



Order F23-15

MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

David S. Adams
Adjudicator

March 10, 2023

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested access to information in a child protection file held by the Ministry of Children and Family Development (the Ministry). The Ministry withheld some information in the responsive records under s. 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA. It also withheld other information under ss. 77(1) (information that would reveal the identity of a reporter) and 77(2)(b) (information supplied in confidence during an assessment or investigation) of the *Child, Family and Community Services Act* (CFCSA). The adjudicator determined that the Ministry was required to withhold some information under s. 22 of FIPPA and s. 77(1) of the CFCSA and that it was authorized to withhold some information under s. 77(2)(b) of the CFCSA. However, the adjudicator found those sections did not apply to other information and ordered the Ministry to disclose that information to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 22(1), 22(2), 22(3)(i), and 22(4); *Child, Family and Community Service Act*, RSBC 1996 c 46, ss. 13, 14, 16(2)(b.1), 16(2)(c), 77(1), and 77(2)(b).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested records from her own case file from the Ministry of Children and Family Development (the Ministry) for a specified range of dates.

[2] The Ministry provided the responsive records to the applicant, but withheld some information in them under ss. 14 (solicitor-client privilege), 15 (disclosure harmful to law enforcement), and 22 (unreasonable invasion of third party personal privacy) of FIPPA. The Ministry also withheld information under the exceptions to access provisions of the *Child, Family and Community Services Act* (CFCSA), namely ss. 77(1) (information that would reveal the identity of

a reporter) and 77(2)(b) (information supplied in confidence during an assessment or investigation).

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision. Mediation did not resolve all of the outstanding issues and the matter proceeded to this inquiry. In the course of the inquiry, the Ministry withdrew its reliance on ss. 14 and 15 of FIPPA.

[4] The Ministry provided submissions including affidavits from a team leader in one of its family services divisions (the Team Leader) and a lawyer in the Ministry of Attorney General's Legal Services Branch (the LSB Lawyer). The Ministry also provided a descriptive table of records. The applicant provided a submission and a copy of a document she received through a request made under FIPPA to the Vancouver Police Department.

ISSUES AND BURDEN OF PROOF

[5] The issues to be decided in this inquiry are:

1. Whether the Ministry must refuse to disclose information under s. 77(1) of the CFCSA;
2. Whether the Ministry may refuse to disclose information under s. 77(2)(b) of the CFCSA; and
3. Whether the Ministry must refuse to disclose information under s. 22(1) of FIPPA.

[6] Under s. 57(2) of FIPPA, the applicant bears the burden of proving that the disclosure of personal information withheld under s. 22 would not be an unreasonable invasion of third party personal privacy. However, it is up to the Ministry to establish that the information at issue is personal information under s. 22(1).¹

[7] Neither party made a submission about who bears the burden of proof under s. 77 of the CFCSA, but several OIPC orders have considered the issue. In Order F21-35, the adjudicator concluded that the public body bore the burden of proving that ss. 77(1) and/or s. 77(2)(b) apply to the withheld information because it was the public body who asserted that the sections applied, the public body has the knowledge and expertise to interpret its enabling statute, and the public body, knowing the contents of the withheld information and the

¹ Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

surrounding circumstances, is in the best position to establish that the information was properly withheld.² I agree with and adopt this approach.

DISCUSSION

Background³

[8] Under the CFCSA, the Ministry has the authority to protect children and to assist families in caring for their children. The CFCSA sets out the circumstances where a child needs protection and requires people to report when they believe a child needs protection.

[9] The CFCSA allows the Minister of Children and Family Development to designate people as “directors” to exercise the powers and carry out the duties contemplated by the CFCSA.

[10] In October 2018, the Ministry received a child protection report about an incident at a public meeting involving the applicant and her young child. The Ministry began an investigation and initiated a Family Development Response Assessment (FDRA) to assess the safety of the child and to determine whether the child’s parents were willing to collaborate in the Ministry’s assessment and planning.

[11] In September 2019, having failed to complete its FDRA because it had not been able to speak to the applicant, the Ministry closed its file and advised the applicant that it did not see the need for further Ministry involvement.

