



Order F23-05

CITY OF VANCOUVER

Emily Kraft
Adjudicator

January 25, 2023

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Summary: The applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the City of Vancouver (City) for access to correspondence about the City's decision to issue a formal public apology regarding the Komagata Maru incident. The City decided to release most of the information in the records, despite the objections of a third party (Third Party) whose personal information appears in the records. The Third Party requested that the OIPC review the City's decision, arguing that s. 22(1) (unreasonable invasion of personal privacy) requires the City to withhold all of the records. The adjudicator found that s. 22(1) does not apply to the information in dispute and ordered the City to disclose that information to the applicant.

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

INTRODUCTION

[1] An individual (applicant) made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the City of Vancouver (City) for access to all communications relating to the City's decision to issue a formal public apology regarding the Komagata Maru incident.

[2] The City identified 45 pages of emails responsive to the request, many of which are between City councillors and a third party (Third Party).¹

[3] The City determined that some of the information in the records might be excepted from disclosure under s. 22(1) (unreasonable invasion of a third party's

¹ FIPPA defines a "third party" as any person, group of persons or organization other than the person who made the request or a public body (Schedule 1 of FIPPA).

personal privacy), and notified the Third Party of the request pursuant to s. 23 of FIPPA.

[4] The Third Party objected to the disclosure of the records in their entirety. However, the City decided to release the records to the applicant, with minor severing under s. 22(1). The City notified the Third Party of its decision pursuant to s. 24 of FIPPA, and the Third Party asked the Office of the Information and Privacy Commissioner (OIPC) to review the City's decision.

[5] Mediation by the OIPC did not resolve the matter and it proceeded to this inquiry. The applicant was provided notice and invited to participate in the inquiry pursuant to s. 54(b) of FIPPA. The applicant, Third Party, and City all provided submissions.

ISSUE

[6] The issue to be decided in this inquiry is whether the City is required to refuse to disclose the information in dispute under s. 22(1) of FIPPA.

[7] Under s. 57(3)(a), the applicant has the burden of proving that disclosure of the personal information in dispute would not be an unreasonable invasion of a third party's personal privacy.

DISCUSSION

Background

[8] The Komagata Maru was a Japanese charter ship that travelled to Vancouver in 1914, carrying 376 passengers from India. Despite being British subjects under the Commonwealth, the passengers were denied entry into Canada based on discriminatory immigration practices. The Komagata Maru was docked in the Vancouver harbour for two months before being forced to return to India. During that time, the passengers were not provided with proper access to food and water. Upon arrival back to India, the Komagata Maru was stopped by British soldiers and a riot ensued. Nineteen passengers were killed in the riot and others were injured or imprisoned.²

[9] The Third Party is a spokesperson for a society (Society) that educates the public about the Komagata Maru incident and has petitioned all levels of government to acknowledge and apologize for the incident.

[10] In June 2020, the City passed a motion to formally apologize for its role in the Komagata Maru incident (Apology Motion).³

² Affidavit of CF, Exhibit B at p 2.

³ Affidavit of CF, Exhibit A at p 1.

Records and information in dispute

[11] The records at issue are emails between City councillors, City employees,⁴ and the Third Party relating to the Komagata Maru incident and the Apology Motion. The emails were exchanged between February 2020 and June 2020.

[12] The City decided to disclose most of the information in the emails and withhold a small amount of information under ss. 22(1) and 15(1)(l) (harm to the security of a property or system).⁵ The Third Party did not request that the OIPC review the City's decision to withhold information, so that severing is not in dispute in this inquiry. Accordingly, I will only make a decision about the information the City plans to disclose but the Third Party argues should be withheld under s. 22(1). From this point forward, I will refer to that information as the information in dispute.

Section 22

[13] Section 22(1) provides 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.

Overview of the parties' positions

[14] The City says that only a small amount of information in dispute qualifies as personal information.⁶ It says that disclosing this personal information would not be an unreasonable invasion of the Third Party's personal privacy because the information appears in emails where the Third Party was communicating on behalf of the Society, the information is publicly available, and disclosure would be desirable for the purpose of subjecting the City's activities to public scrutiny.⁷

[15] The Third Party says that they welcome the opportunity to speak in public about the Komagata Maru incident, but they wish to keep their emails with City councillors private. They say that the Komagata Maru incident was very painful for their family, so they should be granted some control over their communications about the incident.⁸

⁴ It is obvious that most of the individuals in the emails are City employees because of their City email addresses and signature blocks. However, the sender and recipient of the emails on pp 15-16 of the records does not use a City email address, although they are clearly doing work for the City. I conclude that they are either a City employee in the normal sense of the term or based on the definitions of "employee" and "service provider" in Schedule 1 of FIPPA.

