



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F23-13

SIMON FRASER UNIVERSITY

Lisa Siew
Adjudicator

March 1, 2023

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested Simon Fraser University (University) provide access to a variety of records, including communications between him and other University employees. The applicant was a former instructor with the University. The University withheld information in the responsive records under ss. 13(1) (advice and recommendations) and 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA. The adjudicator determined the University was authorized or required to withhold some of the information at issue under ss. 13(1) and 22(1). For the information it was not authorized or required to withhold, the University was required to provide the applicant with access to this information. Lastly, the adjudicator found the University was required under s. 22(5) to provide the applicant with a summary of personal information supplied in confidence about him in a particular record.

Statute Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 13(1), 13(2)(a), 13(2)(n), 13(3), 22(1), 22(2)(a), 22(2)(c), 22(2)(e), 22(2)(h), 22(3)(a), 22(3)(d), 22(3)(g), 22(4)(b), 22(4)(e), 22(4)(i)(ii) and 22(5)(a).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (applicant) made an access request to Simon Fraser University (University) for a variety of records. The applicant's request was grouped into six different categories of records with specified date ranges. His request included access to communications involving him and four different University offices or departments.

[2] The University provided the applicant with partial access to the requested records, but it withheld information under ss. 13(1) (advice and recommendations), 15(1) (disclosure harmful to law enforcement) and 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the University's decision regarding ss. 13(1) and 22(1). The applicant did not challenge the University's decision to withhold information in the responsive records under s. 15(1).¹ The OIPC's investigation and mediation process did not resolve the matters at issue and they were forwarded to this inquiry.

[4] During the inquiry, the OIPC issued third-party notices to two individuals.² Each individual provided a submission for this inquiry that only addresses the University's decision to withhold information under s. 22(1). Their evidence includes pre-approved *in-camera* materials (i.e. material only the adjudicator can see), including approval to withhold their identities from the applicant.³ As a result, I will refer to these individuals as Third Party A and Third Party B throughout this order.

ISSUES AND BURDEN OF PROOF

[5] The issues that I must decide in this inquiry are as follows:

- Is the University authorized to refuse to disclose the information at issue under s. 13(1)?
- Is the University required to refuse to disclose the information at issue under s. 22(1)?

[6] Section 57(1) of FIPPA places the burden on the University to prove the applicant has no right of access to the information withheld under s. 13(1).

[7] Section 57(2) of FIPPA 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 under s. 22(1). However, the public body has the initial burden of proving the information at issue qualifies as personal information.⁴

¹ Information located on p. 1265 of the records.

² Under s. 54 of FIPPA, the OIPC has the power to provide a copy of the applicant's request for review to any person the Commissioner considers appropriate.

³ Where information is approved *in camera*, the decision-maker considers this information privately and the other party will receive the inquiry submissions with the *in camera* material redacted.

⁴ Order 03-41, 2003 CanLII 49220 (BCIPC) at paras. 9–11.

DISCUSSION

Background

[8] The applicant was a doctoral student and a former instructor with the University.⁵ While he was studying and teaching at the University, the applicant was involved in a number of disputes and workplace-related conflicts with other University employees in his department.

[9] One of the disputes resulted in an individual complaining about the applicant and his conduct to the University's Human Rights Office. Despite attempts to reach a resolution, the complaint was not resolved. The Human Rights Office advised the parties that it could do nothing further and closed its file. Thereafter, the applicant filed a complaint about the handling of the matter. A University official responded to that complaint.

[10] Another dispute led to the applicant filing a union grievance (Grievance) against the former Chair of his department (former Chair). The dispute was progressing through the union's dispute resolution process when the applicant later withdrew his complaint against the former Chair.

[11] Several months after the applicant had completed his last teaching assignment, the University sent the applicant a letter notifying him that he was being terminated with cause for professional misconduct. Thereafter, the applicant filed a lawsuit against the University and the individual who filed a complaint about him with the Human Rights Office.

[12] The BC Supreme Court dismissed the applicant's lawsuit for lack of jurisdiction over the proceeding. The judge determined the dispute was governed by a collective agreement between the parties and any determination or resolution should be sought through that grievance and arbitration process.

[13] The applicant is now seeking access to a variety of records, including communications related to his conflicts and interactions with other University employees.

Records and information at issue

[14] The responsive records total approximately 1,400 pages. The records consist mainly of emails, but also include letters, an instructor seniority list, handwritten or typed notes, a log kept by an employee from the Human Rights Office, forms, and a teaching list.

⁵ The information in this background section is compiled from the parties' submissions and evidence.

[15] Due to subsequent events, the University has recently provided the applicant with access to some of the information that it initially withheld under ss. 13(1) and 22(1).⁶ Therefore, I conclude this information is not at issue in this inquiry since it has already been disclosed to the applicant.⁷

Advice and recommendations – s. 13

[16] Section 13(1) authorizes the head of a public body to refuse to disclose information that would reveal advice or recommendations developed by or for a public body or minister. Previous OIPC orders recognize that s. 13(1) protects “a public body’s internal decision-making and policy-making processes, in particular while the public body is considering a given issue, by encouraging the free and frank flow of advice and recommendations.”⁸

[17] To determine whether s. 13(1) applies, I must first decide if disclosure of the withheld information would reveal advice or recommendations developed by or for a public body or minister. The term “recommendations” includes material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised and can be express or inferred.⁹

[18] The term “advice” has a broader meaning than “recommendations.”¹⁰ “Advice” includes an opinion that involves exercising judgment and skill to weigh the significance of matters of fact, including expert opinion on matters of fact on which a public body must make a decision for future action.¹¹

[19] A public body is also authorized to refuse access to information under s. 13(1), not only when the information itself directly reveals advice or recommendations, but also when disclosure of the information would enable an individual to draw accurate inferences about the advice or recommendations.¹²

[20] As well, s. 13(1) extends to factual or background information that is a necessary and integrated part of the advice or recommendation.¹³ This includes factual information compiled and selected by an expert, using his or her

⁶ University’s initial submission at para. 19.

⁷ The University disclosed this information to the applicant on August 9, 2022.

⁸ For example, Order 01-15, 2001 CanLII 21569 (BCIPC) at para. 22.

⁹ *John Doe v. Ontario (Finance)*, 2014 SCC 36 at paras. 23-24.

¹⁰ *John Doe v. Ontario (Finance)*, 2014 SCC 36 at para. 24.

¹¹ *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para. 113.

¹² Order 02-38, 2002 CanLII 42472 at para. 135. See also Order F17-19, 2017 BCIPC 20 (CanLII) at para. 19.

¹³ *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 at paras. 52-53.

expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body.¹⁴

[21] The analysis under s. 13 has two steps. If I find the information at issue would reveal advice or recommendations under s. 13(1), then the next step is to consider if any of the categories listed in ss. 13(2) or 13(3) apply. Subsections 13(2) and 13(3) identify certain types of records and information that may not be withheld under s. 13(1), such as factual material under s. 13(2)(a) and information in a record that has been in existence for 10 or more years under s. 13(3).

The parties' submissions on s. 13

[22] The University submits that it correctly applied s. 13(1) to withhold information in emails between a number of University employees.¹⁵ While the number of employees involved in the emails at issue vary, the University says the employees are from six different departments or offices, including the Human Rights Office, Academic Affairs, Undergraduate Records and Human Resources.¹⁶

[23] Relying on past OIPC orders, the University submits that s. 13(1) applies to this withheld information because it consists of “internal communications in which employees of a public body exchange opinions and recommendations on managing human resources matters.”¹⁷ The University describes the email discussions between these employees as addressing matters related to the applicant, including “the grievance filed on his behalf by his union, and complaints made by employees and students about his behaviour and his performance as an instructor.”¹⁸

[24] The applicant disputes the University’s application of s. 13(1) to the information at issue. He submits this information does not qualify as advice or recommendations “on any legitimate course of action.”¹⁹ The applicant alleges the University is withholding the information at issue as a “cover-up” or as part of a “conspiracy.”²⁰

¹⁴ *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at para. 94.

¹⁵ Emails located on pp. 70, 181, 187, 203, 219, 212, 235, 240, 243, 319, 321, 323, 355, 366, 378, 391, 405, 419, 420, 434, 479, 600, 606, 798, 853, 861, 862, 869, 883, 890, 897, 916, 917, 919, 922, 924, 927, 928 and 1129 of the records.

¹⁶ University’s initial submission at para. 28.

¹⁷ University’s initial submission at paras. 29-31, citing Order F20-38, 2020 BCIPC 44 at para. 23, Order F20-37, 2020 BCIPC 43 at para. 35 and Order F22-07, 2022 BCIPC 7 at paras. 23-25.

¹⁸ University’s initial submission at para. 28.

¹⁹ Applicant’s submission at para. 48.

²⁰ *Ibid* at paras. 46-48.

[25] Alternatively, the applicant submits the information at issue is factual material under s. 13(2)(a) or was used to make a negative decision that affected him under s. 13(2)(n). Therefore, the applicant argues the University cannot withhold the information at issue under s. 13(1).

Analysis and findings on advice and recommendations

[26] The information at issue under s. 13(1) is located in emails between various University employees. Based on my review of these emails, I find some of the withheld information reveals advice or recommendations that different University employees provide to other employees on matters related to the applicant.²¹ This information includes the employee's reasons for the advice or recommendation and covers topics such as student grading concerns and what to do about complaints made by the applicant or complaints received about the applicant. It is clear to me that this information was provided to a University employee who had to decide on a course of action. Therefore, I am satisfied this withheld information reveals advice or recommendations developed by University employees.

[27] However, I find the rest of the information withheld under s. 13(1) is not advice or recommendations developed by, or for, the University for the following reasons:

- The person writing the email is only communicating information of a factual nature, clarifying facts, answering a question or explaining what they have done or will do regarding a matter related to the applicant.²² I find the information withheld in these emails only reveals the gathering or conveying of information.
- The information reveals a University employee's request for advice.²³ Section 13(1) does not typically apply to information that reveals a public body's request for advice and recommendations, even if it discloses the scope of the sought-after advice or recommendations.²⁴ The request would need to reveal the advice or recommendations to fall within the scope of s. 13(1). I do not find the information at issue here reveals any advice or recommendations.

²¹ Information withheld in several emails: only a portion of the email on p. 181 (duplicated on pp. 187, 203, 235, 240, 355, 378, 391-392, 405, 419-420, 434, 853, 861-862, 869, 883-884, 890, 897), p. 210 (duplicated on pp. 212, 919, 924, 928, 1127, 1129), p. 319 (duplicated on pp. 321 and 323), p. 479 (duplicated on p. 482), only a small portion of the email on p. 600, and information withheld in an email on p. 798.

²² Information in emails located on pp. 70, 181 (duplicated on p. 187), 600, 916 of the records.

²³ Page 606 of the records.

²⁴ Order F17-39, 2017 BCIPC 43 (CanLII) at para. 37 and Order F15-33, 2015 BCIPC 36 (CanLII) at para. 24.

- The information reflects a decision already made by University employees on a course of action.²⁵ Section 13(1) does not apply to this kind of information since it only reveals the outcome of a decision and what certain employees are doing to implement that decision.²⁶
- The withheld information has already been disclosed to the applicant or is easily inferable from information revealed in the surrounding records.²⁷ Previous OIPC orders have found that information already disclosed or known to an applicant cannot be withheld under s. 13(1) since it would not “reveal” advice or recommendations for the purposes of s. 13(1).²⁸

[28] I conclude none of the above-noted information reveals any advice or recommendations for a decision-maker to consider nor is this information inextricably intertwined with any advice or recommendations. Therefore, the University is not authorized to withhold this information under s. 13(1).

Analysis and findings on ss. 13(2) and 13(3)

[29] The next step in the s. 13 analysis is to consider whether any of the circumstances under ss. 13(2) and 13(3) apply to the information that I found would reveal advice or recommendations developed by University employees. The applicant argues the University cannot withhold this information since it is factual material under s. 13(2)(a) or was used to make a negative decision that affected him under s. 13(2)(n). I will consider each of these provisions below, along with s. 13(3).

Factual material – s. 13(2)(a)

[30] Section 13(2)(a) says the head of a public body must not refuse to disclose under s. 13(1) any factual material. The term “factual material” does not include facts that are an integral component of the advice or recommendations. Specifically, if the facts are compiled and selected by someone who is using their expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body, then that information falls under s. 13(1) and not under s. 13(2)(a).²⁹ The protection given to these integral facts

²⁵ Information in email located on p. 917 (duplicated on pp. 922 and 927).

²⁶ Order F19-28, 2019 BCIPC 30 (CanLII) at para. 37.

²⁷ Information in emails withheld on p. 600 (disclosed on p. 591), p. 606 (disclosed in earlier email on same page) and p. 917 (disclosed on p. 239).

²⁸ For example, Order F13-24, 2013 BCIPC 31 at para. 19.

²⁹ *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at para. 94 and Order F20-37, 2020 BCIPC 43 (CanLII) at para. 40.

ensures no accurate inferences can be drawn about the advice or recommendations developed by or for the public body.³⁰

[31] I find s. 13(2)(a) does not apply to the information that I found would reveal advice or recommendations. Based on my review of the records, I am satisfied the University has already disclosed any factual material. I find any remaining facts are an integrated part of the advice or recommendations. For instance, I can see the University withheld some facts in an email where the former Chair is providing a suggestion to an employee from the human resources department.³¹ I am satisfied these facts are a necessary part of the advice given by the former Chair and, if disclosed, would reveal or allow someone to accurately infer that advice. As a result, I conclude this information is not factual material under s. 13(2)(a).

Decision affecting the rights of the applicant – s. 13(2)(n)

[32] Section 13(2)(n) states the head of a public body must not refuse to disclose under s. 13(1) “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.” Previous OIPC orders have found s. 13(2)(n) does not require the disclosure of all records which relate in any way to the exercise of a discretionary power or an adjudicative function, but only those records which contain a decision and the reasons for it.³²

[33] The applicant contends s. 13(2)(n) applies to any decision and accompanying reason that was made about him. The applicant is especially interested in any information which shows why the former Chair decided to take away his assigned office on campus for a specific semester and “any later negative decision” that was made against him.³³

[34] I have reviewed the information that I found is advice or recommendations. None of this information is a decision about the applicant, or any accompanying reasons, as required under s. 13(2)(n). Therefore, I find s. 13(2)(n) does not apply. In particular, none of this information reveals any decision or reasons for why the University took away the applicant’s campus office.

³⁰ *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 (CanLII) at para. 52.

³¹ Information located on p. 210 of the records.

³² Order F20-37, 2020 BCIPC 43 (CanLII) at para. 54 and the cases cited in footnote 43.

³³ Applicant’s submission at para. 52.

Information in existence for 10 or more years – s. 13(3)

[35] Under s. 13(3), any information in a record that has been in existence for 10 or more years cannot be withheld under s. 13(1). I find s. 13(3) does not apply because the information I found is advice or recommendations dates back to 2019 and 2020. Therefore, at the time of this inquiry, this information has been in existence for under 10 years.

Conclusion on s. 13(1)

[36] I find the University has established that disclosing some of the information at issue under s. 13(1) would reveal advice or recommendations developed by University employees for other employees. I also find s. 13(2)(a), s. 13(2)(n) and s. 13(3) do not apply to that information. As a result, I conclude the University may withhold this information under s. 13(1).

[37] However, I conclude s. 13(1) does not apply to the rest of the information at issue under s. 13 because disclosure of this information would not reveal any advice or recommendations developed by or for a public body. The University has also withheld some of this information under s. 22(1).³⁴ I will, therefore, consider whether the University is required to withhold that information under s. 22(1), along with the other information at issue under that exception.

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

[38] Section 22(1) of FIPPA requires a public body to refuse to disclose personal information which would unreasonably invade a third-party's personal privacy. Numerous OIPC orders have considered the application of s. 22(1) and I will apply the same approach in this inquiry.

Personal information

[39] Section 22 only applies to personal information; therefore, the first step in the s. 22 analysis is to determine if the information at issue is personal information.

[40] Personal information is defined in FIPPA as “recorded information about an identifiable individual other than contact information.”³⁵ Information is about an identifiable individual when it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.