[12] In October 2020, the applicant made her request to the Ministry for access to the records that are the subject of this inquiry.

Records and information at issue

[13] The responsive records total 55 pages, with 13 of those pages containing information in dispute. The records consist of documents from the Ministry’s case file relating to the reported incident.

[14] The Ministry is withholding the majority of the information on page 41, which it says was a record that was already adjudicated in Order F21-64. That order decided an inquiry between the Ministry and the same applicant. Having reviewed the Ministry’s evidence, including the LSB Lawyer’s affidavit, and the

² Order F21-35, 2021 BCIPC 43 (CanLII) at paras 20-22; also see Order F21-64, 2021 BCIPC 75 (CanLII) at para 10.

³ The information in this section is from the parties’ submissions and evidence.

records in dispute in Order F21-64,⁴ I am not satisfied that this information was adjudicated in that previous order. The adjudicator did not need to make any determination about that information in Order F21-64 because the Ministry disclosed the information to the applicant. However, given that I am satisfied that the applicant has already received that information, I find that it is not information in dispute and I do not need to consider it here.

Identity of person who made a child protection report - 77(1) of CFCSA

[15] Section 77(1) protects the identity of a person who has made a child protection report to a director under s. 14 of the CFCSA. It provides:

A director must refuse to disclose information in a record to a person who has a right of access to the record under [FIPPA] if the disclosure could reasonably be expected to reveal the identity of a person who has made a report under section 14 of this Act and who has not consented to the disclosure.

[16] Section 14 of the CFCSA requires a person who has reason to believe a child needs protection under s. 13 to “promptly report the matter to a director or a person designated by a director.” Section 13 sets out a list of circumstances where a child needs protection. For instance, s. 13(1)(a) applies where a child has been, or is likely to be, physically harmed by its parent. Section 16 requires a director who receives a report either to assess the information in it or promptly refer the report to another director.

[17] The applicant does not dispute that a report was made under s. 14, and I accept the Ministry’s evidence that it was.⁵ Therefore, the only remaining questions for the purposes of s. 77(1) are whether disclosure of the information could reasonably be expected to reveal the identity of the reporter, and whether the reporter(s) consented to disclosure.

[18] In Order F21-35, the adjudicator concluded that the proper interpretation of s. 77(1) was that the director must withhold information that could reasonably be expected to identify a person who made a report under s. 14 of the CFCSA, unless the director receives the person’s consent to disclose their identity. In other words, non-disclosure is the default, ensuring a reporter’s identity is not disclosed without their consent.⁶

[19] Furthermore, under s. 77(1), there is no weighing of competing access and privacy concerns, as there is under s. 22 of FIPPA; s. 77(1) imposes an

⁴ At page 21 of the disputed records in the inquiry for Order F21-64, 2021 BCIPC 75.

⁵ Affidavit of Team Leader at para 9.

⁶ Order F21-35, *supra* note 2 at paras 116-124.

obligation on the Ministry to refuse to disclose identifying information in response to an access request, without any balancing of interests.⁷

[20] The Ministry applied s. 77(1) to pages 5, 43, 45-46, 48, 49 and 52 of the records. I will consider below whether s. 77(1) applies to the information withheld in these pages.

Page 5

[21] The Ministry has withheld several pieces of information on page 5 of the records package. Page 5 is a standardized Ministry “Incident Snapshot Report” containing several information fields, some of which are filled in and some of which are not. The Ministry says that the information on page 5 “reveals the identity of the reporter and provides additional information that the applicant could use to infer or confirm the identity of the reporter”.⁸

[22] The applicant says that the reporter’s name should not be withheld because she believes that the reporter works for a public body. She also says that she already knows the name of the reporter because a Ministry social worker, and others, told it to her. The applicant also disputes that the answer to the query on the form “Police Charges Laid?” would reveal anyone’s identity.⁹

[23] In reply, the Ministry says that the applicant’s purported knowledge of the identity of the reporter does not relieve the Ministry of its obligation to withhold the information.¹⁰ I agree that the wording of s. 77(1) does not take into account whether an applicant knows, or purports to know, a reporter’s identity.

