 13(1). For example, s. 13(2)(a) says that public bodies cannot withhold factual material under s. 13(1). Section 13(3) says that public bodies cannot use s. 13(1) to withhold information in a record that has been in existence for 10 or more years.¹²

[14] In arriving at my decision on s. 13(1), I have considered the principles for applying s. 13(1) as set out in the court decisions and orders cited above.

Parties' submissions on s. 13(1)

[15] BCSC said that it withheld information in three records (23, 25 and 26) under s. 13(1) on the grounds that it was BCSC staff's advice or recommendations to senior BCSC staff about whether to proceed with the investigation.

[16] The applicant said he did not "request records in s. 13 FIPPA".¹³ I have nevertheless considered below whether s. 13(1) applies.

Analysis and findings

[17] **Record 23:** This record is a note of a telephone call between two BCSC employees. BCSC withheld the entire record.

[18] BCSC said that the withheld information is advice or recommendations by investigation staff to BCSC senior management on whether to proceed with the investigation.¹⁴

[19] I agree that some of the withheld information consists of BCSC's internal discussions and opinions on whether and how to proceed with the investigation. I am satisfied that this information is expert advice on matters of fact on which BCSC had to make a decision. I find that it is advice or recommendations for the purposes of s. 13(1).

[20] The rest of the information consists of factual information about the call: the names of the BCSC employees who participated in the call; the time and date of the call; file numbers; factual statements about the purpose of the call; the factual decision on what to do with the investigation; and a factual statement about a BCSC employee's work-place actions. This information contains no opinions, advice or recommendations on how to proceed with the investigation. Rather, it is factual information about the investigation. I find that it is not advice or recommendations under s. 13(1).

¹² Order F21-16 at paras. 14 and 15.

¹³ Applicant's response, para. 8.

¹⁴ BCSC's initial submission, para. 11-12.

[21] **Records 25 and 26:** These two records are notes of telephone calls between BCSC staff and the applicant. BCSC applied s. 13(1) to one short sentence in record 25 and the last two sentences in record 26.¹⁵

[22] BSC said the withheld information documents observations of the applicant's behaviour in his role as complainant in its investigation. BCSC said the information is advice or recommendations on which BCSC's Enforcement Director had to make a decision regarding its Restricting Communications policy. Under this policy, BCSC said, it may restrict communications where there is unreasonable behaviour to staff.¹⁶

[23] I agree that the withheld information in the two records consists of BCSC's observations on the applicant's behaviour. However, there is no advice or recommendations in this information. Nor does it refer to any decision-making process BCSC's Enforcement Director may have engaged in regarding BCSC's Restriction Communications Policy. It also does not indirectly reveal any such information. I find that the withheld information in question is not advice or recommendations for the purposes of s. 13(1).

Does s. 13(2) apply?

[24] Section 13(2) lists categories of information a public body may not withhold under s. 13(1).

[25] The applicant said that s. 13(2)(n) applies.¹⁷ This provision reads as follows:

13 (2) The head of a public body must not refuse to disclose under subsection (1)

...

(n) a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.

[26] BCSC disputed the applicant's arguments on this point.¹⁸

[27] The information I found is advice or recommendations (in record 23) is not about a decision as described in s. 13(2)(n).

[28] There is also no indication that any other provisions in s. 13(2) apply to the information I found is advice or recommendations in record 23. I find that s. 13(2) does not apply to it.

¹⁵ BCSC also applied s. 22(1) to these three sentences and I deal with them below.

¹⁶ BCSC's initial submission, para. 13.

¹⁷ Applicant's response, paras. 12, 13.

¹⁸ BCSC's reply, para. 3.

Section 13(3)

[29] 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.” None of the withheld information in question is older than 10 years. Section 13(3) does not, therefore, apply to it.