⁵ This information appears on pp 4, 6, 9, 11, 13, 21, 22, 27, 36, and 38 of the records and is described in the Records Index included in the City's submission.

⁶ City's response submission at paras 22-23.

⁷ City's response submission at para 29.

⁸ Third Party's initial submission at paras 2-3.

[16] The applicant says that the public is “entitled to know what business and/or operations activity is being conducted with outside organizations, including media companies and advocacy groups.”⁹

[17] I will discuss the parties’ submissions in more detail below.

Personal information

[18] 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.

[19] FIPPA defines personal information as recorded information about an identifiable individual other than contact information.¹⁰

[20] Contact information is defined in 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, address, business email or business fax number of the individual.¹¹ Whether information is contact information depends on the context in which it appears. For instance, whether an email address qualifies as “contact information” depends on whether the person was using the email address to conduct business or allow someone to contact them for business purposes.¹²

[21] The City submits that the Third Party’s name, position or title, and email address are not personal information because they are contact information. In support of its position, it says that the Third Party communicated, at least in part, on behalf of the Society and that their email address is listed as contact information on the Society’s website.¹³

[22] The City further submits that, with the exception of the information that is not in dispute, as well as certain biographical information about the Third Party, “the email communications as a whole do not fall within the definition of personal information.”¹⁴

[23] Although the Third Party did not specifically address this issue in their submissions, they clearly believe that all of the information in dispute is their personal information.

⁹ Applicant’s response submission at p 2.

¹⁰ Schedule 1 of FIPPA.

¹¹ Schedule 1 of FIPPA.

¹² Order F21-35, 2021 BCIPC 43 at para 164.

¹³ Affidavit of CF at paras 11-13.

¹⁴ City’s response submission at para 22.

[24] For the following reasons, I find that the Third Party's name, title (as they appear in their email signature block) and email address are contact information.

[25] The information in question appears in emails between the Third Party and City councillors in which the Third Party made several requests on behalf of the Society. The Third Party introduced themselves as a spokesperson for the Society in their initial emails to City councillors, and their email address contains part of the name of the Society.

[26] Based on the context of the emails, it is clear that the Third Party was communicating with City councillors in their capacity as a spokesperson for the Society and they included their signature block and email address to enable others to contact them about Society-related matters. Accordingly, I am satisfied that the Third Party's signature block and email address are contact information and not personal information for the purposes of s. 22(1). The City is not required to withhold this information under s. 22(1).

[27] Similarly, the email signature blocks and parts of the email headers relating to City councillors and employees are contact information and cannot be withheld under s. 22(1). This information appears in emails that involve City councillors and employees conducting City business and it enables them to be contacted at their place of work.

[28] The information in dispute also includes a signature block and email address that appears in an email from a Ministry of Tourism, Arts & Culture employee (Ministry employee) to the Third Party.¹⁵ I find that this information is also contact information because it is clear that the Ministry employee included it in her email so she could be contacted at her place of work.

[29] Finally, some of the information in dispute is not personal information because it does not relate to an identifiable individual. For instance, the dates, times, and subject lines of most of the emails.¹⁶ There is also a considerable amount of general factual information about the Komagata Maru incident in the Third Party's emails to City councillors. In my view, this type of information is not "about" an identifiable individual, so it does not qualify as personal information and cannot be withheld under s. 22(1).

[30] I find that the remainder of the information in dispute is personal information about the Third Party, City councillors, City employees, and the Ministry employee. It includes their names, comments, questions, opinions, and, in the case of the Third Party, information about their family history. There is also a small amount of personal information about a named relative of the Third Party.

¹⁵ Records at pp 27-28.

¹⁶ For a similar finding, see Order F18-31, 2018 BCIPC 34 at para 74.

[31] I will now determine whether disclosure of the personal information is an unreasonable invasion of third-party personal privacy.

Not an unreasonable invasion of privacy – s. 22(4)

[32] Having found that some of the information in dispute qualifies as personal information, the next step is to consider s. 22(4), which sets out various circumstances in which disclosure of personal information is not an unreasonable invasion of a third party's personal privacy.