[24] In my view, some of the withheld information on this page would reveal the reporter’s identity. The fields for the reporter’s contact information and “Type Of Caller” could reasonably be expected to reveal their identity. I also find that the information withheld in the middle of the page, while not directly revealing the reporter’s identity in itself, could reasonably be expected to identify this person when combined with other available information. I do not accept the applicant’s assertion that s. 77(1) does not apply to a reporter who may work for a public body. I conclude that who a reporter works for has nothing to do with the Ministry’s obligation to protect their identity under s. 77(1).

[25] However, not all of the withheld information would reveal, or allow the applicant to infer, the identity of the reporter. For instance, the method the reporter used to contact the Ministry would not reveal their identity. I also cannot

⁷ *Ibid* at para 130.

⁸ Ministry’s initial submission at para 40.

⁹ Applicant’s response submission at 1-2.

¹⁰ Ministry’s reply submission at paras 6-7.

see, and the Ministry does not explain, how the answer to the query “Police Charges Laid?” is capable of revealing the reporter’s identity.

Page 43

[26] The withheld information on page 43 consists of a file number and a portion of a Ministry social worker’s notes. Although the Ministry did not indicate in the records package that it is relying on s. 77(1) to withhold information on page 43, it does make a s. 77(1) submission about it, and s. 77(1) is referenced in a descriptive table of records which the Ministry provided. I will therefore consider the application of s. 77(1) to the information withheld on page 43.

[27] The Ministry says that page 43 contains information that “the applicant could use, combined with her comprehensive knowledge of the progress of [the Ministry’s] assessment of her family, to infer or confirm the identity of the reporter”.¹¹ The applicant does not say anything specifically about the application of s. 77(1) to page 43.

[28] In my view, none of the information on page 43 is capable of allowing the applicant to infer the identity of a reporter. While I accept the Ministry’s submission that the applicant has a comprehensive knowledge of its assessment of her family, I cannot see, and the Ministry does not sufficiently explain, how she could combine this knowledge with the withheld information on this page to deduce the reporter’s identity.

Pages 45-46

[29] The withheld information on pages 45 and 46 consists mainly of a social worker’s notes. There is also a small amount of information withheld in the “Analysis and Closing Summary” section. The Ministry says that these pages contain information that the applicant could combine with her knowledge of the Ministry’s assessment to infer the identity of the reporter. The applicant disputes that the information on pages 45 and 46 would identify a reporter.¹²

[30] In my view, none of the information on pages 45 or 46 would reveal the identity of a reporter. It is not obviously identifying information on its face, and I do not think the Ministry has sufficiently explained how the applicant could use any of it to infer the identity of a reporter.

¹¹ Ministry’s initial submission at para 40.

¹² Applicant’s response submission at 3.

Page 48

[31] The withheld information on page 48 consists of a description of a report the Ministry received about an altercation. In the “Additional Information” section, the field “Type of Caller” is also withheld. The Ministry says that this page contains information that the applicant could combine with her knowledge of the Ministry’s assessment to confirm the identity of the reporter. The applicant disputes that s. 77(1) applies, and asserts that the information was withheld in order to cover something up; the Ministry denies this.¹³

[32] I am satisfied that the field “Type of Caller” could identify the reporter. However, I cannot see how the rest of the withheld information, which consists of a brief description of the incident that any number of people could have given, would identify the reporter.

Page 49

[33] The withheld information on page 49 consists of details about a social worker’s phone call. As was the case for page 43, the Ministry did not indicate in the records package that it is relying on s. 77(1) to withhold information on page 49. Again, the Ministry does make a s. 77(1) submission about it, and s. 77(1) is referenced in the Ministry’s table of records for page 49. I will therefore consider the application of s. 77(1) to the information withheld there.

[34] The Ministry says that the information withheld on page 49 reveals the identity of the reporter and/or could be used to infer the reporter’s identity. The applicant says that the withheld information appears to be contact information, and asserts that it is likely her own contact information.¹⁴

[35] I find that most of the withheld information on this page would reveal, or allow the applicant to infer, the reporter’s identity. I also agree with the applicant that most of this information is contact information; however, I can assure the applicant that it is not *her* contact information. There is, however, a small amount of information that in my view could be disclosed without revealing the reporter’s identity.

