



Order F23-22

## DESTINATION BRITISH COLUMBIA

David S. Adams  
Adjudicator

March 28, 2023

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**Summary:** An applicant requested records related to a 2015 meeting attended by a representative of Destination British Columbia (DBC). DBC released the responsive records, but withheld some information in them under ss. 13(1) (policy advice or recommendations), 21(2) (information gathered for determining tax liability or collecting a tax), and 22(1) (unreasonable invasion of a third party's personal privacy) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator determined that DBC was required to refuse to disclose the information it withheld under s. 21(2). The adjudicator determined that DBC was required to refuse to disclose some, but not all, of the information it withheld under s. 22(1). Finally, the adjudicator confirmed DBC's decision to withhold a small amount of information under s. 13(1).

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 13(1), 13(2), 13(3), 21(2), 22(1), 22(2), 22(3), 22(4), 56(1); *Provincial Sales Tax Act*, SBC 2012 c 35, ss. 228 and 230(1); *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25, s. 16(2).

## INTRODUCTION

[1] The applicant made a request, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to Destination British Columbia (DBC) for all records related to a March 2015 meeting in Sechelt. The meeting was hosted by the Sunshine Coast Tourism Society (SCT), and attended by a representative of DBC. The meeting's purpose was to explain and gather support for SCT's plan to have the provincial Municipal and Regional District Tax (MRDT) apply to the region.

[2] DBC provided the responsive records, but withheld some information under ss. 13(1) (policy advice or recommendations), 17(1) (harm to a public

body's economic interests), and 22(1) (unreasonable invasion of third-party personal privacy) of FIPPA.

[3] The applicant sought a review of DBC's decision by the Office of the Information & Privacy Commissioner (OIPC). During mediation, DBC withdrew its reliance on s. 17(1) and released some additional information to the applicant. However, mediation did not resolve all the outstanding issues and the matter proceeded to this inquiry.

[4] During the inquiry, DBC reconsidered its severing and disclosed some more information. It also sought permission to add s. 21(2) as an issue. The applicant opposed the addition of this issue.<sup>1</sup> This office allowed the addition of s. 21(2) as an issue because s. 21(2) is a mandatory exception to disclosure.<sup>2</sup>

[5] Both parties provided submissions. DBC provided affidavits from a current executive of DBC (the DBC Executive), from a director in the Ministry of Finance's revenue division (the Finance Director) and from a paralegal in the Legal Services Branch of the Ministry of Attorney General (the LSB Paralegal).

### ***Preliminary Matters***

#### *Commissioner's jurisdiction*

[6] Most of the applicant's submission relates to the circumstances of the adoption of the MRDT. He says the MRDT was improperly and illegally adopted, he makes many allegations of wrongdoing, and he requests that all the money collected under the MRDT program be remitted to his own association. These are matters outside my jurisdiction as an adjudicator under FIPPA, so I will make no decision about them. While I have read and considered the applicant's entire submission, I will refer only to the parts of it that relate to the issues in this inquiry.

#### *Inadvertent disclosure and adjournment*

[7] As I mentioned above, during the inquiry, DBC sought and received permission to add s. 21(2) as an issue. Some of the information it withheld under s. 21(2) had already been disclosed to the applicant in DBC's initial disclosure package. I wrote to DBC to give it the opportunity to request the information back from the applicant. DBC did so, but this request was initially unsuccessful.

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<sup>1</sup> Applicant's letter of July 29, 2022.

<sup>2</sup> Registrar's letter of August 3, 2022.

[8] I then adjourned the inquiry pending the applicant's return or destruction of the inadvertently disclosed information. The applicant later advised DBC that he had destroyed the information, and I resumed the inquiry. I will discuss below whether DBC is required to refuse to disclose the information under s. 21(2).

## ISSUES

[9] The issues I must decide in this inquiry are:

1. Whether DBC must refuse to disclose information under s. 21(2);
2. Whether DBC must refuse to disclose information under s. 22; and
3. Whether DBC may refuse to disclose information under s. 13.

[10] Under s. 57(1) of FIPPA, the burden is on DBC to prove that the applicant has no right of access to the information withheld under ss. 13 and 21(2). Meanwhile, under s. 57(2), the burden is on the applicant to prove that disclosure of personal information withheld under s. 22(1) would not unreasonably invade third-party personal privacy.

## DISCUSSION

### ***Background***

[11] DBC is a Crown corporation responsible for marketing BC as a tourist destination and for promoting the development of the provincial tourism industry.