³⁴ Information located on p. 181 (duplicated on p. 883-884) of the records. The University did not withhold the information on p. 600 under s. 22(1), but I will consider it under s. 22 as well.

³⁵ Schedule 1 of FIPPA.

[41] 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, business address, business email or business fax number of the individual.”³⁶

University’s position on personal information

[42] The University submits the information at issue under s. 22 consists of the personal information of multiple third parties, including University employees and students. It says this personal information includes a person’s name and other identifying information, “details of medical accommodations, personal opinions, employment dispute details, performance issues” and the “academic information of third parties.”³⁷

[43] The University also says some of the information at issue under s. 22 is about the applicant. However, it contends this information about the applicant is “inextricably intertwined” with a third party’s personal information and “cannot be revealed.”³⁸ Relying on a previous OIPC order, the University contends the disclosure of this joint information would be an unreasonable invasion of third-party personal privacy.³⁹

[44] The University also submits that information such as a person’s email signature, that it has withheld in the disputed records is personal information and not contact information. It says this information qualifies as personal information because it reveals the fact that a third party communicated with certain people or departments. It submits these communications can disclose sensitive personal information about the third party such as, for example, when an employee or a student seeks “personal support or advice from counselling services, human resources, the sexual violence support and prevention office, safety and risk services, the human rights office, the office of the ombudsperson etc.”⁴⁰

Third Parties’ positions on personal information

[45] As previously mentioned, two third parties also provided submissions in this inquiry. Third Party A submits all of the information withheld under s. 22 is the personal information of multiple individuals, including their own personal information such as their name and position.⁴¹ Third Party A argues that where their work-related information appears in certain records it is personal information

³⁶ Schedule 1 of FIPPA.

³⁷ University’s initial submission at para. 41.

³⁸ *Ibid* at para. 44.

³⁹ *Ibid* at para. 44, citing Order F15-54, 2015 BCIPC 57 at para. 26.

⁴⁰ University’s initial submission at para. 42.

⁴¹ Third Party A submission at para. 21.

and not contact information because it would reveal their activities. Third Party A submits this conclusion is consistent with the findings of previous OIPC orders.⁴²

[46] Third Party B's submissions focused on one specific email in the records.⁴³ The University withheld the body of the email, but disclosed the rest of the information in the email including the sender and recipient. Third Party B submits the disclosure of this withheld information would be an unreasonable invasion of a third party's personal privacy. They describe some of the withheld information as "an expression of private opinions, thoughts and/or feelings in respect of a matter that is entirely unrelated to the Applicant's access request." Third Party B acknowledges some of the information at issue in this email is the applicant's personal information, but argues this "sensitive information" cannot be disclosed because it is inextricably intertwined with the personal information of a third party.⁴⁴

Applicant's position on personal information

[47] The applicant contends the information at issue is his personal information since it is related to him, his personal life and what certain people said about him. The applicant says this information includes how others acted in response to what was said about him and "all the expressions about or related to those matters, which expressions include plans for cover-up, fabrications, and manipulations among certain SFU officials."⁴⁵ As a result, the applicant submits the information at issue under s. 22(1) should be disclosed to him.

Analysis and findings on personal information

[48] As previously noted, the information at issue under s. 22 is found mainly in emails, but also includes other documents such as letters, an instructor seniority list, a teaching list, forms and handwritten or typed notes. I conclude the information withheld in these records is the personal information of multiple individuals including students, instructors, graduates, individuals who were offered or seeking employment with the University and University employees from various departments. The information at issue includes their names, email addresses, personal details and other identifying information (e.g. student ID number or social insurance number).

[49] The information at issue also includes a third party's opinions and comments about other individuals or events. Some of those opinions and comments are about the applicant and his actions. An individual's opinions and

⁴² Third Party A submission at para. 20, citing Order F08-04, 2008 CanLII 13322 (BCIPC) at para. 20.

⁴³ Email located at p. 999 (duplicated on p. 998).

⁴⁴ Third Party B submission at para. 12.

⁴⁵ Applicant's submission at para. 32.

comments are their personal information only to the extent that the information reveals or identifies that individual as the opinion holder.⁴⁶ In some cases, the University disclosed the identity of these third parties so the applicant would know who provided these opinions.⁴⁷ In those instances, I conclude this information is both the applicant's personal information since it is about him and a third party's personal information since it is an identifiable third party's opinion or comments about the applicant or events related to the applicant.

[50] In some emails, the applicant does not know the identity of the third parties because the University withheld their names and email addresses from the emails, along with their opinions.⁴⁸ Therefore, the question is whether disclosing the opinion or comments on their own would reveal the third parties' identities. If so, then those opinions would be the third party's personal information. I find the applicant could identify several third parties based on their opinions and comments, even though their names have been withheld. My conclusion is based on the fact that their comments and opinions contain information that is fact specific or relates to incidents and interactions involving the applicant. As a result, I am satisfied this information could allow the applicant to ascertain who provided the opinion and, thus, it is the third party's personal information.

[51] There are also several instances where the University has withheld a person's name, job title, University email address, work address or phone number.⁴⁹ Most of this information is found in the sender and recipient fields and the signature block of emails. This type of information is generally considered "contact information" under FIPPA; however, whether information qualifies as "contact information" will depend on the context in which the information appears in the record.⁵⁰ Taking into account the context, I must consider whether the individuals in question intended the information be used to contact them in their business or employment capacity, for business or work purposes and whether the information was provided in the ordinary course of conducting business or work.⁵¹ If so, then that information is contact information under FIPPA.

[52] In the context of this case, I find where the University has withheld information such as a third party's name, phone number and University email address, this information is not contact information because disclosing such details would reveal a person's activities or information related to a particular dispute or complaint involving the applicant. For example, I can see the University withheld a person's name and email address regarding a complaint

⁴⁶ Order F17-01, 2017 BCIPC 1 (CanLII) at para. 48.

⁴⁷ For example, emails located on pp. 170, 574 and 999 of the records.

⁴⁸ For example, email located on p. 174 of the records.

⁴⁹ For example, emails located on pp. 170, 601 and 1017-1018 of the records.

⁵⁰ Order F21-35, 2021 BCIPC 43 (CanLII) at para. 164.

⁵¹ For example, Order F20-52, 2020 BCIPC 61 (CanLII) at paras. 22-29.

they made to the University's Human Rights Office.⁵² This information would reveal the identity of the complainant; therefore, I find this information is personal information and not contact information.

[53] The University also withheld the names and email addresses of several third parties who were offered teaching positions.⁵³ Given the context, I find the purpose of this information is to communicate about potential employment with the University. It reveals whether a third party was successful in applying for a teaching position; therefore, I am satisfied this information is personal information and not contact information.

[54] To conclude, I am satisfied the information withheld by the University under s. 22(1) qualifies as personal information under FIPPA.

Section 22(4) – disclosure not an unreasonable invasion

[55] The second step in the s. 22 analysis is to determine if the personal information falls into any of the types of information or circumstances listed in s. 22(4). If it does, then the disclosure of the personal information is not an unreasonable invasion of a third party's personal privacy and the information cannot be withheld under s. 22(1).

[56] The University and the Third Parties submit that none of the circumstances set out in s. 22(4) apply to the information at issue. On the other hand, the applicant submits that ss. 22(4)(b) and 22(4)(e) apply in this case. Although not raised by any of the parties, I find s. 22(4)(i)(ii) is a relevant circumstance. I will consider all of these provisions below.

Compelling circumstances affecting health or safety - s. 22(4)(b)

[57] Section 22(4)(b) states the disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if there are compelling circumstances affecting anyone's health or safety and notice of the disclosure is mailed to the last known address of the third party.

[58] The applicant argues compelling circumstances exist because some of the information at issue relates to a claim he made for political refugee protection which directly affects his safety. The applicant says he reported a specific security concern to SFU officials and some of the information at issue is related to the treatment he received from SFU after he made the report. The applicant says how SFU officials and employees treated him is an integral part of his

⁵² For example, email located on p. 601 of the records.

⁵³ For example, emails located on pp. 1255-1262 of the records.

refugee protection claim.⁵⁴ Therefore, the applicant submits the information at issue should be disclosed to him.

[59] Section 22(4)(b) authorizes a public body to disclose information to prevent harm to a person's health or safety. This provision should only be considered when there is a complaint about the public body's decision to *disclose* the disputed information under s. 22(4)(b).⁵⁵ It does not apply where the public body is refusing to disclose personal information to an applicant.⁵⁶

[60] In the present case, the University is not relying on s. 22(4)(b) to justify a disclosure of a third party's personal information. Instead, the University decided not to disclose a third party's personal information and has refused access. Therefore, I conclude s. 22(4)(b) does not apply here.

A public body employee's position or functions - s. 22(4)(e)

[61] Section 22(4)(e) states a 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.

[62] The applicant submits s. 22(4)(e) must apply to some of the information at issue because he says some University employees made negative and likely defamatory statements about him and his relationship with another named individual. The applicant contends these University employees made the comments "from their position at SFU with the principle intention" of causing him reputational harm.⁵⁷ Therefore, the applicant submits s. 22(4)(e) applies to this information and it should be disclosed to him.

[63] The University and the Third Parties dispute the applicant's assertion that s. 22(4)(e) applies to any of the information at issue. The University says some of the information at issue may at first glance be about a public body employee's position or functions; however, it says this information "is personal in nature as it relates to personal concerns or opinions or workplace disputes."⁵⁸ Therefore, it submits s. 22(4)(e) does not apply to this information.⁵⁹

[64] The University also says that it withheld some information related to a person's work functions, but it argues disclosing this information would reveal this person's "medical accommodation" since "the individual in question is the only

⁵⁴ Applicant's submission at para. 35.

⁵⁵ Order F19-02, 2019 BCIPC 2 (CanLII) at paras. 20-26, emphasis in original.

⁵⁶ Order F19-02, 2019 BCIPC 2 (CanLII) at para. 27.

⁵⁷ Applicant's submission at para. 34.

⁵⁸ University's initial submission at para. 47.

⁵⁹ The University does not identify where this information is located in the records.

individual who held the position at the time the records were created.”⁶⁰
Therefore, it submits s. 22(4)(e) does not apply to this information.⁶¹

[65] Third Party A submits s. 22(4)(e) does not apply because none of the information at issue is about their position or about the functions they performed on behalf of the University. It says the withheld information is “truly ‘personal’ in nature” and does not fall within s. 22(4)(e).⁶²

[66] Previous OIPC orders have found that s. 22(4)(e) applies to information that reveals a public body employee’s name, job title, duties, functions, remuneration (including salary and benefits) or position.⁶³ However, whether s. 22(4)(e) applies in a particular case depends on the context in which the information at issue appears. For example, a previous OIPC order found that s. 22(4)(e) did not apply to a third-party employee’s name and title because it appeared in the context of a workplace investigation and would reveal personal information about the third party such as disciplinary action and severance information.⁶⁴ I agree with that approach. Where the information at issue appears in a context that reveals more than just the public body employee’s name, job title, duties, functions, remuneration, position or what they did in the normal course of their work, then s. 22(4)(e) does not apply.

[67] Applying that approach, I can see the University withheld the names and personal information of multiple individuals who worked for the University or were offered a position as a sessional instructor in the following records:

- A document titled “TSSU and SFU Final Sessional Seniority List 1194 June 13, 2019.”⁶⁵
- A document titled “1197 Master SI [sessional instructor] Applicant List.”⁶⁶
- An email chain about sessional instructor appointments.⁶⁷
- Email correspondence about teaching positions.⁶⁸

⁶⁰ University’s initial submission at para. 49.

⁶¹ The University does not identify where this information is located in the records.

⁶² Third Party A submission at para. 27. Third Party A does not identify where this information is located in the records.

⁶³ For example, Order F20-54, 2020 BCIPC 63 (CanLII) at para. 56 and footnote 45. Order F14-41, 2014 BCIPC 44 (CanLII) at para. 22, citing Order 02-56, 2002 CanLII 42493 (BCIPC) at para. 63.

⁶⁴ Order F10-21, 2010 BCIPC 32 (CanLII) at para. 24.

⁶⁵ Information located on pp. 1-14 of the records.

⁶⁶ Information located on pp. 16-17 of the records.

⁶⁷ Information located on pp. 766-767 of the records.

⁶⁸ For example, information located on pp. 1255-1262 and 1326-1346 of the records.

- Emails involving a named third party and others or emails between University employees about this third party.⁶⁹

[68] I am satisfied that s. 22(4)(e) applies to the names of several individuals who worked as a sessional instructor.⁷⁰ It is clear that the individuals named in these records were public body employees since they previously worked for the University. I find the disclosure of this information would only reveal that these individuals previously taught for the University in a specific semester.

[69] However, I find s. 22(4)(e) does not apply to the rest of the information. Given the context in which this information appears, I find its disclosure would reveal more than just the fact that these individuals were public body employees and their titles and positions. For instance, I find the disclosure of the names in the seniority list would also reveal an individual's seniority ranking amongst the other sessional instructors listed in this document.

[70] I also find disclosing the names in the email correspondence would reveal who was offered a teaching position and other personal details. Likewise, I am satisfied disclosing the names withheld from the "1197 Master SI Applicant List" would reveal additional information about the named individuals such as the positions they applied for in a particular semester and who they were competing against for those positions.

[71] For similar reasons, I also find s. 22(4)(e) does not apply to the name and identifying information of the employee that the University says was receiving a "medical accommodation."⁷¹ I agree with the University that the disclosure of the employee's name and other identifying information would reveal personal details about them. For example, considering other available information in the records, it would be easy to determine that a workplace accommodation was made for this named individual because of a medical condition. As a result, I conclude s. 22(4)(e) does not apply to this information.

Disclosure of information about a degree - s. 22(4)(i)(ii)

[72] Based on my review of the disputed records, I find s. 22(4)(i)(ii) is relevant to some of the information at issue. It reads:

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

...

(i) the disclosure, in respect of

⁶⁹ For example, information located on pp. 1072, 1207 (repeated on pp. 1210, 1213) of the records.

⁷⁰ Information located on pp. 766-767 of the records.

⁷¹ University's initial submission at para. 49.

...
(ii) a degree, a diploma or a certificate,

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

- (iii) the name of the third party to whom the item applies;
- (iv) what the item grants or confers on the third party or authorizes the third party to do;
- (v) the status of the item;
- (vi) the date the item was conferred or granted;
- (vii) the period of time the item is valid;
- (viii) the date the item expires, or

[73] In order for s. 22(4)(i)(ii) to apply, the information must meet the following two criteria: (1) it must be about a degree, diploma or certificate, and (2) reveal the type of information listed in s. 22(4)(iii) - (viii).⁷²

[74] The University withheld a list of student names in an email about “October 2019 Convocation.”⁷³ The University disclosed the following information in the email: (1) the students completed their program requirements and earned their degree in the Summer 2019 term; (2) the student names are separated into two lists: one for “PhD” students and one for “MSc” students; and (3) the degrees will be awarded to the students during convocation on Friday October 11, 2019.

[75] I find the first criterion is met because the withheld information is clearly about a degree. The email is about which students completed their program requirements and earned their degree in the Summer 2019 term.

[76] I am also satisfied the second criterion is met because disclosing the student names would reveal the name of the third party to whom the degree applies, what type of degree was granted or conferred on the third party and the date the degree was conferred or granted to the third party. As a result, I find s. 22(4)(i)(ii) applies to the student names in the email about October 2019 Convocation and disclosing this information would not be an unreasonable invasion of third-party personal privacy under s. 22(1).

[77] I have considered the other types of information and circumstances listed under s. 22(4) and find no other provision applies.

⁷² Order F21-65, 2021 BCIPC 76 (CanLII) at para. 129. Although the analysis in Order F21-65 was regarding s. 22(4)(i)(i), I find it applies equally to s. 22(4)(i)(ii).

⁷³ Information located on p. 1170 (repeated on p. 1172) of the records.

Section 22(3) – presumptions in favour of withholding

[78] The third step in the s. 22 analysis is to determine whether any of the presumptions in s. 22(3) apply. Section 22(3) creates a rebuttable presumption that disclosing personal information of a certain category or in certain circumstances would be an unreasonable invasion of third-party personal privacy.