Page 52

[36] The withheld information on page 52 consists of portions of a social worker’s comments on a safety assessment document. The Ministry says this information could be combined with the applicant’s knowledge about the Ministry’s assessment to infer the identity of the reporter.¹⁵ The applicant says

¹³ Applicant’s response submission at 4-5; Ministry’s reply submission at paras 12-13.

¹⁴ Applicant’s response submission at 5.

¹⁵ Ministry’s initial submission at para 40.

that the confrontation that is the topic of the partially withheld sentence is common knowledge, having been reported in the news and on social media.

[37] I find that the withheld information on page 52 is of a generic, descriptive character, which could have been given by any number of people, and I do not find that it is capable of identifying the reporter.

Consent to disclosure

[38] Neither party made a submission on the issue of consent to disclosure. Given my conclusion on the interpretation of s. 77(1) above, I must approach the question from the starting point that the Ministry must withhold information that could reasonably be expected to identify a person who made a child protection report under s. 14, *unless* the Ministry has received the person's consent to disclose their identity.¹⁶ There is no evidence before me that the reporter(s) gave this consent to the Ministry, so I cannot find that they did. The Ministry must therefore withhold the information that could reasonably be expected to reveal their identity.

Conclusion on s. 77(1) of the CFCSA

[39] I find that the Ministry has met its burden of proving that s. 77(1) of the CFCSA applies to some of the information withheld under that section. However, for the reasons given, I conclude that most of the information withheld under s. 77(1) could not reasonably be expected to allow the applicant to infer the identity of a person who made a report under s. 14 of the CFCSA.

Information supplied in confidence during an assessment or investigation - 77(2)(b) of CFCSA

[40] The Ministry submits that s. 77(2)(b) of the CFCSA applies to information that it withheld on several pages.¹⁷ The Ministry applied s. 77(2)(b) to some of the same information that it withheld under s. 77(1). I have found that the Ministry was required to withhold some of this information under s. 77(1), so I do not need to consider it again under s. 77(2)(b).¹⁸

[41] Section 77(2)(b) provides:

A director may refuse to disclose information in a record to a person who has a right of access to the record under [FIPPA] if

¹⁶ See, e.g., Order F21-35, *supra* note 2 at paras 116-124.

¹⁷ Namely, the whole of pages 11-13 and 25, and parts of pages 43-45, 48-49, and 53 of the records package.

¹⁸ Namely, some of the information on pages 48 and 49.

...

(b) the information was supplied in confidence, during an assessment under section 16(2)(b.1) or an investigation under section 16(2)(c), by a person who was not acting on behalf of or under the direction of a director.

[42] In order for s. 77(2)(b) to apply, there must be evidence showing all of the following:

1. The information must have been provided to the Ministry by a person who was not acting on behalf of or under the direction of a director;
2. The information must have been provided in the course of an assessment under s. 16(2)(b.1) or an investigation under s. 16(2)(c); and
3. The information must have been supplied in confidence.¹⁹

I will consider each of these criteria below.

Provided to the Ministry by a person not acting on behalf of or under the direction of a director

[43] The Ministry says that all of the information withheld under s. 77(2)(b) was supplied by a person not acting under the direction of a director, or else consists of information that the Ministry planned to collect from those persons.²⁰

[44] The applicant disputes that all of the withheld information was supplied by a person who not acting on behalf or under the direction of a director. She says that much of the withheld information was generated by Ministry social workers.²¹

[45] I can see that some of the information withheld under s. 77(2)(b) was provided to the Ministry by a person who was not acting on behalf or under the direction of a director. For instance, I am satisfied that pages 11 to 13 and some information on page 25 originated outside the Ministry. There is a small amount of information on page 43 that the Ministry says, and I accept, is a file number provided by a person who is not a Ministry employee.