Exercise of discretion

[30] Section 13(1) is discretionary. This means that the head of a public body must properly exercise its “discretion in deciding whether to refuse access to information, and upon proper considerations.”¹⁹ If the head of the public body has failed to exercise discretion, the Commissioner can require the head to do so. The Commissioner can also order the head of the public body to reconsider the exercise of discretion where “the decision was made in bad faith or for an improper purpose; the decision took into account irrelevant considerations; or, the decision failed to take into account relevant considerations.”²⁰

[31] BCSC said it considered a number of factors in deciding whether to apply s. 13(1), including the age, nature and sensitivity of the records and its past practice regarding similar records.²¹

[32] I need only consider the exercise of discretion regarding the information in record 23 that I found was advice or recommendations. There is no indication that BCSC acted in bad faith or for an improper purpose in withholding this information. I find that BCSC exercised its discretion properly in withholding it.

Conclusion on s. 13(1)

[33] I found that some information in record 23 is advice or recommendations. I also found that s. 13(2) and s. 13(3) do not apply to this information. I find, therefore, that s. 13(1) applies to it.

[34] I found above that disclosing the rest of the information in records 23, 25 and 26 would not reveal advice or recommendations. I find that s. 13(1) does not apply to it.

¹⁹ Order 02-50, 2002 CanLII 43486 (BC IPC) at para. 144.

²⁰ *John Doe*, at para. 52; see also Order 02-50, 2002 CanLII 43486 (BC IPC) at para. 144 and Order 02-38, 2002 CanLII 42472 (BCIPC) at para. 147.

²¹ BCSC’s initial submission, para. 14.

Identity of confidential source of law enforcement information - s. 15(1)(d)

[35] BCSC applied s. 15(1)(d) to the following types of information in records 3, 9, 10-15, 17, 21, 22, 24 and 28: the names and contact information of various third-party individuals with whom the BCSC investigator communicated during her investigation of the applicant's complaint; an audio recording of a message from a third party; and information the third parties provided to the investigator. BCSC said that these third parties provided "law enforcement information", in confidence, to its investigator.²²

[36] The relevant provisions in FIPPA and Schedule 1 of FIPPA read as follows:

15 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

(d) reveal the identity of a confidential source of law enforcement information,

...

"law enforcement" means

(a) policing, including criminal intelligence operations,

(b) investigations that lead or could lead to a penalty or sanction being imposed, or

(c) proceedings that lead or could lead to a penalty or sanction being imposed;

[37] Previous orders have said that, in order to show that s. 15(1)(d) applies, it is necessary to establish that the public body was engaged in "law enforcement" and that the individual in question provided "law enforcement information", in confidence, to the public body.²³ I have taken this approach in assessing BCSC's arguments.

[38] Guided by past orders which found that BCSC's investigatory and order-making powers qualify as "law enforcement",²⁴ I am satisfied that BCSC's investigation of the applicant's complaint was a "law enforcement matter".

²² BCSC's initial submission, paras. 15-26. BCSC included record 4 in its list of records to which it applied s. 15(1)(d). However, this record did not appear in the set of records in dispute, which I take to mean it is no longer an issue.

²³ For example, Order F19-06, 2019 BCIPC 8 (CanLII), Order 00-18, 2000 CanLII 7416 (BC IPC), and Order F18-15, 2018 BCIPC 18 (CanLII).

²⁴ Order 00-52 2000 CanLII 14417 (BC IPC), section 3.3; Order F16-25, 2016 BCIPC 27 (CanLII).

[39] BCSC's evidence is that the third parties provided information to its investigator as part of her investigation of potential misconduct under the *Securities Act*.²⁵ I am satisfied that this information was "law enforcement information" for the purposes of s. 15(1)(d).

[40] BCSC said it keeps complaints and investigations confidential.²⁶ Moreover, s. 11(1) of the *Securities Act* and BCSC's information management policy²⁷ state that employees are to keep confidential all information they obtain in the course of carrying out their duties. I accept, therefore, that the third parties provided the law enforcement information in confidence.

[41] I am also satisfied that the applicant could reasonably be expected to identify the third parties from the information in question. In conclusion, therefore, I am satisfied that disclosure of the information in question could reasonably be expected to reveal the identities of confidential sources of law enforcement information.