[79] The applicant and Third Party B did not identify any s. 22(3) presumptions that may apply. However, the University and Third Party A submit one or more of the following presumptions under s. 22(3) apply in this case: s. 22(3)(a) (medical condition or history); s. 22(3)(d) (employment or educational history); and s. 22(3)(g) (personal or personnel evaluations). I will consider each of these provisions below.

Medical condition or history – s. 22(3)(a)

[80] Section 22(3)(a) states 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 a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation.

[81] The University submits some of the withheld information discusses “a third party’s workplace accommodations related to a medical condition.”⁷⁴ It does not identify where this information is located in the records, but submits the withheld information reveals the third party’s medical history and, therefore, s. 22(3)(a) applies.

[82] Third Party A cites s. 22(3)(a) in their submission, but made no arguments about this presumption. However, it did identify what information it thinks the presumption under s. 22(3)(a) applies to in the records.⁷⁵ After reviewing this information, I understand Third Party A is arguing s. 22(3)(a) applies to any information about employee absences for health-related reasons. Third Party A also appears to support the University’s submission that any reference to a third party’s workplace accommodation falls under s. 22(3)(a).

[83] I find s. 22(3)(a) applies to some of the information at issue. As noted by the University, some of the withheld information discusses a third party’s workplace accommodations because of a medical condition. I can see that some of this information reveals details about the third party’s medical condition or

⁷⁴ University’s initial submission at para. 52.

⁷⁵ Schedule “A” of Third Party A’s initial submission citing pp. 27, 33, 35, 40, 44, 48, 51-52, 262, 294, 324, 1096, 1099, 1102, 1105, 1221 of the records.

history.⁷⁶ I am, therefore, satisfied that the presumption under s. 22(3)(a) applies to this information.

[84] However, there is other information in the records that only identifies there is a workplace accommodation and does not reveal any personal details about the third party's medical condition or history.⁷⁷ As an example, the University withheld email discussions between various University employees about the accommodation or information about arrangements made to accommodate the third party, but this information does not reveal details about their medical condition or history.⁷⁸ Therefore, I conclude s. 22(3) does not apply to this information.

[85] I can also see the University withheld any reference to an employee being away from work for health-related reasons. I am satisfied s. 22(3)(a) applies to some of this withheld information because it reveals a third party's symptoms or details about a medical condition.⁷⁹ However, the rest of this information does not reveal anything about a third party's medical condition or history. It simply indicates that an employee was absent from work because of health reasons or makes reference to the fact without divulging any medical or health details about the third party.⁸⁰ As a result, I find the presumption under s. 22(3)(a) does not apply to this information.

Employment or educational history - s. 22(3)(d)

[86] Section 22(3)(d) creates a rebuttable presumption against disclosure where the personal information relates to the employment, occupational or educational history of a third party. Previous OIPC orders have found that the term "employment history" may apply to the contents of a resume or certain information in a personnel file, the details of disciplinary action taken against employees, performance appraisals of employees and information that reveals a third party's workplace behavior or actions in the context of a workplace complaint investigation involving that third party.⁸¹

[87] The University submits s. 22(3)(d) applies to the following information in the records: (1) employee correspondence about a workplace complaint or about another individual's workplace actions or behaviour in the context of a workplace complaint; and (2) an employee's workplace accommodations due to a medical

⁷⁶ For example, information located on pp. 1040, 1041, 1049, 1063, 1068, 1069 of the records.

⁷⁷ For example, information located on pp. 27, 33 (repeated on pp. 35, 40, 44, 48, 52, 1096, 1099, 1102, 1105, 1221), 51, 197 of the records.

⁷⁸ For example, information located on pp. 197, 1017, 1040, 1041, 1048, 1071 of the records.

⁷⁹ For example, information withheld on pp. 262, 294, 1037 and 1038 of the records.

⁸⁰ For example, information withheld on pp. 262, 294, 324, 788, 789, 1012, 1021, 1038 of the records.

⁸¹ Order F14-41, 2014 BCIPC 44 (CanLII) at paras. 45-46. Order F10-21, 2010 BCIPC 32 (CanLII) at paras. 23-24. Order 01-53, 2001 CanLII 21607 at para. 32.

condition and performance complaints about the employee related to those accommodations.⁸² It does not identify where this information is located in the records; however, relying on previous OIPC orders, the University says this information qualifies as employment history and, therefore, s. 22(3)(d) applies.⁸³

[88] Third Party A also submits s. 22(3)(d) applies to information in the records that arises from an investigation into the Grievance, a “harassment complaint” lodged against the applicant to the University’s Human Rights Office and the applicant’s complaint about how the Director of the Human Rights Office (Director) handled the harassment complaint against him.⁸⁴ Third Party A identified where some of this information is located in the disputed records.⁸⁵ Third Party A submits s. 22(3)(d) applies to that information, including employment information about a third party which does not involve the applicant.⁸⁶

[89] I have considered the information at issue, including the information identified by Third Party A in their submission. For the reasons that follow, I find only some of this information would qualify as a third party’s employment history under s. 22(3)(d).

[90] Section 22(3)(d) applies to descriptive information about a third party’s behavior or actions in the context of a workplace complaint investigation involving that third party.⁸⁷ I find some of the withheld information reveals that kind of information about a third party. For instance, the University withheld some information that is an opinion or description about the former Chair and their actions during the events identified in the Grievance.⁸⁸

[91] As another example, the University withheld the Director’s response to the applicant’s allegations that the Director inappropriately shared information about the harassment complaint with another named individual.⁸⁹ I am satisfied s. 22(3)(d) applies to this information since it describes the Director’s workplace behaviour or actions in the context of an investigation into the Director’s alleged wrongdoing.

⁸² University’s initial submission at paras. 55-56.

⁸³ University’s initial submission at paras. 53-54, citing Order F22-07, 2022 BCIPC 7 at paras. 41-43 and Order F20-38, 2020 BCIPC 44 at para. 79.

⁸⁴ Third Party A initial submission at paras. 6-7.

⁸⁵ Third Party A provided a chart (located at “Schedule A” of their initial submission) which they says illustrates the type of personal information s. 22(3)(d) applies to.

⁸⁶ Third Party A initial submission at paras. 34-37.

⁸⁷ Order F20-13, 2020 BCIPC 15 (CanLII) at para. 54. Order 01-53, 2001 CanLII 21607 at paras. 32 and 41.

⁸⁸ For example, information located on pp. 84, 85 and 205 of the records.

⁸⁹ For example, information located on p. 600 of the records.

[92] I am also satisfied that s. 22(3)(d) applies to information about a third party's workplace accommodations. I find s. 22(3)(d) applies to some of this information because it reveals details about the third party's work history such as what was done to accommodate this third party so they could complete their work duties.⁹⁰ I also find s. 22(3)(d) applies to what the applicant and other University employees said about this third party's work performance.⁹¹ Consistent with previous orders, I am satisfied this information relates to the third party's employment history under s. 22(3)(d) since it reveals evaluative comments and complaints about this third party's work performance.⁹²

[93] I also find s. 22(3)(d) applies to some information that reveals the leave entitlement of the employee who was receiving the workplace accommodation.⁹³ Previous OIPC orders have found that information about an employee's leave entitlement relates to employment history under s. 22(3)(d).⁹⁴ I agree with that approach. I am satisfied s. 22(3)(d) applies to this information because it reveals details about the employee's entitlement to a specific type of leave.

[94] I also conclude s. 22(3)(d) applies to information about a number of third parties who taught at the University, were offered teaching positions or who were seeking employment with the University.⁹⁵ This information includes discussions between University employee's about several individuals and matters related to their employment with the University.⁹⁶ As noted by Third Party A, I can see this information is not about the applicant nor is it about any of the disputes involving the applicant. Without revealing any of that information, I am satisfied that it discloses the third party's name and details about their employment or potential employment with the University.

[95] However, I am not satisfied s. 22(3)(d) applies to the rest of the information withheld by the University since it has nothing to do with a third party's work history, work performance or their actions related to a workplace complaint. For example, I find s. 22(3)(d) does not apply to any of the information about the harassment complaint filed against the applicant since this was a personal, non-work dispute between the applicant and a named third party. Although some of the alleged incidents occurred on campus, the dispute itself was of a personal nature and not a workplace complaint nor is the information part of a workplace investigation. Therefore, I conclude s. 22(3)(d) does not apply to this information.

⁹⁰ For example, information located on p. 1165 of the records.

⁹¹ For example, information located on p. 84-85, 1074, 1082, 1245, 1292 of the records.

⁹² For example, Order F21-32, 2021 BCIPC 40 (CanLII) at para. 98.

⁹³ For example, information located on p. 1207 of the records.

⁹⁴ Order F20-20, 2020 BCIPC 23 (CanLII) at paras. 130-131 of the records.

⁹⁵ For example, emails located on pp. 1255-1262 of the records.

⁹⁶ For example, information located on pp. 1173-1176, 1323, 1326-1334, 1379-1380 of the records.

[96] As another example, Third Party A argues that s. 22(3)(d) applies to “the actions and emotional state of employees arising from the incidents asserted in the Grievance.”⁹⁷ However, some of the information cited by Third Party A only shows what a named third party said, did or thinks about the fact that the applicant submitted a grievance.⁹⁸ It does not reveal anything about the workplace actions and behaviours of the third party during the actual events underpinning the Grievance. Furthermore, some of it has nothing to do with the actual allegations in the Grievance itself and instead focuses on a different matter raised by that third party.⁹⁹ I, therefore, conclude s. 22(3)(d) does not apply to this type of information.

[97] As well, the University withheld information that reveals the scheduling information of several third parties, including when they will be available for meetings and discussions or when they are away.¹⁰⁰ Previous OIPC orders have found that s. 22(3)(d) does not apply to this type of information because it reveals nothing about a third party’s leave entitlements. Specifically, s. 22(3)(d) does not apply to information that describes how an employee spent their vacation, factual statements about a third party’s whereabouts and generic details about when various individuals went on vacation or were not in the office.¹⁰¹ I agree with that approach and find the information here is only about a person’s whereabouts such as their schedule and availability. Therefore, without more, I find this type of information is not sufficiently connected to a person’s employment so as to constitute their employment history under s. 22(3)(d).

[98] I have focused so far on a third party’s employment history, but the presumption under s. 22(3)(d) also applies to a third party’s educational history. The University made no arguments about this presumption; however, Third Party A submits s. 22(3)(d) applies to “personal information respecting a third party’s educational history.”¹⁰²

[99] I am satisfied some of the withheld information reveals the educational history of multiple third parties. For example, I can see there were numerous emails between students and University employees or between University employees regarding grade changes that needed to be made for a course taught by the applicant.¹⁰³ The University withheld information in these emails that reveals the student’s identity and their comments such as the student’s name, email address, student ID, their current or revised grade and what they said about their grades. There is also other information about a student’s academic

⁹⁷ Third Party A initial submission at para. 34.

⁹⁸ For example, information located on pp. 35, 40, 43, 47 of the records.

⁹⁹ For example, information located on pp. 997-998 of the records.

¹⁰⁰ For example, information located on pp. 704-728, 801, 803, 1225, 1229 of the records.

¹⁰¹ F20-38, 2020 BCIPC 44 at paras. 77 and 79, Order F20-20, 2020 BCIPC 23 (CanLII) at para. 131, Order F21-32, 2021 BCIPC 40 (CanLII) at para. 101.

¹⁰² Third Party A initial submission at para. 38.

¹⁰³ For example, information located on pp. 524, 536, 696-697, 729, 730 of the records.

transcripts.¹⁰⁴ I am satisfied the presumption under s. 22(3)(d) applies to this information since it relates to a third party's educational history.

[100] However, there is some information that does not disclose any educational details and information about a third party. For instance, the University withheld information in an email between a University employee and a student that does not reveal any information about that student's educational history. It merely consists of the passing along of information that may be of interest to the University employee and is unrelated to any grading issues.¹⁰⁵ Therefore, I am not satisfied that the presumption under s. 22(3)(d) applies to this information.

Personal or personnel evaluations - s. 22(3)(g)

[101] Section 22(3)(g) creates a rebuttable presumption against the disclosure of personal information that consists of personal recommendations or evaluations, character references or personnel evaluations about a third party. Previous OIPC orders have found s. 22(3)(g) applies to formal evaluations of a third party such as a formal performance review.¹⁰⁶

[102] The University submits s. 22(3)(g) applies to information in the records about "complaints and opinions about the performance of an employee by the employee's supervisor."¹⁰⁷ It says some of the evaluative comments about this employee were made by the applicant. The University did not identify where this information is located in the responsive records, but submits s. 22(3)(g) applies to this information because it is a performance review of an employee.

[103] Based on my review of the records, I can see that some of the withheld information consists of evaluative comments and complaints about an identifiable third party's work performance.¹⁰⁸ I found above that s. 22(3)(d) applies to this information because it relates to a third party's employment history. However, I am not satisfied that the presumption under s. 22(3)(g) also applies.

[104] In order for information to be considered a personal or personnel evaluation, there must be a formal evaluation of an individual's performance.¹⁰⁹ The evaluative comments were not provided during a formal performance review of the third party, but were instead given or shared between University employees related to other matters such as work accommodations for the third party and discussions about the Grievance. Therefore, I find the information at issue here lacks the formality required to qualify as a personal or personnel

¹⁰⁴ Information located on p. 1404 of the records.

¹⁰⁵ Information located on p. 560 (repeated on pp. 770-772, 773-775, 778-779, 781-782, 783-784, 786-787) of the records.

¹⁰⁶ For example, Order F19-41, 2019 BCIPC 46 (CanLII) at para. 63.

¹⁰⁷ University's initial submission at paras. 58-59.

¹⁰⁸ For example, information located on pp. 84-85, 1074, 1082, 1245, 1292 of the records.

¹⁰⁹ Order 01-07, 2001 CanLII 21561 at paras. 21-22.

evaluation for the purpose of s. 22(3)(g). As a result, I conclude the presumption under s. 22(3)(g) does not apply to this information or any of the other information withheld in the records.

[105] The parties did not identify any other s. 22(3) presumptions that may apply and I am satisfied there are no other s. 22(3) presumptions that are relevant in this case.

Section 22(2) – relevant circumstances

[106] The final step in the s. 22 analysis is to consider the impact of disclosing the personal information at issue in light of all relevant circumstances. Section 22(2) requires a public body to consider the circumstances listed under ss. 22(2)(a) to (i) and any other relevant circumstances to determine whether disclosing the personal information at issue would be an unreasonable invasion of a third party's personal privacy. One or more of these circumstances may rebut the presumptions that I found apply to some of the information at issue under ss. 22(3)(a) and (d).

[107] The parties submit one or more of the following s. 22(2) circumstances or other factors are relevant in this case:

- Subjecting a public body's activities to public scrutiny – s. 22(2)(a).
- A fair determination of the applicant's right – s. 22(2)(c).
- Unfairly exposing a third party to financial or other harm – s. 22(2)(e).
- Information supplied in confidence – s. 22(2)(f).
- Unfair damage to a third party's reputation – s. 22(2)(h).
- The applicant's existing knowledge of the information at issue.
- The sensitivity of the personal information.

[108] I have also considered whether there are any other circumstances, including those listed under s. 22(2), that may apply. Based on my review of the withheld information, I find there are two other relevant circumstances to consider. Some of the information at issue is the applicant's personal information or the information is already disclosed in public documents.

[109] I will consider all of the above-noted circumstances below. There were no other relevant circumstances for consideration.

Subjecting a public body's activities to public scrutiny – s. 22(2)(a)

[110] Section 22(2)(a) requires a public body to consider whether disclosing the personal information is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny. Where

disclosure would foster the accountability of a public body, this may be a relevant circumstance that weighs in favour of disclosing the information at issue.¹¹⁰

[111] The applicant submits s. 22(2)(a) is a relevant circumstance in this case because he says University employees and officials allegedly made negative statements about him with the intent to cause him “emotional and reputational damage.”¹¹¹ He accuses certain University employees of interfering in his professional and personal life, specifically his friendship with a named individual. The applicant alleges these University employees disapproved of his friendship and conspired to harm that relationship and his academic career.