[46] However, there is some information that I find was generated by Ministry employees. For instance, much of the information on page 25 consists of information generated by a Ministry social worker. On page 43, there is a description authored by a Ministry social worker of a video that two Ministry employees reviewed. On page 44, there is a description of a Ministry employee's

¹⁹ Order F21-64, *supra* note 2 at para 46; Order F21-35, *supra* note 2 at para 134.

²⁰ Ministry's initial submission at para 45.

²¹ Applicant's response submission at 2-3.

plan to collect information from an individual. I also find that all of the withheld information on pages 45, 48 and 53 was generated by Ministry employees because it consists of their recorded observations.

Information provided in the course of an assessment under s. 16(2)(b.1) or an investigation under s. 16(2)(c)

[47] Section 16(2) of the CFCSA sets out what a director may do after assessing the information in a child protection report. A director may, under s. 16(2)(b.1), conduct an assessment of the family respecting the child's safety and whether it is necessary to provide services to the family, or, under s. 16(2)(c), investigate the child's need for protection.

[48] The Ministry says that in response to a child protection report it received about the applicant and her child, it determined that a family development response was the appropriate course of action. It says that a key component of this response was an FDRA of the applicant and her family, in which the Ministry assessed the risk of future harm to a child and determined whether protection services were necessary. The Ministry says that the FDRA qualifies as an assessment under s. 16(2)(b.1) of the CFCSA.²² The Team Leader's affidavit does not mention s. 16(2)(b.1), but refers to "an assessment under s. 16(2)(c)".²³ I think it is likely that the Team Leader meant to refer to an assessment under s. 16(2)(b.1), but nothing turns on this point, as both an assessment under s. 16(2)(b.1) and an investigation under s. 16(2)(c) are contemplated by s. 77(2)(b).

[49] The applicant disputes that there was an investigation under s. 16(2). She says there could be no investigation underway because the police investigation was closed without any charges soon after the incident.²⁴

[50] I am satisfied that the Ministry's FDRA was an assessment of the applicant's family under s. 16(2)(b.1) and/or an investigation of a child's need for protection under s. 16(2)(c). I understand the applicant to be arguing that only a police investigation counts as an "investigation" for the purposes of s. 16. However, an investigation or assessment under s. 16 is conducted by the Ministry, not the police or Crown prosecutors, in response to a child protection report. It exists independently of any investigation the police may be pursuing.

²² Ministry's initial submission at paras 46-49.

²³ Affidavit of Team Leader at para 9.

²⁴ Applicant's response submission at 5-6.

[51] I am also satisfied that all of the information I have found was provided by persons not acting on behalf of or under the authority of a director was provided in the course of an assessment under s. 16(2)(b.1) or an investigation under s. 16(2)(c), because on its face, it clearly relates to the Ministry's assessment and/or investigation of the applicant's family in response to a child protection report.

Information supplied in confidence

[52] The Ministry says that the context in which the information withheld under s. 77(2)(b) was gathered, and the inherently sensitive nature of the material, establish that the information was supplied in confidence.²⁵ The Team Leader's affidavit says that all of the information collected during the initial report to the Ministry and the resulting assessment is collected in confidence and treated by the Ministry as confidential.²⁶ The applicant disputes that the withheld information was supplied in confidence.²⁷

[53] I accept that some of the information withheld under s. 77(2)(b) was supplied in confidence. Pages 11 to 13, consisting of a letter and attachments, are expressly marked 'confidential' by their sender, and I can also see that their contents are sensitive. While the information sent by the non-Ministry employee on page 25 lacks an express statement of confidentiality, I am satisfied from the context that the parties treated the information as confidential. However, the Ministry does not explain, and I am unable to tell, how the file number on page 43 was supplied in confidence.

Conclusion on s. 77(2)(b) of the CFCSA

[54] For the reasons given above, I conclude that the Ministry has met its burden of proving that s. 77(2)(b) applies to some of the withheld information; the Ministry may refuse to disclose that information.²⁸ However, I conclude that s. 77(2)(b) does not apply to the remainder of the withheld information, and so the Ministry may not refuse to disclose it.²⁹

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

[55] Section 22 of FIPPA says that a public body must refuse to disclose personal information if this disclosure would be an unreasonable invasion of

²⁵ Ministry's initial submission at paras 50-51.