[42] The applicant noted that the investigation was closed and that he was not the subject of the investigation.²⁸ However, these factors do not, in my view, overcome the reasonable expectation that he would be able to identify confidential sources of law enforcement information.

[43] I find, therefore, that s. 15(1)(d) applies to the information in question in records 3, 9, 10-15, 17, 21, 22, 24 and 28.

Section 15(4)(a)

[44] The applicant argued that s. 15(4)(a) applies here.²⁹ BCSC disagreed.³⁰

[45] This provision reads as follows:

15 (4) The head of a public body must not refuse, after a police investigation is completed, to disclose under this section the reasons for a decision not to prosecute

(a) to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim, ...

²⁵ Affidavit of BCSC investigator, para. 4.

²⁶ BCSC's initial submission, para. 5

²⁷ This policy was attached to BCSC's initial submission.

²⁸ Applicant's response, paras. 3-4.

²⁹ Applicant's response, paras. 7, 12

³⁰ BCSC's reply, paras. 4-5.

[46] I have no hesitation in rejecting the applicant's argument on this point. As BCSC pointed out, and I agree, BCSC is not the police and the information in question has nothing to do with a decision not to prosecute.

Harm to third-party business interests – s. 21(1)

[47] BCSC applied s. 21(1) to the following:

- the name of the third-party business that was the subject of the complaint; this information is repeated in numerous places in emails between the BCSC investigator and potential witnesses in which the investigator asked them questions about the business in question (records 9, 10-15, 17); and
- portions of notes of telephone calls between
 - a third party and BCSC staff (record 22) and
 - the applicant and BCSC staff (records 25 and 27).

[48] The applicant did not explicitly address s. 21(1).

[49] I found above that s. 15(1)(d) applies to some of the information to which BCSC also applied s. 21(1), that is, all of record 15 and three sentences in record 22. I will not, therefore, consider whether s. 21(1) also applies to that information.

[50] I consider below the remaining information that BCSC withheld under s. 21(1).

[51] The relevant parts of s. 21(1) of FIPPA read as follows:

21(1) The head of a public body must refuse to disclose to an applicant information

(a) that would reveal

...

(ii) commercial, financial, labour relations, scientific or technical information of or about a third party,

(b) that is supplied, implicitly or explicitly, in confidence, and

(c) the disclosure of which could reasonably be expected to

...

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

(iii) result in undue financial loss or gain to any person or organization, ...

[52] Previous orders and court decisions have established the principles for determining whether s. 21(1) applies.³¹ All three parts of the s. 21(1) test must be met in order for the information in dispute to be properly withheld. First, BCSC must demonstrate that disclosing the information at issue would reveal one or more types of information listed in s. 21(1)(a). Next, it must demonstrate that the information was supplied, implicitly or explicitly, in confidence. Finally, it must demonstrate that disclosure of the information could reasonably be expected to cause one or more of the harms set out in s. 21(1)(c).

Type of information – s. 21(1)(a)(ii)

[53] BCSC said that the information in question is commercial information.³² The applicant did not specifically address this issue.

[54] FIPPA does not define “commercial information”. However, past orders have found that “commercial information” relates to commerce, or the buying, selling, exchanging or providing of goods and services. The information does not need to be proprietary in nature or have an actual or potential independent market or monetary value.³³

Business name

[55] BCSC said that it withheld the name of the business that was the subject of the complaint.³⁴

[56] The applicant said BCSC “must give third party records without names and address.”³⁵ I take this to mean he does not want access to the name of the business that was the subject of his complaint.

[57] I have therefore decided it is not necessary to determine if s. 21(1)(a)(ii) applies to the name of the business wherever it appears in the records.

Other information

[58] BCSC applied s. 21(1) to information in records 25 and 27 about the third party business that was the subject of the complaint. BCSC said this information

³¹ See, for example, Order 03-02, 2003 CanLII 49166 (BCIPC), Order 03-15, 2003 CanLII 49185 (BCIPC), and Order 01-39, 2001 CanLII 21593 (BCIPC).