[112] The applicant also submits the University is attempting to discredit him and conspire against him because he exposed the University’s support for a “terrorist regime.”¹¹² The applicant alleges the University commenced a conspiracy campaign against him after he reported a security concern and says some of the information at issue is related to the “institutional mistreatment” that he suffered.¹¹³ By refusing to provide him with access to the requested records, the applicant alleges the University is now attempting to cover-up any evidence there was a conspiracy and defamation campaign against him.

[113] Therefore, the applicant submits s. 22(2)(a) is a relevant circumstance in this case because disclosure will hold the University accountable for its alleged “support for agents of a terrorist regime...matters of procedural malpractices, lack of due process, and the institutional abuse of public resources to satisfy the illegitimate personal desires and intents of certain individuals within the SFU administration and community.”¹¹⁴

[114] Third Party A and B submit no public interest would be served by disclosing the information at issue. They argue that it would not improve or foster the accountability of a public body or subject a public body’s activities to public scrutiny to disclose “the expression of the personal feelings and/or concerns of identifiable third parties.”¹¹⁵

[115] Third Party A also submits it would not add to the public’s ability to scrutinize a public body’s activities by disclosing the personal information of students and “personal information relating to a third party’s participation in a

¹¹⁰ Order F05-18, 2005 CanLII 24734 at para. 49.

¹¹¹ Applicant’s submission at para. 1.

¹¹² *Ibid* at para. 13.

¹¹³ *Ibid* at para. 31.

¹¹⁴ *Ibid* at para. 45.

¹¹⁵ Third Party A initial submission at para. 43 (citing Order F19-27, 2019 BCIPC 29 (CanLII) at paras. 58-59) and Third Party B initial submission at para. 18 (also citing Order F19-27).

workplace investigation.¹¹⁶ Therefore, both Third Party A and B submit s. 22(2)(a) is not a relevant factor or, alternatively, it does not favour disclosure.

Analysis and findings on public scrutiny - s. 22(2)(a)

[116] One of the purposes of s. 22(2)(a) is to make public bodies more accountable.¹¹⁷ Therefore, for s. 22(2)(a) to apply, the disclosure of the specific information at issue must be desirable for subjecting the public body's activities to public scrutiny as opposed to subjecting an individual third party's activities to public scrutiny.¹¹⁸

[117] Based on my review of the records, I am satisfied disclosing some of the withheld information would be desirable for subjecting the University's activities to public scrutiny. I find the University has withheld some information that would shed light on how grading disputes with an instructor should be handled and whether or not that process was followed in a particular case involving the applicant.¹¹⁹ Consistent with a prior order, I conclude accountability under s. 22(2)(a) requires the public to see "when public bodies are following policy, procedures and law, as well as when they are not."¹²⁰ Therefore, I find s. 22(2)(a) is a factor which weighs in favour of disclosing this information.

[118] However, I find s. 22(2)(a) does not apply to the rest of the information at issue. I understand the applicant has questions about how the University responded to his security concerns and whether there was an alleged conspiracy and defamation campaign against him. I am not satisfied that disclosing any of the information at issue would shed light on the University's activities in relation to the applicant's concerns.

[119] At most, some of the information at issue would subject an individual third party's activities to public scrutiny. For instance, the University withheld what an employee said and did in regard to a certain matter involving the applicant.¹²¹ I conclude this information only highlights the employee's actions rather than the activities of the University. As noted, s. 22(2)(a) does not apply where the disclosure of the information at issue would only result in the public scrutiny of an individual third party's activities.¹²² Therefore, I find s. 22(2)(a) is not a factor that weighs in favour of disclosing this information.

¹¹⁶ Third Party A initial submission at para. 43 (citing Order F19-27, 2019 BCIPC 29 (CanLII) at paras. 58-59) and para. 44.

¹¹⁷ Order F18-47, 2018 BCIPC 50 (CanLII) at para. 32.

¹¹⁸ Order F16-14, 2016 BCIPC 16 (CanLII) at para. 40.

¹¹⁹ For example, information located on pp. 477, 743-744, 745 of the records.

¹²⁰ Order F21-49, 2021 BCIPC 57 (CanLII) at para. 34.

¹²¹ Information located on pp. 167-169 of the records.

¹²² Order F16-50, 2016 BCIPC 55 (CanLII) at para. 48.

Fair determination of the applicant's rights – s. 22(2)(c)

[120] Section 22(2)(c) applies to personal information that is relevant to a fair determination of the applicant's rights. Previous OIPC orders have said that all four parts of the following test must be met in order for s. 22(2)(c) to apply:

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
3. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.¹²³

[121] The applicant submits s. 22(2)(c) applies in this case and that the withheld information is required for the following seven existing or contemplated legal actions:

- 1) An appeal to the Supreme Court of Canada: A judge of the BC Supreme Court dismissed the applicant's lawsuit against the University and a named individual for lack of jurisdiction on the basis the dispute was governed by a collective agreement (the SFU Action). The BC Court of Appeal upheld this decision. The applicant says he plans to appeal the dismissal of his lawsuit to the Supreme Court of Canada.
- 2) An injunction application: As part of the SFU Action, the judge generally adjourned all applications pending the outcome of the University's jurisdictional challenge, including an application to stop the applicant from posting and publishing certain material.
- 3) Civil claim against the Burnaby Beacon: The applicant provided evidence that he filed a civil claim against a journalist and the Burnaby Beacon, a news organization, for allegedly making and publishing false defamatory statements about him.

¹²³ Order 01-07, 2001 CanLII 21561 at para. 31.

- 4) A complaint to the Canadian Judicial Council: The applicant says he submitted a complaint to the Canadian Judicial Council about the BC Supreme Court judge who decided the SFU Action. Among other things, the applicant alleges the presiding judge engaged in misconduct and was biased.
- 5) Defamation action: The applicant plans to sue any individuals who made defamatory statements about him. He submits the records at issue are required to establish whether “there is a good cause of action in defamation against any SFU employee for any undisclosed statement made during or around the time of any of the Records came into existence.”¹²⁴
- 6) Political refugee claim: The applicant provided evidence which shows he submitted a claim to the Immigration and Refugee Board of Canada for refugee protection in Canada. The applicant submits the records at issue are required to support his refugee protection claim.
- 7) Law Society of BC complaint: The applicant plans to submit a complaint to the Law Society of BC about two named lawyers who represented the University in the SFU Action. The applicant alleges the lawyers engaged in misconduct and “acted in contravention of their duty regarding the discovery of documents.”¹²⁵

[122] The University submits the applicant has failed to prove all four parts of the s. 22(2)(c) test are satisfied. The University provided detailed submissions on each of the applicant’s listed claims.¹²⁶ To summarize those arguments, the University accepts that the applicant’s claims would satisfy part one of the test since they involve legal rights. However, the University submits the applicant has failed to prove all of his claims would satisfy parts three and four and, sometimes, part two of the legal test. In particular, the University says the applicant has not shown how the personal information in the disputed records has any bearing on the determination of his rights or how it is necessary in order to prepare for any of the proceedings listed above or to ensure a fair hearing.

[123] Third Party A and Third Party B also submit the applicant has failed to demonstrate how the personal information at issue is relevant to a fair determination of the applicant’s legal rights. Third Party A did not address parts one or two of the test, but supports the University’s submission that the applicant has failed to prove parts three and four of the s. 22(2)(c) test are satisfied.¹²⁷

¹²⁴ Applicant’s submission at para. 25.

¹²⁵ *Ibid* at para. 28.

¹²⁶ University’s reply submission at paras. 16-62.

¹²⁷ Third Party A reply submission at paras. 8-9.

Third Party B adopts and relies on the submissions made by the University and by Third Party A regarding s. 22(2)(c).

[124] I will address the four elements of the s. 22(2)(c) test below.

Part one: legal right

[125] Part one of the s. 22(2)(c) test requires the right in question be a legal right drawn from the common law or a statute as opposed to a non-legal right based on moral or ethical grounds. I am satisfied the applicant's seven claims involve a legal right such as the right to appeal, the right to sue for defamation and the right under a statute to submit a complaint to a designated regulatory or oversight body. The University does not dispute that this part of the test is satisfied.

Part two: proceeding under way or contemplated

[126] Part two of the test requires the legal right be related to a proceeding which is either under way or contemplated. In terms of a contemplated proceeding, previous OIPC orders have found an applicant only needs to establish that they are contemplating (*i.e.* intently considering) the commencement of a proceeding.¹²⁸ It is not necessary for an applicant to have already made a decision to commence legal proceedings to satisfy this requirement.¹²⁹ However, part two of the test requires the proceeding in question must not already be completed.

[127] The University accepts this part of the test may be satisfied for five of the applicant's seven claims. The University submits the applicant has failed to show the current status of two claims: the appeal to the Supreme Court of Canada (SCC) and the injunction application. Citing SCC statutory deadlines, the University says the applicant has not proven that he filed his appeal to the SCC in time or that he was granted an extension to do so.¹³⁰ Regarding the injunction application, the University submits its status is also unknown given the SFU Action was upheld by the BC Court of Appeal and because the applicant does not address its present status in his submission.

[128] I am satisfied that most of the applicant's claims are either contemplated or under way. In particular, contrary to the University's submission, I find there is evidence the injunction application has not been completed. The applicant provided a copy of the BC Supreme Court decision in his submission. The judge noted the defendants are at liberty to reschedule the injunction application and

¹²⁸ For example, Order F16-36, 2016 BCIPC 40 (CanLII) at para. 50.

¹²⁹ Order F16-36, 2016 BCIPC 40 (CanLII) at para. 47.

¹³⁰ University's reply submission at paras. 19-23.

that the judge would remain on the case and hear the application at that time. Therefore, I am not satisfied the injunction application has been completed.

[129] However, I agree with the University that there is insufficient evidence to establish that the appeal to the SCC is under way. The applicant provided no evidence to show that he filed his appeal in the allotted time or that he was given an extension. Furthermore, if the applicant has missed the appeal deadline, then he is unable to commence those proceedings. Therefore, the legal right would not be related to a contemplated proceeding for the purposes of s. 22(2)(c). An applicant cannot contemplate a proceeding under s. 22(2)(c) that they are legally barred from starting because of a missed deadline.

[130] To summarize, except for the appeal to the SCC, I am satisfied the legal rights in the applicant's claims are related to a proceeding which is either under way or contemplated. Since all four parts of the test must be met, it is not necessary for me to decide if the appeal to the SCC meets part three and four of the test. Therefore, I will focus the remaining analysis on the applicant's six other claims.

Part three: information has a bearing on the legal right

[131] Part three of the s. 22(2)(c) test requires that the personal information sought by the applicant have some bearing on, or significance for, a determination of the legal right in question. In other words, the applicant must prove there is a "demonstrable nexus" or connection between the withheld information and the legal right.¹³¹

[132] I find the legal rights engaged here are the following:

- to sue for defamation;
- to present a case at a future injunction application;
- to complain to a designated regulatory or oversight body; and
- to seek refugee protection in Canada.

[133] I will first consider whether there is a connection between the withheld information and the applicant's legal right to sue for defamation. There are three elements a plaintiff must prove in order to succeed in a defamation action: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published,

¹³¹ Order F16-36, 2016 BCIPC 40 (CanLII) at paras. 52 and 62.

meaning they were communicated to at least one person other than the plaintiff.¹³²

[134] The personal information at issue includes comments and opinions made by a number of individuals to others about the applicant and his actions.¹³³ To be clear, I make no findings on whether any of those comments or opinions are in fact defamatory, but I find the applicant's ability to review this information clearly has significance for a determination of the applicant's legal rights regarding any potential or current defamation action involving those individuals. This information is relevant to the applicant's ability to learn who made comments about him and what was said. Therefore, I am satisfied the third part of the s. 22(2)(c) is met for this information.

[135] The next item I will consider is whether there is a connection between the withheld information and the applicant's legal right to present his case at a future injunction application. As part of the SFU Action, the defendants sought an injunction to prevent the applicant from distributing and publishing material online about certain individuals. According to the court decision, the parties agreed to a consent order where the applicant would stop posting these materials until the injunction application and the jurisdictional challenge was heard.

[136] After the hearing and determination of the jurisdictional challenge, the judge in the SFU Action concluded the defendants are at liberty to reschedule the injunction application against the applicant and that the judge would remain on the case and hear the application at that time. The applicant submits he needs the withheld information in order to respond to the injunction application if the defendants pursue it and because there is no other way to obtain the information.¹³⁴

[137] The judge's decision in the SFU Action details what information and materials would be relevant to a future injunction application, specifically what information the applicant had posted about certain individuals. In my opinion, any future injunction application made by the defendants in the SFU Action would be based on those materials or any new information that may be relevant. Therefore, it is not clear and the applicant does not sufficiently explain how the information at issue in this inquiry has any bearing on, or significance for, a determination of the applicant's right to present his case at any future injunction application. As a result, I am not satisfied that the third part of the s. 22(2)(c) test is met when it comes to the injunction application.

¹³² *Grant v. Torstar Corp.*, 2009 SCC 61 (CanLII) at para. 28. Applicant's submission at paras. 24 and 25, citing *Christian Advocacy Society of Greater Vancouver v. Arthur*, 2013 BCSC 1542 (CanLII) with test set out at para. 45.

¹³³ For example, information located on pp. 167-169, 574, 917 of the records.

¹³⁴ Applicant's submission at para. 38(b).

[138] I will next consider whether there is a connection between the withheld information and the applicant's legal right to complain to a designated regulatory or oversight body. The applicant provided a copy of a complaint that he filed with the Canadian Judicial Council against the BC Supreme Court judge who decided the SFU Action. The complaint partly focuses on what the judge said about him and his pleadings in the court decision, including how the judge allegedly expressed disbelief that he had been defamed.¹³⁵ The applicant submits the withheld information is relevant, in part, to prove the judge was wrong for not believing him and that the judge's opinions and comments were inappropriate.

[139] It is evident the applicant already knows the identity of the judge and it seems to me that any relevant information about what the judge said about the applicant is already available in the judge's decision. Therefore, without more, it is unclear how the withheld information at issue in this inquiry is connected to the determination of the applicant's complaint to the Canadian Judicial Council about the alleged misconduct of the judge. Ultimately, there is insufficient explanation or evidence to assist me in seeing the connection here.

[140] The applicant also says he plans to file a complaint to the Law Society of BC against two named lawyers who represented the University in the SFU Action. The applicant alleges the lawyers blocked the discovery process by claiming it was too expensive to produce the documents requested by the applicant.¹³⁶ Therefore, the applicant alleges the lawyers "acted in contravention of their duty regarding the discovery of documents."¹³⁷ He submits the withheld information is relevant because he needs the disputed records as evidence to address this part of the lawyers' misconduct.

[141] However, I find there is insufficient explanation or evidence to establish a connection between the withheld information at issue in this inquiry and any complaint the applicant may file about the conduct of the two lawyers. It is not clear how the withheld information is relevant when none of it is about the lawyers or their conduct. Therefore, I am not persuaded the information at issue in this inquiry has any bearing on a determination of the applicant's legal right to submit a complaint about the lawyers with the Law Society of BC.

[142] The final item to consider under the third part of the s. 22(2)(c) test is whether there is a connection between the withheld information and the applicant's legal right to seek refugee protection in Canada. The applicant provided a copy of his refugee protection claim which alleges he was persecuted in his originating country and that he was mistreated in Canada by the University for exposing people who supported the ruling regime of his originating country.

¹³⁵ Applicant's submission at para. 22.

¹³⁶ *Ibid* at para. 15.

¹³⁷ *Ibid* at para. 28.

The applicant says he suffered “institutional mistreatment” from the University and that this treatment is an integral part of his refugee claim.¹³⁸

[143] I understand the applicant is arguing that he needs the withheld information to show he is being persecuted in Canada by the University. However, refugee protection claims are about establishing a genuine fear of persecution in your originating country rather than the country from which you are seeking refuge and protection. Therefore, without more, it is unclear how the withheld information has some bearing on, or significance for, a determination of the applicant’s refugee claim that he must remain in Canada for his own well-being.

[144] To summarize, I find part three of the s. 22(2)(c) test is satisfied for only one of the applicant’s legal rights and none of the others. I conclude the personal information sought by the applicant has some bearing on, or significance for, a determination of the applicant’s legal right to sue for defamation. I will focus the remaining analysis on this legal right.