²⁶ Affidavit of Team Leader at para 16.

²⁷ Applicant's response submission at 3.

²⁸ Namely, pages 11 to 13 and some of the information on page 25 of the records package.

²⁹ Namely, some of the information on page 25 and the information on pages 43-45, 48, and 53 of the records package.

a third party's personal privacy. The analytical framework for s. 22 is well established:

This section only applies to “personal information” as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. However, this presumption can be rebutted. Whether s. 22(3) applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy.³⁰

[56] The applicant's spouse gave consent for his personal information to be disclosed, so the only information the Ministry is still withholding under s. 22 is on pages 45 and 52 of the records package. The withheld information consists of parts of a social worker's incident report on page 45, as well as a short description of a confrontation in a Ministry safety assessment form on page 52.

[57] The applicant says that the Ministry has not sufficiently explained why s. 22 applies to the information, and disputes that disclosure of it would be an unreasonable invasion of a third party's personal privacy.³¹

Personal information – s. 22(1)

[58] The first step in the s. 22 analysis is to determine whether the information is personal information. Both “personal information” and “contact information” are defined in Schedule 1 of FIPPA:

“personal information” means recorded information about an identifiable individual other than contact information;

“contact information” means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;

[59] The Ministry says that the withheld information on page 45 is a social worker's description of several third parties and their activities. It says that this information is the personal information of the third parties because it is reasonably capable of identifying an individual on its own or when combined with other sources. It also says that the information on page 52 is about a clearly

³⁰ Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.

³¹ Applicant's response submission at 3 and 5.

identifiable third party. The Ministry submits that none of the information withheld under s. 22 is contact information.³²

[60] I find that the information withheld under s. 22 is personal information. I find that the information withheld from the social worker's notes on page 45 is reasonably capable of identifying individuals because it records the social worker's observations about times, places, and family relationships.³³ I also find that the information withheld on page 52 is about identifiable individuals. None of this information consists of contact information. Therefore, I conclude that it is the personal information of those individuals. Some of the personal information is also the applicant's personal information, as I will discuss below.

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

[61] The next step in the s. 22 analysis is to determine whether the personal information falls into any of the categories set out in s. 22(4), and is therefore not an unreasonable invasion of a third party's personal privacy.

[62] The Ministry submits that s. 22(4) does not apply to any of the information withheld under s. 22. The applicant made no submissions about s. 22(4).

[63] On examining the withheld information in light of the provisions in s. 22(4), I find that none of them apply.

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

[64] The third step in the s. 22 analysis is to determine whether any presumptions set out in s. 22(3) apply, such that disclosure of the personal information is presumed to be an unreasonable invasion of a third party's personal privacy.

[65] The Ministry says that s. 22(3)(i) applies to some of the withheld information in a social worker's notes because "the social worker has indicated a third party's presumed racial or ethnic origin". It does not submit that any other s. 22(3) presumption applies.³⁴ The applicant made no submissions about s. 22(3).

[66] Section 22(3)(i) applies where the personal information indicates the third party's racial or ethnic origin. I find that s. 22(3)(i) applies to a small amount of the withheld information, namely part of the second redacted portion on page 45. I can see that this information deals with the social worker's evaluation of a third party's racial or ethnic origin.

³² Ministry's initial submission at paras 14-22.

³³ Namely, the information withheld on the first two paragraphs of page 45.

³⁴ Ministry's initial submission at paras 26-27.

[67] The Ministry does not argue, and I do not find, that any other s. 22(3) presumption applies to the personal information withheld under s. 22(1).

Relevant circumstances – s. 22(2)

[68] The final step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of all relevant circumstances, including (but not limited to) those set out in s. 22(2). It is at this step that any applicable s. 22(3) presumptions may be rebutted.