³² BCSC’s initial submission, paras. 29-30.

³³ See Order 01-36, 2001 CanLII 21590 (BC IPC) at para. 17, and Order F08-03, 2008 CanLII 13321 (BC IPC) at para. 62.

³⁴ BCSC’s initial submission, paras. 30-31.

³⁵ Applicant’s response, para. 9.

relates to “offers of products and services that the third party business could supply or perform” and “the amount of the proposed investment.”³⁶

[59] I agree with BCSC’s description of this information. I am satisfied that it relates to the buying and selling of products and services by the third-party business. I find, therefore, that it is commercial information of or about the third-party for the purposes of s. 21(1)(a)(ii).

Supply in confidence

[60] The next step is to determine whether the information I found is commercial information of or about the third-party business was “supplied, implicitly or explicitly, in confidence.” The information must be both “supplied” and supplied “in confidence.”³⁷

[61] I need deal here only with the information I found is the third-party business’s “commercial information” in records 25 and 27. As noted above, these records are notes of telephone calls between BCSC staff and the applicant. BCSC disclosed these records in severed form. One can easily see from the disclosed information that the records describe the applicant’s conversations with BCSC staff, about his complaint and the investigation.

Supply

[62] BCSC said that the information in question was “supplied” in confidence.³⁸ The applicant said “I have submitted or created and have knowledge of third party records.”³⁹

[63] Some of the information consists of statements or questions by BCSC staff to the applicant during their conversations. I find that this information was not “supplied” and that s. 21(1)(b) does not, therefore, apply to it.

[64] It is clear from the records themselves that the applicant himself provided the rest of the information. I recognize that it does not matter who supplied the third-party information to the public body in order for it to be “supplied”.⁴⁰ I therefore find that the information that the applicant provided was “supplied”.

³⁶ BCSC’s initial submission, paras. 30-31.

³⁷ See, for example, Order F17-14, 2017 BCIPC 15 (CanLII) at paras. 13-21, Order 01-39, 2001 CanLII 21593 (BC IPC) at para. 26, and Order F14-28, 2014 BCIPC 31 (CanLII) at paras. 17-18.

³⁸ BCSC’s initial submission, para. 31.

³⁹ Applicant’s response, para. 5.

⁴⁰ Order 01-26, para. 29.

Supply “in confidence”

[65] BCSC said that the information in question was supplied “in confidence”. BCSC referred to s. 11(1) of the *Securities Act* and its policy on conducting investigations in confidence in support of this argument.⁴¹

[66] Regarding the information I found was “supplied”, I accept that BCSC receives and treats investigation information in confidence. I do not, however, consider that this applies to the applicant, as the supplier of the information, or that it means that the applicant intended BCSC to keep information he provided in confidence from him. There is certainly no indication of such an intention on the applicant’s part in the submissions or records.

[67] BCSC also did not point me to any orders in which a public body has successfully applied s. 21(1)(b) to third-party business information that an applicant himself supplied. Such a finding would, in my view, be an absurd application of s. 21(1)(b).

[68] In conclusion, BCSC has not persuaded me that the information that the applicant provided was supplied “in confidence”, either explicitly or implicitly. I find, therefore, that s. 21(1)(b) does not apply to it.

Conclusion on s. 21(1)

[69] I found above that some of the information to which BCSC applied s. 21(1) in records 25 and 27 is “commercial information” of or about a third party.

[70] I also found that some of this “commercial information” was “supplied” but that it was not supplied “in confidence”. As all three parts of the third-party test must be satisfied in order for s. 21(1) to apply, it follows that I find that s. 21(1) does not apply to the information in dispute in records 25 and 27.

[71] Given these findings, I need not deal with s. 21(1)(c).

Does s. 21(3)(a) apply?