Part four: necessary to prepare for proceeding or ensure a fair hearing

[145] Part four is about determining whether the personal information is necessary in order to prepare for the proceeding or to ensure a fair hearing. The applicant must prove there is a connection between the personal information at issue and the proceeding that is under way or contemplated.¹³⁹

[146] In terms of the applicant’s legal right to sue for defamation, there are two proceedings that are relevant:

1. A civil claim against the Burnaby Beacon and a journalist; and
2. An anticipated lawsuit against any individuals (yet to be identified) who made a defamatory statement about the applicant.

[147] I will first consider the civil claim already under way against the Burnaby Beacon and a journalist. The applicant provided a filed copy of a notice of civil claim which shows the applicant sued them for making and publishing defamatory statements about him. The applicant says the defamatory statements are directly related to the SFU Action. He submits the disputed records are relevant because he wants to refer to them at trial.

[148] However, I am not persuaded the withheld information is necessary to prepare for this proceeding or to ensure a fair hearing. I have considered the three elements that a plaintiff must prove in order to succeed in a defamation

¹³⁸ Applicant’s submission at para. 31.

¹³⁹ Order F16-36, 2016 BCIPC 40 (CanLII) at para. 62.

action. It is not clear how the withheld information at issue in this inquiry is necessary to show that the journalist and the Burnaby Beacon made statements about the applicant that would lower the applicant's reputation in the eyes of a reasonable person. It is important to note that none of the information at issue in this inquiry reveals what the journalist or the Burnaby Beacon said or published about the applicant to others. Instead, as the applicant's civil claim indicates, those alleged defamatory statements are found in other documents or online sources.

[149] I have also considered whether the withheld information may be related to disproving a possible defence by the defendants, but the applicant made no submissions about it and there is nothing in the civil claim or the materials before me that assists with that determination. Therefore, taking all of this into consideration, I am not satisfied there is a connection between the personal information at issue in this inquiry and the applicant's civil claim against the Burnaby Beacon and the named journalist.

[150] I will now consider the applicant's anticipated lawsuit for defamation. The applicant submits some of the information at issue is necessary to bring a defamation claim against any relevant individuals. Previous OIPC orders have taken two approaches when deciding if information is necessary for a potential lawsuit under s. 22(2)(c). One approach is to find that this fourth part of the test will not be satisfied when the applicant is able to obtain the information by another means such as court proceedings or litigation disclosure processes.¹⁴⁰

[151] However, in Order F16-36, Adjudicator Alexander rejected this restrictive approach because it would be inconsistent with the modern approach to statutory interpretation:

In my view, the approach of reading in a requirement that part four of the test is only met in situations where the FOI process is an applicant's sole way to receive the information is inconsistent with s. 22(2)(c), as interpreted using modern statutory interpretation principles. Section 22(2)(c) is about whether the *personal information* itself is necessary in order to prepare for the proceeding or to ensure a fair hearing. It is not about whether *disclosure* of the personal information through FOI is necessary for that purpose...¹⁴¹

[152] As part of his reasons, Adjudicator Alexander also concluded that "summarily dismissing s. 22(2)(c) because the applicant may be able to receive the information by another means may result in prejudice to the applicant in relation to his or her legal rights."¹⁴² As examples, he noted the following:

¹⁴⁰ For example, Order F21-19, 2021 BCIPC 24 (CanLII) at para. 33 and Order F15-50, 2015 BCIPC 53 (CanLII) at para. 28.

¹⁴¹ Order F16-36, 2016 BCIPC 40 (CanLII) at para. 56, citations omitted and emphasis in original.

¹⁴² *Ibid* at para. 59.

...Summarily rejecting s. 22(2)(c) because an applicant can likely get the information by another means may in some cases circumscribe the applicant's access rights, and, for example, result in the applicant needing to incur more time and costs to get information through another proceeding (*i.e.* it may require one or more applications and court appearances to be able to get the information in a proceeding). Further, it may fail to take into account the timing of the disclosure (*i.e.*, it may be probative for the applicant to receive information before a proceeding is commenced or before disclosure in a proceeding is required), or result in the applicant not receiving some or all of the information through disclosure processes in the relevant proceeding...¹⁴³

[153] For all the reasons given in Order F16-36, I agree with and adopt the approach taken by Adjudicator Alexander. I conclude the focus under part four of the s. 22(2)(c) test should be whether the personal information itself is necessary in order to prepare for the proceeding or ensure a fair hearing.

[154] Applying that approach, I find the applicant will need to know the identity of any individuals who made statements about him and what was said in order to prepare for the lawsuit. I also conclude this information is necessary to ensure a fair hearing of the applicant's claim against those individuals since it would be evidence in the hearing. Therefore, I am satisfied there is a connection between some of the personal information at issue and this contemplated proceeding.

Conclusion under s. 22(2)(c)

[155] To conclude, I find the s. 22(2)(c) test is met for only one of the applicant's seven listed claims. I am satisfied that some of the personal information at issue is relevant to a fair determination of the applicant's rights regarding a contemplated lawsuit against any individuals (yet to be identified) who made an allegedly defamatory statement about the applicant. Therefore, I find s. 22(2)(c) is a factor that weighs in favour of disclosing some of the information at issue.

Unfair exposure to financial or other harm – s. 22(2)(e)

[156] Section 22(2)(e) requires a public body to consider whether disclosure of a third party's personal information will unfairly expose the third party to financial or other harm. Previous OIPC orders have held that "other harm" for the purposes of s. 22(2)(e) consists of "serious mental distress or anguish or harassment."¹⁴⁴ For s. 22(2)(e) to apply though, the mental harm must go "beyond embarrassment, upset or a negative reaction to someone's behaviour."¹⁴⁵

¹⁴³ Order F16-36, 2016 BCIPC 40 (CanLII) at para. 59, citations omitted.

¹⁴⁴ Order F15-29, 2015 BCIPC 32 at para. 32.

¹⁴⁵ Order 01-15, 2001 CanLII 21569 (BC IPC) at para. 49.

[157] The University argues s. 22(2)(e) is a relevant circumstance which favours non-disclosure of the information withheld from the records. The University says the applicant has a history of publishing “threatening and misogynistic public statements online related to his disputes” with others and with the University.¹⁴⁶ It notes this history was detailed by the judge in the SFU Action as part of their reasons. Given this history, the University submits there is a real risk that any personal information obtained by the applicant through this access request may be used against the third parties to cause them further harm.

[158] Third Party A submits disclosure of the disputed records will expose them and other third parties to harm in the following ways: (1) harassment from the applicant and/or the applicant’s social media followers; (2) mental distress or anguish at the risk of, or from, such harassment; and (3) risk of physical harm from any violence that may be incited by the applicant.¹⁴⁷

[159] Third Party A also provided *in camera* submissions and an affidavit to support their position. I am unable to openly discuss that information or the arguments made in those materials, but I have taken it into account. Lastly, Third Party A submits there are no relevant factors or public interests that would outweigh the “significant harms” they say disclosure would cause to them and other third parties.¹⁴⁸

[160] The applicant questions the truthfulness of any submissions or evidence provided by Third Party A. Even though Third Party A received approval to withhold their identity from the applicant, the applicant is convinced that he knows their identity based on the materials that he can see. Based on his own assumption about their identity, the applicant accuses Third Party A of deceptive practices to further their own interest and to cover up any wrongdoing. The applicant provided examples of what he alleges is Third Party A’s deceitful behaviour.

[161] The applicant also accuses Third Party B of improper behaviour. The applicant believes he knows the identity of Third Party B. Based on that assumption, the applicant accuses Third Party B of interfering in his personal relationship with another individual and engaging in other allegedly harmful actions against him.

Analysis and findings on unfair exposure to harm - s. 22(2)(e)

[162] For the reasons that follow, I am satisfied s. 22(2)(e) is a relevant circumstance that favours withholding some, but not all, of the information at issue. The evidence shows the applicant has a history of publishing information

¹⁴⁶ University’s initial submission at para. 63.

¹⁴⁷ Third Party A initial submission at para. 48.

¹⁴⁸ *Ibid* at para. 52.

and making online statements about a number of individuals identified in the records at issue in this inquiry, including the former Chair. Furthermore, some of those online postings contain troubling comments and content. For instance, the judge in the SFU Action noted that some of the applicant's postings referenced the death of the former Chair and another named individual and included their pictures. Therefore, it is evident that those type of statements can cause serious mental distress to the individuals mentioned in the postings.

[163] I have also considered the information at issue and the *in camera* evidence. The information at issue includes personal information about a number of third parties and comments and opinions made by a number of individuals to others about the applicant and his actions, including comments made by the former Chair. It is clear to me that some of those individuals would be concerned if the applicant were to receive this information. Regarding the *in camera* evidence, I am limited in what I can say about that information. However, considering this evidence and all the other materials before me, I am persuaded that disclosing some of the information at issue would unfairly expose a third party to serious mental distress.

[164] I am aware the applicant is legally prevented from publishing any negative materials about the University and certain individuals. As previously noted, as part of the SFU Action, the parties agreed to a consent order where the applicant would stop distributing and publishing material online about the defendants and other individuals. The judge's decision notes the applicant indicated he had every intention of continuing to comply with the consent order. However, under s. 22(2)(e), it is the *exposure* to harm and not the likelihood of harm that matters.¹⁴⁹ Therefore, even though it is unlikely the applicant would distribute and publish materials about certain individuals given the consent order, the evidence as a whole satisfies me that disclosing some of the withheld information would expose certain individuals identified in the records at issue to serious mental distress. As a result, I conclude s. 22(2)(e) is a factor that favours withholding the information at issue related to these specific individuals.

[165] However, for the rest of the information at issue, there is insufficient evidence to establish that disclosing this information would expose the individuals identified in those records to serious mental distress or other harm under s. 22(2)(e). For instance, the University withheld some information about a third party and their workplace accommodation because of a medical condition. I was not provided with any evidence that the applicant posted or published harmful or negative statements online about this third party. Rather, there is information disclosed in the records that satisfies me the applicant harbours no hostility towards this third party.¹⁵⁰ As a result, I am not satisfied that disclosing

¹⁴⁹ Order 01-37, 2001 CanLII 21591 (BCIPC) at para. 42.

¹⁵⁰ Information located on pp. 166, 197 and 221 of the records.

any of the withheld information about this third party would unfairly expose this individual to harm under s. 22(2)(e).

Supplied in confidence - 22(2)(f)

[166] Section 22(2)(f) requires a public body to consider whether the personal information was supplied in confidence. In order for s. 22(2)(f) to apply, there must be evidence that an individual supplied the information and that it was done so under an objectively reasonable expectation of confidentiality, at the time the information was provided.¹⁵¹

[167] The University argues s. 22(2)(f) is a relevant circumstance which favours withholding some of the information at issue. The University submits that where a public body has a standard practice of treating information as confidential, then s. 22(2)(f) applies.¹⁵² Applying that approach, the University says it is standard practice for it to treat certain communications as confidential because the nature of those communications is sensitive and private. The University did not identify where this information is located in the records, but it submits communications where employees and students are seeking personal support or advice from “counselling services, human resources, the sexual violence support and prevention office, safety and risk services, the human rights office, the office of the ombudsperson, etc.” are kept confidential.¹⁵³

[168] Third Party A submits most of the withheld information was supplied in confidence by third parties. Third Party A cites two previous orders to argue that third parties expect personal comments and opinions about workplace matters related to an access applicant be kept confidential.¹⁵⁴ Third Party A also provided *in camera* evidence to support their position regarding s. 22(2)(f). It also argues there are no relevant factors that would outweigh any information supplied in confidence by a third party.

[169] Third Party B’s submissions focused on one specific email in the records between two University employees.¹⁵⁵ The University withheld the body of the email. Third Party B submits this information was supplied in confidence because of the “type of information” and the “circumstances under which it was supplied.”¹⁵⁶ They argue that it is clear from the record itself that the employees understood and expected their email discussion to be confidential.

¹⁵¹ 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).

¹⁵² University’s initial submission at para. 69, citing Order F22-07, 2022 BCIPC 7 (CanLII) at paras. 59 and 62.

¹⁵³ University’s initial submission at para. 68.

¹⁵⁴ Third Party A initial submission at paras. 55-56, citing Order F19-15, 2019 BCIPC 17 at paras. 86-87 and Order F17-46, 2017 BCIPC 51 at para. 22.

¹⁵⁵ Email located at p. 999 (duplicated on p. 998).

¹⁵⁶ Third Party B’s initial submission at para. 24.

[170] The applicant disputes the confidential supply of any redacted information in the records. However, for argument's sake, the applicant submits any claim of confidentiality is invalidated because it has "no legitimate purpose" and was only shared to cover up or organize a conspiracy against him.¹⁵⁷

Analysis and finding's on confidential supply - s. 22(2)(f)

[171] Based on my review of the records, I find some of the information at issue reveals information that was supplied in confidence by a third party. For example, the University withheld grading concerns and comments provided by a number of students to a University employee via email.¹⁵⁸ It also withheld a third party's comments about other matters unrelated to the applicant.¹⁵⁹ This information includes a portion of the email that is the focus of Third Party B's submissions.¹⁶⁰ Some of the withheld information also consists of a third party's thoughts or opinions regarding the applicant and his actions that was communicated by email to others.¹⁶¹ Lastly, some of this information includes information provided by a third party to the Director of the Human Rights Office regarding a harassment complaint about the applicant.¹⁶²

[172] I am satisfied the individuals involved in these communications provided this information in confidence considering the personal or private details that are revealed about them, other individuals or about matters related to the applicant. As well, given the subject matter of some communications, I accept that the third party providing the information had a reasonable expectation of confidentiality.¹⁶³ Third Party A also provided *in camera* evidence about the confidentiality of some of those communications, which I accept.¹⁶⁴ I also find the University treated this information confidentially since, from what I can see, it was only shared between the email participants or with other University employees directly involved in the subject matter of the emails.

[173] I understand the applicant challenges any claim of confidentiality because he alleges some of this information was part of a conspiracy against him. However, the analysis under s. 22(2)(f) only considers whether the personal information was supplied in confidence by a third party and not whether there was inappropriate behaviour or an improper motive. Instead, those type of

¹⁵⁷ Applicant's submission at paras. 46-47.

¹⁵⁸ For example, information located on p. 794 of the records.

¹⁵⁹ For example, information located on p. 1168 of the records.

¹⁶⁰ Information located on pp. 998 and 999 of the records.

¹⁶¹ For example, information located on pp. 40, 87, 168, 170, 279, 574, 1067, 1111, 1138 of the records.

¹⁶² For example, information located on pp. 600, 662, 675-676, 691-692 of the records. The University disclosed that it was a "harassment complaint" on pp. 661 and 662 of the records.

¹⁶³ For example, information located on pp. 168-169 of the records.

¹⁶⁴ Third Party A affidavit at para. 9.

considerations may be relevant under other factors and circumstances such as ss. 22(2)(a) (subjecting a public body's activities to public scrutiny) and 22(2)(c) (whether the information is relevant to a fair determination of the applicant's rights). Therefore, for the reasons given above, I am satisfied some of the withheld information was supplied in confidence which weighs in favour of withholding that information.

[174] However, I conclude there is other information that does not qualify as being supplied in confidence in accordance with s. 22(2)(f). Some of this information is not inherently confidential since it only reveals factual, impersonal or non-contentious information such as a person's availability or details for a meeting or a discussion.¹⁶⁵ I also find there is information that was provided by a third party with no expectation of confidentiality because the third party openly shared this information with others and there were no restrictions placed on the dissemination of this information.¹⁶⁶

[175] As well, some of the withheld information was supplied by the applicant to others.¹⁶⁷ Previous orders have found that s. 22(2)(f) "does not support withholding information supplied by an applicant because the applicant is the source of the information."¹⁶⁸ I agree with that approach since this information would already be known to the applicant as the source of the information.¹⁶⁹ As a result, I find s. 22(2)(f) is not a relevant circumstance that weighs in favour of withholding this information.