[12] The MRDT is a provincial tax on the purchase price of taxable accommodation.<sup>3</sup> Municipalities, regional districts, and eligible entities are able to apply to the provincial government to have the MRDT imposed within a specific geographic area of the province.<sup>4</sup> The revenue from the tax is used for, among other things, tourism marketing in the regional district where it is adopted.<sup>5</sup> During the time period covered by the applicant's access request, the MRDT program was jointly administered by DBC, the Ministry of Finance (Finance), and the Ministry of Jobs, Tourism, and Skills Training (JTST).<sup>6</sup>

[13] There are several conditions that must be met before the Province will impose the MRDT, including support from local governments, support from local

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<sup>3</sup> Affidavit of Finance Director at para 6.

<sup>4</sup> *Ibid* at para 8.

<sup>5</sup> *Ibid* at para 12; DBC website: [Municipal & Regional District TaxProgram \(MRDT\) - Destination BC - Destination BC](#).

<sup>6</sup> Affidavit of Finance Director at para 6.

tourism industry stakeholders, and the support of 51% of local accommodation providers, representing 51% of the total accommodation units in the area.<sup>7</sup>

[14] In 2012, SCT, a non-profit society formed to promote tourism on BC's Sunshine Coast, applied to DBC for the MRDT to be imposed there. However, the application was not successful, and Finance advised SCT that it would have to apply again.<sup>8</sup>

[15] In 2014, SCT asked DBC for assistance in preparing its application package. From January to March 2015, SCT and others communicated with DBC and Finance about the list of accommodation providers who would be required to collect the MRDT.<sup>9</sup> These communications included discussions about whether certain accommodation providers were eligible to vote for the MRDT. They resulted in a March 2, 2015 meeting, at which SCT explained its plan and sought support from accommodation providers. DBC's chief executive officer attended and spoke at the meeting, but did not advocate for or against adoption of the MRDT.<sup>10</sup>

[16] On March 8, 2015, the applicant sent an email to various accommodation providers that expressed his view that the application process had been compromised.<sup>11</sup> DBC and SCT each obtained a copy of this email.

[17] In August 2015, SCT submitted a second MRDT application to DBC. This application was successful, and in an April 2016 Order in Council, the Cabinet added SCT as a "designated recipient" for the purposes of the MRDT program.<sup>12</sup>

### ***Records at issue***

[18] The information in dispute consists of parts of emails involving staff members of DBC, Finance, and JTST. There are also some spreadsheets containing information about accommodation providers, an information bulletin, and a briefing note. Most of the information has been released to the applicant, but DBC has withheld some material in the emails and one of the spreadsheets.

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<sup>7</sup> *Ibid* at para 8.

<sup>8</sup> *Ibid* at paras 13-14.

<sup>9</sup> *Ibid* at paras 15-17.

<sup>10</sup> Affidavit of DBC Executive at para 20.

<sup>11</sup> *Ibid* at para 21; records package at 153ff.

<sup>12</sup> Affidavit of Finance Director at para 21; Affidavit of DBC Executive at para 24.

***Information gathered for determining tax liability or collecting a tax – s. 21(2)***

[19] Section 21(2) of FIPPA says that the head of a public body must refuse to disclose to an applicant information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

[20] Section 21(3) provides that s. 21(2) does not apply if (a) the third party consents to disclosure, or (b) the information is in a record that is in the custody or under the control of the digital archives or museum archives of government or the archives of a public body and that has been in existence for 50 or more years. DBC submits that neither ss. 21(3)(a) nor (b) apply here. Since there is no evidence before me that any of the third parties consented to disclosure, I find that s. 21(3)(a) does not apply. Since the information dates from 2014 and 2015, I find that s. 21(3)(b) does not apply.

[21] DBC does not argue, and I do not find, that any of the information withheld under s. 21(2) was obtained on a tax return. The only question for the purposes of s. 21(2), therefore, is whether it was gathered for the purpose of determining tax liability or collecting a tax.