[33] The applicant and Third Party do not address s. 22(4) in their submissions. The City says that s. 22(4) does not apply to the small amount of information it says qualifies as personal information.¹⁷

[34] Based on my review of the records, I find that s. 22(4)(e) applies to most of the personal information about the City councillors, City employees, and the Ministry employee.

[35] Section 22(4)(e) provides that disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if the information is about the third party's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff. Past orders have found that the names and personal information of public body employees fall under s. 22(4)(e) when they relate to the employees' job duties in the normal course of work-related activities.¹⁸

[36] In my view, the information about City councillors, City employees, and the Ministry employee relates to those individuals' normal work functions and activities. Some of that information is also about the Third Party, so s. 22(4)(e) does not apply. However, I find that s. 22(4)(e) applies to the remaining information about the City councillors, City employees, and the Ministry employee. The City is not required to withhold this information under s. 22(1). I will not consider this information any further.

[37] I have considered the other factors listed in s. 22(4) and am satisfied that none apply.

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

[38] The third step in the s. 22(1) analysis is to consider whether any of the presumptions in s. 22(3) apply to the remaining personal information at issue. Section 22(3) lists circumstances in which disclosure of personal information is presumed to be an unreasonable invasion of personal privacy.

¹⁷ City's response submission at para 27.

¹⁸ Order F19-27, 2019 BCIPC 29 at para 51.

[39] The City and the Third Party submit that s. 22(3)(i) applies to some of the information in dispute.

[40] Section 22(3)(i) says that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

[41] I am satisfied that s. 22(3)(i) applies to some of the personal information in dispute because it indicates the racial or ethnic origin of the Third Party and their relative. Accordingly, disclosure of this information is presumed to be an unreasonable invasion of their personal privacy.

[42] The parties did not raise any other s. 22(3) factors, and I am satisfied that none apply.

Relevant circumstances – s. 22(2)

[43] The last step in the s. 22(1) analysis is to determine whether disclosure of the disputed information would be an unreasonable invasion of a third party's personal privacy, considering all relevant circumstances including those listed in s. 22(2). It is at this step that any s. 22(3) presumptions may be rebutted.

[44] The parties raise arguments that relate to s. 22(2)(a) as well as other factors that are not listed in s. 22(2).

Section 22(2)(a)

[45] Section 22(2)(a) states that, in determining whether disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, a relevant circumstance to consider is whether the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny.

[46] The City says that, since the Third Party was communicating with City councillors in relation to official City business, disclosure of the personal information in dispute would be desirable for the purpose of subjecting the activities of the City to public scrutiny.¹⁹

[47] The applicant submits that the interests of government transparency and accountability in this case are "inarguably great." The applicant is concerned about "the deployment of government time and resources to solicit electoral favor

¹⁹ City's response submission at para 29(a).

from selected constituent groups based on race and religion,” referencing the “Quick Wins ethnic outreach scandal.”²⁰

[48] The information in dispute here does not reveal the kind of activity the applicant is concerned about. However, it is clear from the information in the emails that the Third Party, acting on behalf of the Society, influenced the City to pass the Apology Motion. Therefore, I can see how disclosure of this information could be desirable for transparency reasons. However, based on my review of the material on the Society’s website, which the City referred me to, I am satisfied that the City already publicly disclosed the fact that the Society influenced its decision to pass the Apology Motion.²¹ In my view, disclosing the emails between the Third Party and City councillors would not add further transparency to the City’s decision. I am not persuaded that this factor weighs in favour of disclosure in this case.

Publicly available information

[49] Although it is not listed as a factor under s. 22(2), previous orders have found that the public availability of the information in dispute is a factor that should be considered.²² Previous orders have said that, if the applicant or public already knows the information, then it is not private and this may weigh in favour of disclosure. In general, it would not be an unreasonable invasion of a third party’s personal privacy to disclose information that is already known.²³

[50] The City says that much of the personal information contained in the records is publicly available through newspaper articles and on the Society’s website.²⁴ Specifically, the City says that the information that indicates the Third Party’s racial or ethnic origin is available on the Society’s website.²⁵

[51] The Third Party says that, while they welcome the opportunity to speak in public about the Komagata Maru incident because it allows them to “take back the narrative,” they should be given control over their communications regarding the incident because it hurt their family very deeply. They explain that “this loss of privacy is a loss of agency for a persecuted ethnic minority.”²⁶

[52] Based on my review of the Society’s website, I am satisfied that most of the personal information in dispute is publicly available. For instance, the information about the racial or ethnic origin of the Third Party and their relative is included on the Society’s website as well as various news publications cited on

²⁰ Applicant’s response submission at p 1.