Unfair damage to a third party's reputation – s. 22(2)(h)

[176] Section 22(2)(h) requires a public body to consider whether disclosure of the personal information at issue may unfairly damage a third party's reputation. Given the applicant's practice of posting negative online comments about others, the University argues there is a real risk that any personal information that the applicant obtains may be used to further damage a third party's reputation.

[177] The University also submits "personal information related to complaints of harassment, performance reviews or complaints from a supervisor about an employee, may cause embarrassment, stigma and harm to reputation if disclosed."¹⁷⁰ It does not identify where this information is found in the records, but submits s. 22(2)(h) is a factor in favour of withholding this kind of information.

¹⁶⁵ For example, information located on pp. 210, 541, 682, 683, 684, 686, 704, 1225, 1388 of the records.

¹⁶⁶ For example, information located on p. 1037 of the records.

¹⁶⁷ For example, information located on pp. 82, 83, 84, 85, 1279, 1283, 1292-1294 of the records.

¹⁶⁸ Order F15-29, 2015 BCIPC 32 (CanLII) at para. 42.

¹⁶⁹ Order 01-53, 2001 CanLII 21607 at para. 62.

¹⁷⁰ University's initial submission at para. 66.

[178] Third Party A says the contents of the records on their own may not unfairly damage a third party's reputation; however, it argues disclosing the information at issue may incite the applicant to engage in certain behaviour which it mostly describes *in camera*.¹⁷¹ Third Party A submits this behaviour would damage a third party's reputation.

[179] Based on his own assumptions about the identities of Third Party A and B, the applicant submits it is absurd for Third Party A and B to be arguing that they will suffer reputational damage because of what they said about him in the responsive records. Instead, the applicant submits the information at issue will show how these individuals "eagerly engaged" in trying to damage his reputation and interfere in his personal relationship with a named individual.¹⁷²

Analysis and finding's on unfair damage to reputation - s. 22(2)(h)

[180] For the reasons that follow, I am not persuaded that s. 22(2)(h) is a factor that weighs in favour of withholding any of the information at issue. The University has withheld what some third parties have said about the applicant and matters related to the applicant.¹⁷³ However, it is unclear how disclosing this information could damage their reputations since it is about the applicant and impacts his reputation. If disclosed, perhaps someone may think some of the third parties' comments are inappropriate.¹⁷⁴ However, I do not accept that it would be unfair for a third party, especially a public body employee in a position of authority, to have to defend or be accountable for those comments.

[181] The University mentions some other information for which it says s. 22(2)(h) is relevant; however, it does not identify where this information is in the records. Based on my own review of the records, it is unclear how disclosing any of the withheld information might damage anyone's reputation, nor is it apparent how the alleged damage to anyone's reputation would be unfair as required under s. 22(2)(h).

[182] For example, the University says the withheld information includes complaints from a supervisor to an employee. I assume the University is referring to the applicant's comments about an identifiable third party and their work related to a course that he taught.¹⁷⁵ If so, I can see that the applicant's comments are critical of the employee's work, but not to the extent that it may be considered damaging to their reputation. As a result, I am not persuaded that

¹⁷¹ Third Party A affidavit at para. 13.

¹⁷² Applicant's submission at para. 39.

¹⁷³ For example, information located on pp. 168, 320, 361, 412, 574, 575, 749, 917, 1127 of the records.

¹⁷⁴ For example, information located on p. 574 of the records.

¹⁷⁵ For example, information located on pp. 84-85, 1006-1008 of the records.

disclosing any comments about the employee's work may unfairly damage the employee's reputation in accordance with s. 22(2)(e).

[183] Regarding Third Party A's arguments, their open evidence indicates they are concerned about the applicant sending emails to others.¹⁷⁶ However, I note there is other available information which indicates the applicant is unlikely to engage in this behaviour.¹⁷⁷ Furthermore, even if the applicant were to act improperly and email others, I am not satisfied anyone receiving an email from the applicant would accept the contents and regard any third parties negatively. There is publicly available information about the applicant and his allegations against the University and other individuals. Given this publicly available information, I am not persuaded that anyone who receives an email from the applicant would accept, without question, what the applicant may say or allege about any third parties. Therefore, I am not satisfied disclosing the information at issue may unfairly damage the reputation of any person referred to in that information.

Applicant's existing knowledge

[184] Previous OIPC orders have found that it would not be an unreasonable invasion of a third party's personal privacy under s. 22 to disclose personal information already known to the applicant.¹⁷⁸ An applicant's knowledge of the personal information at issue may be a factor that weighs in favour of disclosure where there is evidence, or the circumstances indicate, that an access applicant likely knows, can infer or does know the information at issue.¹⁷⁹

[185] The University submits whether the applicant knows the personal information at issue is not a relevant factor under s. 22(2) that favours disclosure. It made detailed submissions on this matter which can be summarized as follows:

1. An applicant's existing knowledge should not be considered a relevant circumstance as this conflicts with the stated purpose of FIPPA;
2. In the alternative, if an applicant's existing knowledge is considered a relevant circumstance, then the existing knowledge should not weigh in favour of disclosure when an applicant's knowledge was obtained in confidential and restricted settings such as employment settings; and

¹⁷⁶ Third Party A affidavit at para. 13.

¹⁷⁷ I am unable to identify where this information is found in the evidence before me since it may disclose some of the *in camera* information. But, I am satisfied that anyone reviewing the parties' submissions and the *in camera* evidence would be able to determine the relevant information and the source of my finding.

¹⁷⁸ For example, Order F19-41, 2019 BCIPC 46 at paras. 79-80.

¹⁷⁹ For example, Order F17-05, 2017 BCIPC 6 (CanLII) at paras. 54-60.

3. Moreover, if an applicant's existing knowledge is considered a relevant circumstance, the risk of, and the applicant's propensity for, public disclosure or online posting of the information ought to be weighed against disclosure.¹⁸⁰

[186] Third Party A also argues an applicant's existing knowledge is not a factor that favours disclosure. They submit the sensitivity of the withheld information outweighs any "general existing knowledge" the applicant has about some of the information at issue.¹⁸¹ It also says this "general existing knowledge" does not entitle the applicant to "the full extent of the personal information at issue."¹⁸² As an example, Third Party A argues "the fact that the Applicant may know of a third party's participation in a workplace investigation does not entitle the Applicant to know the extent of or the full particulars of that participation."¹⁸³

[187] For our present purposes, I will only address the University's first argument because the University's other arguments and Third Party A's submission deal with a later stage of the s. 22 analysis when all the circumstances and factors are assessed against each other to determine whether disclosure would be an unreasonable invasion of a third party's personal privacy. I will take into account those other arguments at the later stage of the s. 22 analysis.

University's submission on applicant's existing knowledge

[188] The University acknowledges that previous OIPC orders have considered an applicant's existing knowledge of the information at issue as a relevant circumstance, but submits that I should reject this longstanding and established practice. The University argues an applicant's existing knowledge should never be a relevant circumstance under s. 22(2) as this conflicts with the stated purpose of FIPPA.

[189] The University notes that, under s. 2(1), the purposes of FIPPA are to make public bodies more accountable to the public and to protect personal privacy by: (a) giving the public a right of access to records, and (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves.¹⁸⁴ The University says these provisions mean "an access request for personal information that is not an applicant's information must be considered as a right of access to the public, and to the world-at-large."¹⁸⁵ Therefore, the University argues "an applicant should not have a

¹⁸⁰ University's initial submission at para. 74.

¹⁸¹ Third Party A initial submission at para. 65.

¹⁸² *Ibid.*

¹⁸³ *Ibid.*

¹⁸⁴ University's initial submission at para. 76, emphasis in original.

¹⁸⁵ *Ibid* at para. 77, emphasis in original.

special right to personal information that the public does not have a right to, other than their own personal information.”¹⁸⁶

[190] In support of its position, the University cites the following passage from Order 03-35:

As I have held before – notably, in Order 01-52, [2001] BCIPCD No. 55, at para. 73 – the disclosure of information through an access request under the Act, other than personal information relating to an access applicant, is to be approached on the basis that it is disclosure to the world. This is because it would be a contradiction to treat the right of access under the Act to information (other than personal information relating to an applicant) as a right that is limited to particular applicants or purposes when it is – as s. 2(1) of the Act affirms – a public right that is not restricted to particular purposes.¹⁸⁷

[191] The University interprets this statement to mean allowing an applicant’s existing knowledge to be a relevant circumstance under s. 22(2) contradicts or conflicts with the purposes of FIPPA. As a result, the University submits FIPPA purposefully excludes an applicant’s existing knowledge from the s. 22(2) analysis. In particular, it notes that an applicant’s existing knowledge is not listed as a circumstance under ss. 22(2) or 22(4).

[192] Lastly, the University submits “there is no mechanism preventing an applicant from taking the records received through an access request and publishing them to the world at large or disclosing them without restriction.”¹⁸⁸ Therefore, it argues if existing knowledge is a consideration under s. 22(2), then it should be the public’s knowledge of the information at issue that is considered and not the applicant’s existing knowledge.

Analysis and findings on applicant’s existing knowledge

[193] For the reasons that follow, I am not persuaded by the University’s argument and interpretation of s. 22(2). First, the University cites Order 03-35 in support of its position; however, I do not find the analysis and findings in that order supports the University’s argument. In that order, former Commissioner Loukidelis was deciding whether s. 17(1) (harm to a public body’s financial or economic interests) could apply to information that had already been inadvertently disclosed by a public body. There was no analysis or conclusions on whether an applicant’s existing knowledge can be a relevant circumstance under s. 22(2).

¹⁸⁶ University’s initial submission at para. 79.

¹⁸⁷ University’s initial submission at para. 78, citing Order 03-35, 2003 CanLII 49214 (BCIPC) at para. 31.

¹⁸⁸ University’s initial submission at para. 81.

[194] However, I note that other OIPC orders have applied former Commissioner Loukidelis' comments about FIPPA's purposes to the s. 22 analysis. The former Commissioner's statement has been interpreted to mean that disclosure of information through a FIPPA access request is, in essence, disclosure to the world because FIPPA places no restrictions on what an applicant may do with information that they receive in response to an access request.¹⁸⁹ Previous OIPC orders have considered this assumption as a circumstance under s. 22(2); however, it was done so in addition to considering an applicant's existing knowledge.¹⁹⁰ In other words, Order 03-35 does not mean an applicant's existing knowledge should never be a relevant circumstance under s. 22(2), as argued by the University. Rather, where appropriate, it can be a relevant consideration alongside other factors and circumstances.

[195] Second, the University's interpretation ignores the unambiguous wording of s. 22(2). Section 22(2) says the public body "must consider all the relevant circumstances, including" the circumstances listed under s. 22(2). The use of the term "including" means the specified factors under s. 22(2) are a non-exhaustive list and the analysis is not limited to only those circumstances. Therefore, the fact that an applicant's knowledge is not listed under s. 22(2) does not mean the legislature purposefully excluded it from consideration, as argued by the University. It is clear that a public body, or an adjudicator at an inquiry, can consider other relevant factors and circumstances, including whether the applicant already knows the information at issue.

[196] Third, it is well-established that the modern principles of statutory interpretation require the words of a statute be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."¹⁹¹ The University submits it would be inconsistent with the legislature's intention and with FIPPA to interpret s. 22(2) to include consideration of an applicant's existing knowledge.

[197] However, the University's interpretation does not take into account that some of the factors listed under s. 22(2) expressly consider an applicant's knowledge or circumstances unique to the parties. For example, s. 22(2)(c) considers whether the personal information is relevant to a fair determination of the applicant's rights. The analysis under s. 22(2)(c) necessarily involves considering information specific to the applicant and within their knowledge. As another example, s. 22(2)(e) asks whether the third party will be exposed unfairly to financial or other harm. The University's own submissions in this inquiry on s. 22(2)(e) focuses on circumstances and information specific to the applicant and to certain individuals.

¹⁸⁹ Order F21-65, 2021 BCIPC 76 (CanLII) at para. 58.

¹⁹⁰ For example, Order F17-01, 2017 BCIPC 1 (CanLII) at para. 77.

¹⁹¹ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 (SCC) at para. 21.

[198] I also note that an applicant's knowledge is inherent in some of the presumptions under s. 22(3) such as s. 22(3)(h)(ii) which takes into account whether the applicant could reasonably be expected to know the identity of the third party who confidentially supplied a personal recommendation or evaluation. It is, therefore, evident that an applicant's personal knowledge is factored into or embedded in the s. 22 analysis. In other words, the s. 22 analysis intentionally considers the specific concerns, knowledge and circumstances of the applicant and any appropriate third parties.

[199] As a result, I conclude that it is consistent with the legislature's intention and the overall analysis under s. 22 to consider an applicant's existing knowledge of the information at issue as a relevant circumstance under s. 22(2). Therefore, for the reasons given, the University's arguments do not persuade me to reject the well-established approach to s. 22. Consistent with past OIPC orders, I conclude a relevant factor in this case under s. 22(2) is the applicant's knowledge of the personal information at issue.

Conclusion on applicant's existing knowledge

[200] There is no doubt that the applicant knows some of the information that the University has withheld in the records. The University has withheld information in emails where the applicant was the author or recipient and information in handwritten and typed notes for meetings that the applicant participated in, so it is clear that he already knows what was said in those communications and at those meetings.¹⁹²

[201] Furthermore, it is clear the applicant already knows some of the s. 22(1) information that the University is withholding because the University disclosed that information in a copy of the records provided to the applicant. In many places, the University was inconsistent in its severing so it withheld information on certain pages, but then disclosed that same information elsewhere in the records.¹⁹³ The University did not explain this inconsistency in its severing; nevertheless, it is clear that the applicant already knows that information since he was given a copy of the relevant records.

¹⁹² For example, information located on pp. 83-85, 166, 584, 595, 607-608, 631-635, 645, 1005, 1006, 1041, 1070-1072, 1115, 1281 of the records.

¹⁹³ For example, information withheld in the records about third party including their name, position and other personal details, but disclosed on pp. 1037-1039, 1042, 1158, 1277. Other examples: an email signature block was withheld on pp. 174, 208, 397, 403, but disclosed on pp. 169, 202, 390; information withheld on pp. 175 and 197, but disclosed on p. 903; information withheld on p. 917, but disclosed on p. 922; information withheld on p. 1189, but disclosed on same page; name of third party withheld on pp. 1284, 1286, but disclosed on p. 1284; information withheld on pp. 1193, 1196, but disclosed on p. 1188; information withheld on p. 1073, but disclosed on p. 1070 of the records.

[202] The applicant also provided evidence to show that he already has a copy of some of the records in dispute where the withheld information is not concealed. It appears the applicant obtained some of this information from an access request.¹⁹⁴ In other cases, it is not apparent, nor did the applicant explain, how he obtained those records, but it is clear that he knows the withheld information on those pages since he has a copy of the exact same record.¹⁹⁵ Therefore, I find the applicant's knowledge of some of the withheld information weighs in favour of disclosing that information.

Sensitivity of the information

[203] Previous OIPC orders have considered the sensitivity of the personal information at issue and where the sensitivity of the information is high withholding the information should be favoured.¹⁹⁶ However, where the information is of a non-sensitive nature or that sensitivity is reduced by the circumstances, then this factor may weigh in favour of disclosure.¹⁹⁷

[204] The University submits the records contain sensitive information related to what it describes as "employment disputes, medical accommodations, student academic information, employee evaluations, and third party confidential communications, concerns and opinions."¹⁹⁸ The University does not identify where this information is found in the records, but it argues the sensitivity of this information weighs in favour of withholding it even when an applicant may already know the information at issue.

[205] Third Party A and B also argue the sensitivity of the information at issue is a relevant circumstance which favours withholding information. Specifically, both Third Parties cite the same two OIPC orders to argue that a third party's personal opinions, feelings and concerns which are sensitive or private in nature weigh against disclosure.¹⁹⁹ Third Party A also submits the information at issue "is not the type of innocuous information shared as a matter of course," particularly a subset of records that Third Party A partly describes *in camera*.²⁰⁰

[206] The applicant did not directly address the other parties' arguments on the sensitivity of the information at issue.

¹⁹⁴ Applicant's submission at Exhibit G referring to p. 735 of the records and Exhibit F referring to pp. 262 and 295 of the records.