*Gathered for the purpose of determining tax liability or collecting a tax*

[22] In Order F05-29, former Commissioner Loukidelis explained the purpose of s. 21(2):

In my view, the purpose of s. 21(2) is to protect information that a public body obtains from a taxpayer (on the taxpayer's tax return) or otherwise gathers or gathered relating to the taxpayer for the purpose of determining tax liability or collecting a tax, without, unlike s. 21(1), requiring the establishment of confidentiality of the information or a reasonable expectation of harm to the taxpayer from its disclosure.<sup>13</sup>

[23] In that case, the former Commissioner also found that the word "gathered" in s. 21(2) did not apply to information *generated* by the public body by "applying skills, techniques and professional judgment to information that it has gathered (even where underlying information that is analyzed to create the disputed information has been gathered directly from a taxpayer)".<sup>14</sup>

[24] Previous orders have also held that the information needs to be gathered for the sole or primary purpose of determining tax liability or collecting a tax. Information that is gathered "for a whole host of reasons" will not meet this bar.<sup>15</sup>

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<sup>13</sup> Order F05-29, 2005 CanLII 32548 (BC IPC) at para 92.

<sup>14</sup> *Ibid* at para 96.

<sup>15</sup> Order F15-19, 2015 BCIPC 21 (CanLII) at para 24, citing Order 00-10, 2000 CanLII 11042 (BC IPC) at 20-21.

[25] The information DBC withheld under s. 21(2) is of several types. There are the names and addresses of accommodation providers, provided by the Finance to DBC via email.<sup>16</sup> There are also Finance's emailed responses to DBC staff's questions about whether certain businesses were registered with Finance as accommodation providers.<sup>17</sup> Finally, there are the PST numbers and registration statuses of accommodation providers contained in a spreadsheet.

*Information in emails*

[26] DBC says that all the information withheld in the emails under s. 21(2) was gathered for the purpose of determining tax liability and/or collecting a tax; it says that Finance gathered the information through its Taxpayer Administration, Compliance and Service (TACS) software system for these purposes.<sup>18</sup>

[27] The Finance Director's affidavit provides some detail on Finance's gathering process:

TACS is the software system Finance uses to administer various [pieces of] tax legislation. Information stored in TACS is gathered through various means including application forms, a taxpayer self-service portal called "e-tax BC", and telephone and email communications with taxpayers. Information from tax returns is entered directly into TACS, but the information attached to a PST account is provided by the registrant when they register for the purpose of tax collection...

For the purposes of PST, Finance uses the information in TACS to determine taxpayer obligations (e.g., outstanding tax liabilities, requirements to register, and obligations to levy and collect tax) and entitlements (e.g., entitlements to refunds) under provincial tax legislation. All information in TACS is gathered by Finance for the purpose of determining tax liability or collecting tax. If Finance were to release information contained in TACS, but not publicly available, through *FIPPA*, taxpayers may be less likely to provide Finance in the future with all relevant taxation information.<sup>19</sup>

[28] DBC says that Finance, having gathered the information for its own purposes, provided the information to DBC in response to DBC's requests, which were made in order to administer of the MRDT program.<sup>20</sup> The applicant does not make a submission about the application of s. 21(2).

[29] On reviewing the information withheld from the emails, I am persuaded by DBC's evidence and argument that the information was gathered by Finance for

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<sup>16</sup> At 22-23 of the records package, and repeated at 29, 32-33, 36, and 44.

<sup>17</sup> At 24 of the records package, and repeated at 29-30, 33-34, 37, and 46; also at 75 and repeated at 78-79, 80, 82, and 131.

<sup>18</sup> DBC's initial submission at paras 66-68.

<sup>19</sup> Affidavit of Finance Director at paras 18-19.

<sup>20</sup> DBC's initial submission at para 66.

the purpose of determining tax liability or collecting a tax. The nature of the information – whether a particular business was registered as an accommodation provider, operators’ names and addresses – is not such that Finance could be said to have generated it by the application of skill or judgment.

*Information in spreadsheet*

[30] The information on page 58 that DBC seeks to withhold under s. 21(2) consists of the PST numbers and registration statuses of approximately 50 accommodation providers, contained in two columns of a spreadsheet. The spreadsheet is an attachment to a June 10, 2014 email from the president of SCT to a staff member at the Vancouver, Coast & Mountains Tourism Region. The attachment was forwarded to DBC, and on again to Finance, whose staff provided information on the providers’ registration status.