[72] The applicant said that s. 21(3)(a) applies.⁴² BCSC disagreed.⁴³ The relevant provision reads as follows:

21 (3) Subsections (1) and (2) do not apply if
(a) the third party consents to the disclosure, ...

⁴¹ BCSC’s initial submission, paras. 5, 31.

⁴² Applicant’s reply, paras. 11, 12.

⁴³ BCSC’s response, para. 2.

[73] There is no indication that any third party consented to disclosure of the information in question. I find that s. 21(3)(a) does not apply here.

Unreasonable invasion of third-party personal privacy – s. 22(1)

[74] BCSC applied s. 22(1) to information in several portions of the records. The approach to applying s. 22(1) of FIPPA, which I will follow, has long been established. See, for example, Order F15-03, where the adjudicator said this:

Numerous orders have considered the approach to s. 22 of FIPPA, which 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.” This section only applies to “personal information” as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party’s personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party’s personal privacy.⁴⁴

[75] BCSC said it withheld, under s. 22(1), the personal information of:

- “the individual subject of the investigation”;
- “third parties to the enforcement investigation, who were potential investors/witnesses”; and
- “BCSC employees who investigated the complaint or oversaw the investigation”.⁴⁵

[76] BCSC applied s. 22(1) to some of the information to which I found above that s. 15(1)(d) applies in records 3, 9, 10-15, 17, 21, 22, 24, 25 and 28.⁴⁶ This includes the names of third-party individuals who provided information to BCSC’s investigator, along with the information they provided. I need not, therefore, consider whether s. 22(1) also applies to that information.

[77] In any case, the applicant said that BCSC “must disclose records without third party names and address.”⁴⁷ I take this to mean the applicant does not want the names of the third-party individuals whose names BCSC withheld under s. 22(1), wherever they appear in the records.

⁴⁴ Order F15-03, 2015 BCIPC 3 (CanLII), at para. 58.

⁴⁵ BCSC’s initial submission, para. 36.

⁴⁶ BCSC included record 4 in its list of records to which it applied s. 22(1). However, this record did not appear in the set of records in dispute, which I take to mean it is not in issue.

⁴⁷ Applicant’s response, para. 9.

[78] The upshot is that I need only consider the remaining information BCSC withheld under s. 22(1) in records 25, 26 and 27, which are notes of telephone calls between BCSC staff and the applicant. The information in dispute in these three records consists of the following:

- BCSC staff's comments and questions to the applicant;
- BCSC staff's comments about the applicant;
- BCSC staff's comments about third parties; and
- statements the applicant made and questions he asked, both about himself and third-parties, including the business.

Is it personal information?

[79] FIPPA defines "personal information" as recorded information about an identifiable individual, other than contact information.

[80] "Contact information" is defined in Schedule 1 of FIPPA 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."

[81] The information in dispute in records 25, 26 and 27 is about identifiable individuals, that is, the applicant and third parties. It is not "contact information". I find that it is personal information.

[82] It bears emphasizing that BCSC applied s. 22(1) to the applicant's own personal information, to which he has a right of access under FIPPA. Some of the applicant's personal information appears in isolation and some is intertwined with third-party personal information.

BCSC employees

[83] BCSC said it applied s. 22(1) to information about its employees but did not say where this information was in the records. Nor did BCSC explain how any such information is "about" its employees and thus personal information.

[84] BCSC has the burden of proving that information in dispute is personal information. It has not done so in this case, in my view. I find, therefore, that records 25, 26 and 27 contain no personal information of BCSC employees. This means that s. 22(1) does not apply respecting BCSC employees.

Does s. 22(4) apply?

[85] Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. BCSC said that s. 22(4) does not apply.⁴⁸ The applicant said that ss. 22(4)(a) and (c) apply.⁴⁹ These provisions read as follows:

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

(a) the third party has, in writing, consented to or requested the disclosure,

...

(c) an enactment of British Columbia or Canada authorizes the disclosure,

...

[86] **Section 22(4)(a):** The applicant said that Canada Revenue Agency and the third party consented to disclosure. BCSC disputed this argument.⁵⁰

[87] There is no evidence of any such consent. I find that s. 22(4)(a) does not apply.