¹⁹⁵ Applicant's submission at Exhibit E, referring to pp. 97, 99-100, 613, 678 of the records.

¹⁹⁶ Order F16-52, 2016 BCIPC 58 at para. 87.

¹⁹⁷ *Ibid* at paras. 87-91 and 93.

¹⁹⁸ University's initial submission at para. 96.

¹⁹⁹ Third Party A initial submission at paras. 62 and 63 and Third Party B initial submission at paras. 27 and 28, citing Order F18-38, 2018 BCIPC 41 (CanLII) at para. 99 and Order F19-27, 2019 BCIPC 29 at paras. 71-72.

²⁰⁰ Third Party A initial submission at paras. 41(c), 50, 63.

Analysis and finding's on sensitivity of the information

[207] Based on my review of the records, I find some of the withheld information is of a sensitive nature and includes some of the information described *in camera* by Third Party A. This information includes a number of third party's personal opinions and feelings about matters related to the applicant, including feelings expressed by the complainant in the harassment complaint.²⁰¹ I also note that some of the opinions and feelings are about matters that do not concern the applicant, but reveal sensitive details about other individuals, including information that is the focus of Third Party B's submissions.²⁰² Given the personal or private information that it reveals, I find this information is of a sensitive nature.

[208] As well, the University submits there is sensitive information in employee evaluations. It does not identify where this information is found in the records. However, based on my review of the records, I conclude there are evaluative comments about an identifiable third party's work performance. I previously found s. 22(3)(d) applied to this information because it relates to a third party's employment history.²⁰³ I find some of this information is sensitive because it reveals critical comments and opinions about a third party and their work performance.²⁰⁴

[209] However, I do not find the rest of the withheld information to be particularly sensitive. For example, some of the withheld information consists of a factual description of the applicant's actions or a third party's opinion about the applicant and matters related to the applicant that, in my view, does not reveal any personal or intimate details about that third party or their thoughts and feelings.²⁰⁵

[210] Regarding the evaluative comments of a third party's work performance, I find some of this information is not sensitive since it is a factual description of the third party's behaviour and does not reveal any sensitive details about the third party or others.²⁰⁶ I find there is other information of a more personal nature about this third party. However, I conclude any perceived sensitivity about this information is diminished by the circumstances because there is other information in the records that shows some of those comments may be unfounded or that the third party's work performance was impacted by other factors.²⁰⁷

²⁰¹ Information located on pp. 167-169, 662, 692 of the records.

²⁰² For example, information located on pp. 998 and 1168 of the records.

²⁰³ For example, information located on p. 84-85, 1074, 1082, 1245, 1289, 1292-1293 of the records.

²⁰⁴ For example, information located on p. 1289 of the records.

²⁰⁵ For example, information located on pp. 168, 320, 412, 476 of the records.

²⁰⁶ For example, information located on pp. 84, 1285, 1293 of the records.

²⁰⁷ For example, information located on pp. 1196, 1244-1245, 1283 of the records.

[211] The University also submits there is student academic information that is sensitive. It does not identify where this information is found in the records, but from what I can see, there were emails between a number of students and University employees about grading changes for a course taught by the applicant.²⁰⁸ However, in my opinion, none of this information is inherently sensitive, nor does it reveal any sensitive details about those students. In particular, some of this information only reveals salutations and introductory comments or it is about innocuous matters such as arranging a time to speak or information unrelated to any course concerns.²⁰⁹

[212] The University also submits there is sensitive information about a medical accommodation. I found previously that there is some information about a third party's medical condition or history under s. 22(3)(a). Most of this information is a factual description of the third party's medical condition or history and actions taken by University employees to accommodate for the third party's medical condition at work. I do not find this information reveals sensitive or intimate information about that third party. There is other information that reveals specific details about the third party's medical condition; however, I conclude any perceived sensitivity about this information is diminished by the circumstances since this third party openly shared those details with others.²¹⁰

[213] To conclude, I find only some of the information at issue is of a sensitive nature which weighs in favour of withholding that information. However, I conclude the rest of the information at issue is of a non-sensitive nature or its sensitivity is reduced by the circumstances which weighs in favour of its disclosure.

Applicant's personal information

[214] I find a factor that supports disclosure is that some of the withheld information is the personal information of the applicant. Previous OIPC orders have stated that it would only be in rare circumstances where disclosure to an applicant of their own personal information would be an unreasonable invasion of a third party's personal privacy.²¹¹ Some of the information at issue is the applicant's personal information because it consists of another individual's comments about the applicant and his actions, emails written and sent by the applicant or captures his interactions with others.²¹²

²⁰⁸ For example, information located on pp. 541, 557 and 696 of the records.

²⁰⁹ Information located on pp. 560, 699, 700 of the records.

²¹⁰ Information located on p. 1037 of the records.

²¹¹ For example, Order F14-47, 2014 BCIPC 51 at para. 36, citing Order F10-10, 2010 BCIPC 17 at para. 37.

²¹² For example, information located on pp. 82-86, 732-735, 1074 of the records.

[215] Although some of that information is a combination of the applicant and a third party's personal information, in Order 01-53, former Commissioner Loukidelis noted that "an applicant will relatively rarely be refused access to an entire record containing her or his own personal information in order to protect someone else's personal privacy."²¹³ I agree and adopt that approach. Therefore, I find the fact that some of the withheld information is the applicant's personal information is a factor that weighs in favour of disclosing some of the information at issue.

Information already disclosed in public documents

[216] I find another circumstance that supports disclosure is that some of the withheld information is already disclosed in publicly available documents. Previous OIPC orders have found a relevant circumstance that favours disclosure is when the personal information at issue is known to the public or has become common public knowledge.²¹⁴

[217] The judge's decision in the SFU Action discloses some of the same detailed information that the University is withholding in the records at issue in this inquiry.²¹⁵ For example, the University is withholding the following information from the records:

- Details about the applicant's allegations against the former Chair, including the name of the former Chair and information about a dispute over accommodating a third party because of a medical condition.
- The name and personal details (e.g. academic and employment history) of the complainant who submitted the harassment complaint to the Human Rights Office against the applicant, including the details of their complaint and the resolution they were seeking.
- Details about the applicant's conduct that was discussed amongst University employees.
- Details about the applicant's online postings and public allegations against certain University employees.

[218] All of this information is published and openly discussed in the judge's decision which is available and easily accessible to the general public. Therefore,

²¹³ 2001 CanLII 21607 (BCIPC) at para. 83.

²¹⁴ For example, Order 01-53, 2001 CanLII 21607 (BCIPC) at para. 77 and Order F16-52, 2016 BCIPC 58 (CanLII) at para. 83.

²¹⁵ The court decision is cited at paras. 5-12 of the University's initial submission. I have not cited the court decision in my order since it would reveal some of the information at issue.

I find the fact that some of the withheld information is publicly available weighs in favour of its disclosure.

Conclusion on s. 22(1)

[219] I am satisfied that the information withheld in the records by the University is the personal information of multiple individuals. This personal information can be grouped into the following categories based on whom the information is about:

- Students;
- Instructors and job applicants;
- A third party and their workplace accommodation due to a medical condition;
- A third party and their harassment complaint;
- The Director of the Human Rights Office;
- Comments and opinions about the applicant;
- The former Chair; and
- Other University employees and individuals.

[220] For some of this information, I conclude its disclosure would not be an unreasonable invasion of a third party's personal privacy under s. 22(4). Specifically, I found s. 22(4)(e) applies to the names of several individuals who worked as a sessional instructor since this information would be about the position or functions of a public body employee.²¹⁶ I also found s. 22(4)(i)(ii) applies to a list of students who convocated in October 2019 because the disclosure would reveal applicable information in respect of a degree.²¹⁷ Under s. 22(4), the disclosure of this information is not an unreasonable invasion of third-party personal privacy and the University may not withhold it under s. 22(1).

[221] For the other information at issue, my findings and conclusions are set out below.

Information related to students

[222] In a number of emails between University employees or with students, the University withheld the personal information of multiple students including their name, email address, student identification number and comments or questions.

[223] I find it would be an unreasonable invasion of a third party's personal privacy to disclose some of the information in these emails related to concerns and questions about a course previously taught by the applicant or other

²¹⁶ Information located on pp. 766-767 of the records.

²¹⁷ Information located on p. 1170 (repeated on p. 1172) of the records.

academic matters.²¹⁸ I found the presumption under s. 22(3)(d) applied to this information since it is part of the students' educational history. I also find there are no relevant circumstances to rebut this presumption, especially considering some of this information was supplied in confidence under s. 22(2)(f).²¹⁹ Therefore, I conclude the University is required to withhold this information under s. 22(1).

[224] However, I find it would not be an unreasonable invasion of a third party's personal privacy to disclose information in a number of emails about arranging a time to speak, regarding matters unrelated to any course concerns, some innocuous comments in the emails and where the applicant was included in the email.²²⁰ None of this information reveals any sensitive details about those students and was not supplied in confidence. For instance, the University withheld the name of a student who graduated in 2019, but there is information in these emails that indicates the student's name will be published on a department website.²²¹ I find the intended publication of the student's name rebuts any assertions of confidentiality. Therefore, I conclude the University is not required to withhold this information and the other noted information under s. 22(1).

Information related to instructors and job applicants

[225] I find it would be an unreasonable invasion of a third party's personal privacy to disclose some information about individuals who taught or did course-related work for the University, were offered teaching positions or seeking employment with the University.²²² This information includes a list of names in a sessional instructor seniority list, the names of individuals who applied for or were offered a teaching position in a semester and emails between University employees or with several third parties about matters related to their employment or potential employment with the University.²²³ I found the presumption under s. 22(3)(d) applies to some of this information because it relates to the employment history of these individuals. For most of this information, I did not find nor was I made aware of any factors to rebut these presumptions.

²¹⁸ For example, information located on pp. 18, 20, 21, 313-317, 452-468, 495-497, 499, 500, 503-507, 510, 511, 520, 524, 526-528, 531, 533, 535-537, 541, 548, 574-576, 696-731, 736-738, 742, 770-772, 774-775, 778-779, 781-784, 786-787, 792-794, 957, 959, 961-963, 965, 967-968, 970, 973, 977, 979, 982, 984-985, 1000, 1065 of the records.

²¹⁹ Information located on p. 794 of the records.

²²⁰ For example, information located on pp. 541, 560, 698-700, 768-769, 1264 of the records.

²²¹ Information located on pp. 768-769 of the records.

²²² For example, information located on pp. 766-767, 812, 1218, 1255-1262, 1267, 1269, 1272-1275, 1326-1346, 1349, 1350, 1352, 1353, 1355, 1357-1360, 1362, 1364, 1365-1367, 1369, 1371-1373, 1375, 1381, 1384-1389, 1391-1394, 1396-1404 of the records.

²²³ Information located on pp. 1-14, 15, 16-17, 558, 559, 561-563, 1173-1177, 1179, 1181, 1184, 1186, 1267-1268, 1323, 1326-1334, 1379-1380, 1393, 1398-1401 of the records.

[226] However, I find some of this information deals with innocuous matters such as arranging a time to speak and requesting further information or does not reveal any sensitive or intimate details about a third party.²²⁴ Therefore, I am not satisfied that disclosing this information would be an unreasonable invasion of a third party's personal privacy.

[227] I can also see that some of the withheld information is already disclosed or easily inferable from the responsive records.²²⁵ For instance, the University withheld the identity and information of a third party in some emails related to a course taught by the applicant, but it disclosed this information elsewhere in the records.²²⁶ I can also see the applicant was included in these emails so he knows this third party's identity or can easily infer it since he was involved in the relevant events. As well, in some meeting notes, the University withheld the name of an instructor.²²⁷ However, the applicant attended that meeting; therefore, he clearly knows the identity of this person. None of this information about any of these third parties is sensitive and only deals with course-related work. As a result, I conclude it would not be an unreasonable invasion of a third party's privacy to disclose this information. Therefore, the University is not required to withhold it and the other noted information under s. 22(1).

Information about a third party and about their workplace accommodation

[228] I find it would be an unreasonable invasion of a third party's personal privacy to disclose some information about a third party and their workplace accommodations because of a medical condition. I found disclosing some of this information is presumed to be an unreasonable invasion of privacy because it relates to the third party's medical condition or history under s. 22(3)(a) and their employment history under s. 22(3)(d).

[229] I conclude there are no circumstances to rebut these presumptions especially considering some of that information would reveal critical comments and opinions of a sensitive nature about this third party and their work performance.²²⁸ Therefore, even though the applicant may know some of this information because of his involvement in the relevant events and communications, I find those other considerations weigh heavily against disclosure. As a result, I conclude it would be an unreasonable invasion of the third party's personal privacy to provide the applicant with access to this information.

²²⁴ Information located on pp. 1364-1367, 1388, 1402-1403 of the records.

²²⁵ Information located on p. 562-563, 735, 1313, 1315 of the records.

²²⁶ Information located on pp. 1313, 1315 and name disclosed on p. 1315 of the records.

²²⁷ Information located on p. 735 of the records.

²²⁸ For example, information located on pp. 1245, 1289 of the records.

[230] However, for other information, I find the presumption under s. 22(3)(a) is rebutted because details about the third party's medical condition was openly shared by the third party with others.²²⁹ There is also other information about this third party that I found was not subject to any presumptions under s. 22(3) because it does not reveal any personal or sensitive details about the third party's medical condition, medical history or their employment history. Instead, this information only identifies the third party was absent from work or the fact that there was a workplace accommodation.²³⁰

[231] Some of the information at issue about this third party is already known to the applicant because he was the source of those critical comments and opinions about the third party or participated in the relevant communications, events and meetings.²³¹ Other information was publicly disclosed in the judge's decision for the SFU Action, specifically the nature of the third party's medical condition.²³² I also find the University has already disclosed some of the third party's personal information in a copy of the records provided to the applicant such as the third party's name, position, email address, details about their employment leave, some of the applicant's course-related concerns about the third party and that the third party's workplace accommodation was due to a medical condition.²³³ As a result, I conclude it would not be an unreasonable invasion of the third party's personal privacy to disclose this information where it appears in the records and the University is not required to withhold it under s. 22(1).²³⁴

[232] The University submits the applicant's existing knowledge about this information should not weigh in favour of disclosure because "it was obtained in confidential and restricted settings such as employment settings."²³⁵ The University argues that the records containing this third party personal information, even emails written by the applicant, "were created under the protective dome of employment confidentiality."²³⁶ It says the third party's personal information was accessible or disclosed to the applicant only in his former role as an instructor where he was bound by the University's privacy and confidentiality policies.

[233] Now that the applicant is no longer employed by the University, it submits the applicant should be denied this information even though he already knows it

²²⁹ Information located on p. 1037 of the records.

²³⁰ For example, information located on pp. 27, 33, 51, 106, 197, 917, 1011, 1014, 1017-1018, 1021, 1038, 1046, 1115, 1158 of the records.

²³¹ For example, information located on pp. 82, 83-85, 166 (duplicated on pp. 171, 177, 183, 189, 199, 205, 327, 332, 336, 341, 351), 732-735, 1004-1008, 1010-1012, 1015, 1040-1041, 1047-1049, 1070-1072, 1157, 1283-1284, 1287, 1295-1296, 1299 of the records.

²³² Information withheld on the bottom of p. 83 of the records.

²³³ For example, information about third party disclosed on pp. 1037-1039, 1042, 1070, 1158, 1189, 1277 of the records.

²³⁴ For example, information located on pp. 51, 221, 245, 264, 281, 297 of the records.

²³⁵ University's initial submission at para. 74.

²³⁶ University's initial submission at para. 87.

because he is making the request as a private individual and a member of the public and there are no restrictions on what he can do with that personal information. In particular, the University says “the risk of and the applicant’s propensity for public disclosure or online posting of the information ought to be weighed against disclosure.”²³⁷ Given his past practice, the University submits the applicant will likely use and disclose the third party’s personal information “to the world at large, in harmful, negative online posts.”²³⁸

[234] In support of its position, the University cites two BC orders and one Ontario court decision to argue that an access applicant’s previous personal or professional knowledge of the information at issue should not determine whether they are entitled to access that information under FIPPA because disclosure under FIPPA is, in effect, disclosure to the world with no restrictions on the use of that information.²³⁹

[235] I agree with the University that an applicant’s existing knowledge of the information at issue should be weighed against other relevant circumstances including the impact of the disclosure on any relevant third parties. However, I disagree with the University’s suggestion that an access applicant should always be denied access when they are no longer bound by any employer confidentiality or privacy policies or other professional disclosure restrictions. There is nothing in my review of FIPPA that suggests the legislature intended s. 22 to operate in such an inaccessible manner. Instead, as previously discussed, the analysis under s. 22 is a fact-specific determination that takes into account an access applicant’s knowledge, circumstances unique to the parties and the actual information at issue in determining whether access should be given.