²¹ This finding is based on the material posted on the Society’s website at the date of this order.

²² Order F18-38, 2018 BCIPC 41 at para 92.

²³ Order F22-31, 2022 BCIPC 34 at para 78.

²⁴ City’s response submission at para 29(c).

²⁵ Affidavit of CF at para 12.

²⁶ Third Party’s initial submission at para 3.

the website. The website also outlines the various requests made by the Third Party in the disputed emails.

[53] I understand why it is important to the Third Party to have some degree of control over their communications about the Komagata Maru incident given their personal connection to it. However, the emails in dispute are in the custody or under the control of the City, so FIPPA applies. Consistent with previous OIPC decisions, the fact that much of the information in dispute is already in the public realm weighs in favour of disclosure. In fact, I give this factor considerable weight.

Sensitivity

[54] Sensitivity is not listed as a factor under s. 22(2), however, past orders have considered it as a relevant circumstance. For instance, where personal information is highly sensitive (e.g. medical or other intimate information), this factor weighs against disclosure.²⁷ However, where information is innocuous and not sensitive in nature, then this factor may weigh in favour of disclosure.²⁸

[55] The Third Party says that the information in dispute relates to a sensitive matter and that they have a right to discuss such matters in private.²⁹

[56] In my view, the general topic of the Komagata Maru incident is a sensitive one, especially for the Third Party. However, most of the information in dispute is not sensitive in nature. For instance, information about meeting arrangements between the Third Party and a City employee, information about draft motions to be considered by City councillors, and information about the Third Party's other Society-related work is entirely non-sensitive. In my view, this factor weighs in favour of disclosure.

Professional capacity

[57] The City says that disclosure of the information in dispute would not be an unreasonable invasion of the Third Party's personal privacy in part because the Third Party was communicating with City councillors on behalf of the Society.³⁰ I understand the City to be saying that the Third Party was acting in a professional capacity.

[58] I agree that the information in dispute appears in emails where the Third Party was acting in their professional capacity as a representative of the Society,

²⁷ Order F21-64, 2021 BCIPC 75 at para 107.

²⁸ See for example Order F16-06, 2016 BCIPC 7 at para 38 and Order F17-13 BCIPC 14 at para 62.

²⁹ Third Party's initial submission at para 3.

³⁰ City's response submission at para 29(b).

rather than in a strictly personal and private capacity. Consistent with previous OIPC decisions, this factor weighs in favour of disclosure.³¹

Summary and conclusion on s. 22(1)

[59] I find that some of the information in dispute is not personal information because it is either contact information or it does not relate to an identifiable individual. Accordingly, the City is not required or authorized under s. 22(1) to withhold this information.

[60] I find that s. 22(4)(e) applies to most of the personal information about City councillors, City employees, and the Ministry employee. The City is not required or authorized under s. 22(1) to withhold this information.

[61] I find that disclosing some of the information in dispute is presumed to be an unreasonable invasion of personal privacy under s. 22(3)(i) because it indicates the racial or ethnic origin of the Third Party and their relative. However, given that this information is publicly available on the Society's website and various news publications, I find that the s. 22(3)(i) presumption is rebutted and disclosure would not be an unreasonable invasion of personal privacy. The City is not required or authorized under s. 22(1) to withhold this information.

[62] I find that the remaining personal information about the Third Party appears in emails where they were acting in a professional capacity, and the information is either publicly available on the Society's website or not sensitive in nature. I am therefore satisfied that disclosure of this information would not be an unreasonable invasion of the Third Party's personal privacy.

[63] In conclusion, the City is not required or authorized under s. 22(1) to withhold any of the information in dispute.

CONCLUSION

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

1. The City is not required to refuse to disclose the information in dispute under s. 22(1) of FIPPA. For clarity, the information in dispute does not include the information the City is refusing to disclose to the applicant.
2. The City is required to give the applicant access to the information in dispute.

³¹ See for example Order F13-01, 2013 BCIPC 1 at para 61 and Order F18-42, 2018 BCIPC 45 at para 22.

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3. The City must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records described at item 2 above.

[65] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **March 10, 2023**.

January 25, 2023

ORIGINAL SIGNED BY

Emily Kraft, Adjudicator

OIPC File No.: F20-84785