[69] The Ministry does not argue that any of the circumstances set out in s. 22(2), or any other relevant circumstances, favour disclosure. In particular, the Ministry says that the information “would have no relevance to a fair determination of the applicant’s rights” under s. 22(2)(c).³⁵ It also says that there is nothing to rebut the presumption raised by s. 22(3)(i). The Ministry submits that since it does not know whether any of the third parties object to the disclosure of their personal information, a cautious approach to disclosure is warranted.³⁶

[70] Reviewing the factors set out in s. 22(2), I agree with the Ministry that the information is not relevant to a fair determination of the applicant’s rights, as contemplated by s. 22(2)(c). The Ministry has long since closed its file related to the incident, so none of the applicant’s rights (other than the right to access information under FIPPA) are at issue here. The applicant also made no submissions on s. 22(2), so I have no evidence of a particular legal right that may be relevant.

[71] I also do not find that any other enumerated s. 22(2) circumstance applies to the personal information. However, I do find that there are some *unenumerated* circumstances that apply, and I now turn to consider those.

Applicant’s knowledge

[72] Previous orders have considered whether an applicant’s knowledge of the information in dispute weighs for or against disclosure.³⁷

[73] The applicant says, with respect to page 52, that she knows the name of the person described there. She also says that that information has been published in the news and on social media.³⁸

[74] I do not think the applicant’s knowledge is relevant to the withheld personal information on page 45. However, I find it is relevant to the withheld

³⁵ *Ibid* at para 29.

³⁶ *Ibid* at paras 28-33.

³⁷ E.g., Order F22-10, 2022 BCIPC 10 (CanLII) at paras 142-149.

³⁸ Applicant’s response submission at 5.

personal information on page 52. Here, the context in which the personal information appears makes the content of that information unmistakable to someone in the applicant's position and with her knowledge. I find that for this information on page 52, the applicant's knowledge weighs in favour of disclosure.

Applicant's personal information

[75] Previous orders have found that "it would only be in rare circumstances that disclosure to an applicant of their own personal information would be an unreasonable invasion of a third party's personal privacy".³⁹ In my view, the withheld personal information on page 52 is a third party's personal information but also the applicant's personal information because it describes a confrontation between her and the third party. I find that this factor weighs in favour of disclosure.

Sensitivity

[76] Previous orders have considered the sensitivity of the information as a relevant circumstance.⁴⁰ I do not think any of the personal information on page 45 is sensitive. It consists of routine observations made in a public place during the course of a social worker's day. I therefore find that this circumstance weighs in favour of disclosing that information.

[77] Similarly, I find that the personal information on page 52 is not sensitive since it is factual information that does not reveal any sensitive details about an individual. I therefore find that this factor weighs in favour of disclosure.

Conclusion on s. 22(1)

[78] Examining the matter as a whole, I find that the circumstances set out in s. 22(2), and the other relevant circumstances as set out above, favour disclosure of most of the information the Ministry has withheld under s. 22(1). As a result, the Ministry is not required to refuse to disclose this information.

[79] In the case of the information that I have found is subject to s. 22(3)(i), however, I do not think the s. 22(2) circumstances favouring disclosure are enough to overcome the presumption of an unreasonable invasion of a third party's personal privacy, and conclude that the Ministry must refuse to disclose that information under s. 22(1).

³⁹ Order F22-10, *supra* note 37 at para 150.

⁴⁰ E.g., Order F16-06, 2016 BCIPC 7 (CanLII) at para 38.

CONCLUSION

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

1. Subject to item 4 below, the Ministry is required to refuse to disclose the information it withheld under s. 77(1) of the CFCSA.
2. Subject to item 4 below, the Ministry is authorized to refuse to disclose the information it withheld under s. 77(2)(b) of the CFCSA.
3. Subject to item 4 below, the Ministry is required to refuse to disclose the information it withheld under s. 22(1) of FIPPA.
4. The Ministry is not required or authorized under ss. 77(1) and 77(2)(b) of the CFCSA or s. 22 of FIPPA to refuse the applicant access to the information that I have highlighted in the copy of the records which is provided to the Ministry with this order.
5. I require the Ministry to give the applicant a copy of the records with the highlighted information unredacted. The Ministry must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, along with a copy of the relevant records.

[81] Pursuant to s. 59(1) of FIPPA, the Ministry is required to comply with this order by **April 25, 2023**.

March 10, 2023

ORIGINAL SIGNED BY

David S. Adams, Adjudicator

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