[236] Considering the information that I am ordering disclosed to the applicant, I am satisfied the disclosure of this information would not unreasonably invade the third party’s personal privacy. I previously found none of the information, if disclosed, would unfairly damage the third party’s reputation under s. 22(2)(h) or would unfairly expose this third party to harm under s. 22(2)(e). The University’s position also overlooks the fact that the applicant does not need the records and information at issue to make public statements or publish negative online posts about this third party and their work performance or medical accommodation. He already knows most of this information because he was the source of those critical comments or participated in the relevant communications and meetings.

²³⁷ University’s initial submission at para. 74.

²³⁸ University’s initial submission at para. 91.

²³⁹ Order F21-47, 2021 BCIPC 55 (CanLII) at paras. 68-71, Order F21-50, 2021 BCIPC 58 (CanLII) at paras. 152-153 and *Ontario (Attorney General) v. Holly Big Canoe*, 2006 CanLII 14965 (ON SCDC) at para. 51.

[237] Furthermore, as noted, some of the third party's personal information is already publicly available or was disclosed to the applicant in the records in response to his access request. There are no restrictions on what the applicant may do with that information and, more importantly, there is no evidence that the applicant used or has any intentions of using this information to harm the third party, as argued by the University. Therefore, for the reasons given, I am not satisfied that the disclosure of this information would be an unreasonable invasion of this third party's personal privacy.

Information about a third party and their harassment complaint

[238] As previously noted, some of the withheld information is about a third party and their harassment complaint to the Human Rights Office about the applicant.²⁴⁰ This information includes communications they had with the Director of the Human Rights Office about their complaint and a copy of their written complaint which includes the allegations they made against the applicant.

[239] I find it would be an unreasonable invasion of a third party's personal privacy to disclose some personal information about this third party and their communications with the Director regarding the complaint. I found the third party supplied some of this information in confidence under s. 22(2)(f) considering the personal details that are revealed about them and what they think about the applicant and their interactions with him.²⁴¹ I conclude there are no factors that weigh in favour of disclosing this information about the third party to the applicant. In particular, I find none of this information would be relevant to a fair determination of the applicant's rights under s. 22(2)(c).

[240] However, for other information, I find its disclosure would not be an unreasonable invasion of the third party's personal privacy. Some of the communications between the third party and the Director is not sensitive such as emails about arranging a time for a phone discussion or information that only shows there were discussions between the Director and the third party.²⁴² It is also clear that the applicant knows the third party filed the harassment complaint against him and that the Director and the third party had discussions regarding the complaint. As well, the University withheld the date of a discussion, but disclosed this same information elsewhere in the records.²⁴³ Therefore, it is unclear how it would unreasonably invade the third's party personal privacy to disclose all of this information to the applicant.

²⁴⁰ The University disclosed that it was a "harassment complaint" on pp. 661 and 662 of the records.

²⁴¹ For example, information located on pp. 662, 675-676 of the records.

²⁴² Information located on pp. 681-684, 675, 681, 686 of the records.

²⁴³ For example, information withheld on pp. 614, 615, 665, 681, but disclosed on p. 682 of the records.

[241] There is other information where the applicant is the source of some of the withheld information about this third party. The University withheld information in the applicant's response to the third party's allegations or in communications and discussions the applicant had with the Director about the complaint.²⁴⁴ As well, the applicant provided evidence that he already has an unsevered copy of some of the relevant records.²⁴⁵ The records also indicate the applicant was provided with a written copy of the third party's allegations against him and that some of the withheld information was already disclosed to the applicant.²⁴⁶ The applicant already knows all of this information so it is unclear how disclosing it to him now would be an unreasonable invasion of the complainant's or another third party's personal privacy.

[242] Furthermore, I can also see that some of the information about this third party and their complaint is published and discussed openly in the judge's decision for the SFU Action. This information includes the name and personal details of the third party who submitted the complaint (e.g. academic and employment history), the details of their complaint and the resolution they were seeking. It is unclear how disclosing all of this publicly available information to the applicant now would unreasonably invade this third party's personal privacy. Therefore, where it appears in the records, I conclude the University is not required to withhold this information under s. 22(1).²⁴⁷

Information about the Director of the Human Rights Office

[243] Some of the withheld information related to the harassment complaint involves the personal information of the Director who handled the complaint. I find disclosing some of that withheld information would unreasonably invade the personal privacy of the Director, specifically personal biographical information that the Director shared with the third party who filed the complaint.²⁴⁸ I find there are no factors that weigh in favour of disclosing this information about the Director to the applicant.

[244] However, I conclude disclosing the rest of the information related to the Director would not unreasonably invade their, or another third party's, personal privacy. For instance, the University withheld a small amount of information in an email between the Director and another University employee about the

²⁴⁴ For example, information on pp. 607-608, 622, 623, 631-635, 645, 650 of the records.

²⁴⁵ Information located on pp. 87, 88, 97, 99-100, 613, 678 of the records.

²⁴⁶ Copy of written complaint located on pp. 691-692 of the records and evidence the applicant received a written copy of the complaint on pp. 648, 657 and 662 of the records. Information withheld on pp. 600 and 667 is disclosed on p. 591 of the records.

²⁴⁷ For example, information located on pp. 577, 598, 600, 601, 607, 610, 613, 614, 615-619, 622, 623-624, 630, 631-635, 637, 640, 641, 643, 645, 648-650, 652, 657, 660, 661, 662, 664, 665, 669, 670, 671-673, 675, 678, 685, 686, 693-695 of the records.

²⁴⁸ Information located on p. 684 of the records.

applicant.²⁴⁹ Nothing about this information reveals any personal details about any third parties and only shows the Director seeking information for the benefit of the applicant. Therefore, it is unclear how disclosing this information would unreasonably invade any third party's personal privacy.

[245] The University also withheld the Director's response to the applicant's allegations that the Director mishandled the complaint file.²⁵⁰ I found the presumption under s. 22(3)(d) applied to some of this information because it is related to a complaint about the Director's workplace behaviour and actions. However, I find the presumption is rebutted because the University already disclosed some of this withheld information elsewhere in the records.²⁵¹ The applicant also provided evidence that he already has an unsevered copy of some of this withheld information.²⁵² Considering the applicant already knows this information, it is unclear how disclosing it now would unreasonably invade a third party's personal privacy. As a result, I conclude the University is not required to withhold this information under s. 22.

Comments and opinions about the applicant

[246] The University withheld a number of third parties' comments and opinions about the applicant and his actions, including comments made by the former Chair and other University employees. Although I found some of this information is relevant to a fair determination of the applicant's rights under s. 22(2)(c), there are several factors that weigh heavily against disclosure. Specifically, I find some of this information about the applicant was supplied in confidence in accordance with s. 22(2)(f) or its disclosure would unfairly expose some third parties to serious mental distress under s. 22(2)(e).²⁵³ Therefore, I conclude disclosing this information would unreasonably invade the personal privacy of several third parties.

[247] However, I find disclosing some of the opinions and comments about the applicant would not be an unreasonable invasion of a third party's personal privacy. Although these comments and opinions are critical of the applicant, the focus of this information is on course-related matters which I find are not sensitive in nature or do not reveal any personal or intimate details about a third party.²⁵⁴ It is also clear that some of those comments have already been communicated to the applicant.²⁵⁵ The University has also withheld non-sensitive

²⁴⁹ Information located on p. 655 of the records.

²⁵⁰ For example, information located on pp. 600, 613-614 of the records.

²⁵¹ Some of the information withheld on p. 600 is disclosed on p. 591 of the records.

²⁵² Information located on p. 613 of the records.

²⁵³ For example, information located on pp. 40, 43, 167-169, 170, 187, 194, 210, 279, 319, 373, 391, 575, 876, 986-988, 997-999, 1094, 1111, 1138, 1235-1236, 1238-1241 of the records.

²⁵⁴ For example, information located on pp. 27, 181, 319, 320, 361, 412, 470, 476, 575, 749, 917, 922, 1169, 1227, 1230, 1232, 1244 of the records.

²⁵⁵ For example, information located on pp. 735, 1169, 1244 of the records.

information which only shows a third party communicated with others about an undisclosed matter.²⁵⁶ For those reasons, I am not satisfied that disclosing any of this information would unfairly expose any third parties to harm under s. 22(2)(e).

[248] I also find some of this information is desirable for subjecting the University's activities regarding grading disputes with an instructor to public scrutiny under s. 22(2)(a).²⁵⁷ It is also clear that the applicant knows some of the withheld information because he already has a copy of some of those records where the withheld information is unsevered or the exact same information is disclosed elsewhere in the records.²⁵⁸ Therefore, all of these factors satisfy me that disclosing this information to the applicant would not be an unreasonable invasion of a third party's personal privacy and the University is not required to withhold it under s. 22(1).

Information about the former Chair

[249] In the records, there are several places where the University has withheld the applicant's comments and opinions of the former Chair and identifying information about the former Chair.²⁵⁹ I found some of this information is subject to the presumption under s. 22(3)(d) because it is the employment history of the former Chair. It describes the applicant's opinion about the former Chair and their behaviour in the context of a workplace complaint.

[250] However, most of this withheld information is published and discussed openly in the judge's decision for the SFU Action. The published information includes identifying information about the former Chair such as their name, position and detailed information which describes the applicant's allegations against them. I also note the applicant is the source of some of the withheld information. The University is withholding from the applicant his own opinions about the former Chair and their actions.²⁶⁰

[251] Considering the applicant already knows this information and it is publicly available, I am not satisfied that disclosing all of this information now would unreasonably invade the personal privacy of the former Chair. As a result, I conclude the presumption under s. 22(3)(d) is rebutted and the University is not required to withhold this information under s. 22(1).

²⁵⁶ For example, information located on pp. 167-168 of the records.

²⁵⁷ For example, information located on pp. 743-744, 745 of the records.

²⁵⁸ Information located on pp. 87-88, 97, 99, 262, 295, 100, 1107-1108, 1110-1114 of the records. An email signature block withheld on pp. 174, 208, 397, 403, but disclosed on pp. 169, 202, 390; information withheld on pp. 175 and 197, but disclosed on p. 903; information withheld on pp. 194, 197, but disclosed on p. 877, 880; information withheld on p. 917, but disclosed on p. 922; information withheld on pp. 1193, 1196, but disclosed on p. 1188 of the records.

²⁵⁹ For example, information located on pp. 84, 85, 166, 205, 584, 595, 599 of the records.

²⁶⁰ Information located on p. 166 of the records.

[252] However, I find it would be an unreasonable invasion of the former Chair's personal privacy to disclose information that would reveal their medical history.²⁶¹ I considered whether there were any factors that may rebut the presumption under s. 22(3)(a) and could find none. Therefore, I conclude the University is required to withhold this information under s. 22(1).

Information about other University employees and individuals

[253] The remainder of the information at issue involves the personal information of other University employees and individuals. The withheld information includes their names, when or why they were away from work, what other people have said about them or information they have shared with others.

[254] I find it would not be an unreasonable invasion of a third party's personal privacy to disclose some of this information to the applicant, including information about employees who were absent from work because of health-related reasons or for another reason.²⁶² I found the presumptions under ss. 22(3)(a) or 22(3)(d) did not apply to this information because it does not reveal any medical details or history about the third party and this information was not sufficiently connected to a person's employment so as to constitute their employment history. Instead, all of this information only discloses factual, non-sensitive information about various individuals or about their schedules.²⁶³

[255] The University also withheld information about other individuals that the applicant clearly knows because it disclosed that exact same information elsewhere in the records.²⁶⁴ There is also information that describes how an employee viewed a work task.²⁶⁵ None of this information reveals any sensitive or controversial information about these individuals. Therefore, I find it would not be an unreasonable invasion of a third party's personal privacy to disclose this information to the applicant.

[256] However, I find it would be an unreasonable invasion of a third party's personal privacy to disclose the rest of the information that the University withheld about these other individuals. Some of the information is presumptively an unreasonable invasion of a third party's personal privacy because it would reveal details about their employment history under s. 22(3)(d) or their medical condition and history under s. 22(3)(a).²⁶⁶ There is other information that reveals a third party's thoughts, feelings or opinion about other individuals or matters that

²⁶¹ Information located on pp. 802, 804, 1381 of the records.

²⁶² Information for health reasons withheld on pp. 262, 294, 324, 512, 788, 789, 1012, 1021, 1221, 1225, 1229 of the records. Other information withheld on pp. 801, 803 of the records.

²⁶³ For example, information located on p. 210, 262 of the records.

²⁶⁴ For example, information withheld on pp. 175 and 344, but disclosed on p. 903 and information withheld on p. 1186, but disclosed on p. 1184 of the records.

²⁶⁵ Information withheld on pp. 262, 295 of the records.

²⁶⁶ For example, information withheld on pp. 262, 294, 1151, 1168 of the records.

have nothing to do with the applicant.²⁶⁷ I considered whether there were any factors that weigh in favour of disclosing this information to the applicant and could find none. As a result, I conclude the University is required to withhold this information under s. 22(1).

Summary of a record under s. 22(5)(a)

[257] I found that there was some information about the applicant supplied in confidence by a number of third parties. This information includes a third party's thoughts or opinions regarding the applicant and his actions that was communicated to others. If a summary of this information can be prepared without revealing the identity of the third party who supplied the confidential information, the public body is required to give that summary to the applicant under s. 22(5)(a).

[258] For some of this information, I find the applicant already knows the third party's identity because it is disclosed in the records.²⁶⁸ For other information, I find it would be easy for the applicant to infer the third party's identity based on the fact-specific nature of the withheld information and other information already disclosed in the records. For example, the University withheld a third party's identity and their comments about the applicant and his actions in an email, but it is easy to determine this person's identity based on the subject line of the email that was disclosed to the applicant and the contents of the surrounding records.²⁶⁹ As a result, I find the University is not required to provide the applicant with a section 22(5)(a) summary of this information.

[259] However, the University withheld the identity and email address of a third party who provided a small amount of information in confidence about the applicant in an email to a University employee.²⁷⁰ I am satisfied that a summary of this information can be prepared without revealing the identity of the third party who provided this confidential information about the applicant. Therefore, I find the University is required under s. 22(5)(a) to give the applicant a summary of the information about him in this particular email.

CONCLUSION

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

²⁶⁷ For example, information withheld on pp. 998, 999 of the records.

²⁶⁸ For example, information located on pp. 40, 43, 167-169, 170, 279, 574, 876, 986, 1235 of the records.

²⁶⁹ Email located on p. 662 of the records.

²⁷⁰ Email located on p. 794 (duplicated on p. 793) of the records.

1. Subject to item 2 below, I confirm the University's decision to refuse access to the information withheld in the records under ss. 13(1) and 22(1).
2. The University is not authorized or required by ss. 13(1) and 22(1) to withhold the information highlighted (in green) in a copy of the records that will be provided to the University with this order.
3. I require the University to give the applicant access to the information in the responsive records that it is not authorized or required to withhold. The University must concurrently provide the OIPC registrar of inquiries with proof that it has complied with the terms of this order, along with a copy of the records that it provides to the applicant.
4. Under s. 58(3)(a), I require the University to perform its duty under s. 22(5) to give the applicant a summary of the information supplied in confidence about him in the email located on p. 794 of the records. As a condition under s. 58(4), I require the University to provide me with the s. 22(5) summary for my approval before the date specified in paragraph 261 of this order.

[261] Under s. 59 of FIPPA, the University is required to give the applicant access to the information it is not authorized or required to withhold, and to provide the applicant with the s. 22(5) summary, by April 14, 2023.

March 1, 2023

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

OIPC File No.: F20-83164