[88] **Section 22(4)(c):** I understand the applicant to say here that Canada Revenue Agency legislation authorizes disclosure. BCSC disputed the applicant's argument.⁵¹

[89] The applicant did not explain what legislation he meant or what it says. I find that s. 22(4)(c) does not apply.

[90] **Other parts of s. 22(4):** There is no basis for finding that the rest of s. 22(4) applies here either. The personal information at issue does not, for example, relate to any third party's position, functions or remuneration as an officer, employee or member of a public body (s. 22(4)(e)).

Conclusion on s. 22(4)

[91] I find that s. 22(4) does not apply, for reasons explained just above.

⁴⁸ BCSC's initial submission, para. 39.

⁴⁹ Applicant's response, paras. 1, 2, 10, 16.

⁵⁰ BCSC's reply submission, para. 2.

⁵¹ BCSC's reply submission, para. 6.

Presumed unreasonable invasion of third-party privacy – s. 22(3)

[92] Section 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. The applicant did not explicitly address this provision. BCSC said that ss. 22(3)(b), (f) and (i) apply to the information in question.⁵² These provisions read as follows:

22 (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

(b) 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,

...

(f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,

...

(i) the personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations, ...

[93] **Section 22(3)(b)** – I agree that the records contain third-party personal information the BCSC investigator obtained as part of her investigation into a possible violation of the *Securities Act*. I find that s. 22(3)(b) applies to this information.

[94] **Section 22(3)(f)** – The records contain scattered references to amounts of money third-party individuals invested in the business in question and their other investment activities. I find that this information falls under s. 22(3)(f).

[95] **Section 22(3)(i)** – I agree that some information refers to third parties' religious associations. I find that s. 22(3)(i) applies to it.

Conclusion on s. 22(3)

[96] I have found that ss. 22(3)(b), (f) and (i) apply to some third-party personal information in dispute in records 25, 26 and 27. This means its disclosure is presumed to be an unreasonable invasion of third-party personal privacy.

[97] The remaining third-party personal information in dispute does not fall squarely under any of the s. 22(3) presumptions.

⁵² BCSC's initial submission, paras. 40-43.

Relevant Circumstances

[98] Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy. It is at this stage that the s. 22(3) presumptions may be rebutted.

[99] BCSC said that it considered the factors in ss. 22(2)(f) and (h). The applicant referred to the factor in s. 22(2)(g). These provisions read as follows:

22 (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

...

- (f) the personal information has been supplied in confidence,
- (g) the personal information is likely to be inaccurate or unreliable,
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, ...

[100] **Section 22(2)(f):** BCSC's arguments on this point were similar to those it made regarding s. 15(1)(d) and s. 21(1)(b).⁵³ The applicant said he "submitted or created" the "third-party records".⁵⁴

[101] As above, I accept that BCSC conducts its investigation in confidence. I do not, however, accept that confidentiality applies to information the applicant himself supplied during his conversations with BCSC staff.

[102] I also do not consider confidentiality applies to information BCSC staff disclosed to the applicant in the course of their telephone calls, including in questions and statements they made. Any such information was not, in any case, "supplied".

[103] I find, therefore, that s. 22(2)(f) is not a relevant circumstance here.

[104] **Section 22(2)(g):** The applicant said "BCSC failed to prove information is inaccurate or unreliable."⁵⁵ BCSC said it did not rely on this factor.⁵⁶

[105] As BCSC pointed out, s. 22(2)(g) does not require a public body to prove information is inaccurate or unreliable. Whether personal information is likely to

⁵³ BCSC's initial submission, paras. 45-46.

⁵⁴ Applicant's response, para. 5.

⁵⁵ Applicant's response, para. 6.

⁵⁶ BCSC's reply submission, para. 10.

be inaccurate or unreliable is simply a factor public bodies must consider. BCSC said it did not rely on this factor and there is no indication that the information falls under s. 22(2)(g).

[106] I find that s. 22(2)(g) is not a relevant circumstance here.

[107] **Section 22(2)(h):** BCSC said that disclosure of the information could unfairly damage third-party reputations because the allegations were not made public, the matter did not proceed to hearing, there was no finding of misconduct and the investigation was closed.⁵⁷ The applicant did not comment on this factor.

[108] In light of BCSC's arguments, it is not clear how the reputations of the third parties might be damaged, unfairly or otherwise, through disclosure of the information in dispute. The applicant is, any case, already in a position to disclose information about these individuals, as he was the source of that information. He does not need BCSC's records of telephone calls with him to do so.

[109] I find, therefore, that s. 22(2)(h) is not a relevant circumstance here.

[110] **Applicant's knowledge:** BCSC said it also considered and gave weight to the applicant's knowledge of third-party personal information. BCSC noted, however, that FIPPA does not restrict what an applicant may do with information he receives under the Act.⁵⁸ The applicant said he had "knowledge of third party records".⁵⁹

[111] Past orders have said that an applicant's knowledge of withheld information, including that which he himself provided, may weigh in favour of disclosure.⁶⁰

[112] I agree that FIPPA does not restrict an applicant's use of information he receives in the Act. However, records 25, 26 and 27 contain information about telephone calls in which the applicant participated. It is evident from the records that the applicant knows the information in dispute, either because he provided it to BCSC in the first place or because BCSC's staff disclosed it to him during their calls. In my view, the applicant's knowledge of the information in dispute is a relevant circumstance here and it weighs heavily in favour of disclosure.

⁵⁷ BCSC's initial submission, para. 47.

⁵⁸ BCSC's initial submission, paras. 41, 48.

⁵⁹ Applicant's response, para. 5.

⁶⁰ See, for example, Order F22-30, 2022 BCIPC 33 CanLII, at para. 48.

Conclusion on s. 22(1)

[113] I found above that the information in dispute is personal information of both the applicant and third parties. As noted above, some of the applicant's personal information appears in isolation and some is intertwined with third-party personal information.

[114] I also found that ss. 22(3)(b), (f) and (i) apply to some but not all of the third-party personal information.

[115] I also found that the circumstances in ss. 22(2)(f), (g) and (h) are not relevant here.

[116] The applicant's knowledge of the third-party personal information, the fact that he provided much of this information to BCSC and the fact that much of the information is the applicant's own personal information are all relevant circumstances that, in my view, completely outweigh any presumed invasion of third-party personal privacy under s. 22(3). This finding applies to the third-party personal information and to the applicant's own personal information, both in isolation and where intertwined with third-party personal information.

[117] I find, therefore, that s. 22(1) does not apply to the information in dispute in records 25, 26 and 27.

CONCLUSION

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

1. BCSC is not authorized to withhold any of the information it withheld under s. 13(1) in records 23, 25 and 26, except for a portion of record 23, which I order BCSC to disclose.
2. BCSC is authorized to withhold all information it withheld under s. 15(1)(d) in records 3, 9, 10-15, 17, 21, 22, 24 and 28.
3. BCSC is not required to withhold any information it withheld under s. 21(1) in records 25 and 27 and I order BCSC to disclose that information.
4. BCSC is not required to withhold any information it withheld under s. 22(1) in records 25, 26 and 27 and I order BCSC to disclose that information.

[119] For clarity, in light of my orders above, BCSC must disclose records 26 and 27 in full and must disclose records 23 and 25 in severed form. I have prepared for BCSC copies of records 23 and 25, highlighted to show the information it is authorized to withhold.

[120] I concluded above that the applicant is not interested in the names of third-party individuals or the third-party business name. BCSC may, therefore, withhold any such information in the records it must disclose as a result of this order.

[121] BCSC must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the records it is required to disclose under items 3 and 4 in paragraph 118 above.

[122] Under s. 59(1), BCSC is required to comply with this order by **March 9, 2023**.

January 25, 2023

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

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