[31] DBC says that the information in the spreadsheet on page 58 did not originate with DBC. DBC does not know who the author of the spreadsheet is. It believes that the information must have come from Finance’s TACS. It does not believe the spreadsheet or the information in it came from SCT because the spreadsheet does not look like SCT’s spreadsheets and in an email (in evidence here) SCT’s president told DBC’s counsel: “I don’t ever remember having PST information and we certainly wouldn’t have been circulating that internally”.<sup>21</sup>

[32] DBC also says the information in this case should be viewed as highly sensitive private information because the *Provincial Sales Tax Act* prohibits disclosure of information or records under that Act except in specific circumstances that do not include responding to a FIPPA access request.<sup>22</sup>

[33] Although there is some uncertainty about the source of this information, I am satisfied on the balance of probabilities that it came from TACS and was provided by Finance to DBC. The context provided by the emails that discuss the spreadsheet is enough to satisfy me that this is the case. I therefore find that the information on page 58 was gathered by Finance for the purpose of determining tax liability or collecting a tax, and therefore also conclude that DBC must withhold it under s. 21(2).

*Information gathered by one public body and then provided to another public body*

[34] I turn next to the question of whether information that was gathered by Finance for the purpose of determining tax liability or collecting tax continues to enjoy the protection of s. 21(2) after it is disclosed to DBC. I am not aware of any

<sup>21</sup> DBC’s initial submission at paras 84-86; Affidavit of Finance Director, Exhibit B.

<sup>22</sup> DBC’s initial submission at para 88, citing ss. 228 and 230(1) of the *Provincial Sales Tax Act*, SBC 2012, c 35.

BC authority on this point. However, in *Natural Resources Conservation Board (Re)*, 2011 CanLII 96588, a decision of the Alberta Information and Privacy Commissioner, the adjudicator considered the application of s. 16(2) of the *Alberta Freedom of Information and Protection of Privacy Act*<sup>23</sup> (the Alberta Act), whose wording is very similar to s. 21(2) of FIPPA. In that case, the public body withheld from an access applicant some information it had received from the Canada Revenue Agency (CRA). The adjudicator concluded that:

...in order to engage section 16(2) of the [Alberta] Act, the information need not be collected by the Public Body for tax purposes. It is enough that, when the information was first collected (in this instance, by the CRA), it was for the tax purposes listed in section 16(2) of the [Alberta] Act, although it was later collected and used by the Public Body for a different purpose.<sup>24</sup>

[35] I agree with and adopt this approach. In my view, it would frustrate the purposes of s. 21(2) if the information taxpayers provide, or that Finance gathers from them, is no longer protected by s. 21(2) if transmitted to another public body. This conclusion is supported by the reasoning in BC Order F15-19, where the adjudicator considered the expectations of taxpayers in the context of a FIPPA dispute:

While the intent of FIPPA is to make public bodies more open and accountable through disclosure of information, it also recognizes that exceptions to disclosure are desirable and necessary in certain circumstances...[T]he exceptions in ss. 21(2) and 22(3)(e) recognize that taxpayers, whether individual or corporate, are entitled to privacy with respect to their tax information. Such privacy fosters the voluntary and fulsome disclosure of information necessary for governments to determine tax liability and collect tax.<sup>25</sup>

*Conclusion on s. 21(2)*

[36] Since I have found that all of the information withheld under s. 21(2) was originally gathered by Finance for the purpose of determining tax liability or collecting a tax, I conclude that DBC is required to withhold this information.

***Disclosure harmful to third-party personal privacy – s. 22***

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

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<sup>23</sup> RSA 2000, c F-25.

<sup>24</sup> At paras 46-53.

<sup>25</sup> Order F15-19, *supra* note 15 at para 28.

party's personal privacy. The analytical framework for s. 22, which I will apply, 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.<sup>26</sup>

[38] DBC has withheld some information (i.e., the names and addresses of certain accommodation providers) under both ss. 21(2) and 22, but since I have found that s. 21(2) applies to that information, I need not consider whether s. 22 also applies to it.

*Personal information – s. 22(1)*

[39] The first step in the s. 22 analysis is to determine whether the information is personal information. “Personal information” is 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;

[40] DBC says that all of the information it withheld under s. 22 is personal information, because it consists of names and addresses, opinions, and vacation details of identifiable individuals. It says that none of this information is contact information within FIPPA's definition of that term.<sup>27</sup>

[41] DBC submits that comments made about the applicant cannot be disclosed because they are also the personal information of the commenter.<sup>28</sup> I do not agree. The fact that a piece of information is the personal information of a third party is not enough, by itself, for a public body to withhold it under s. 22. Disclosure of the information must, in all the circumstances, amount to an unreasonable invasion of third-party personal privacy for it to be withheld.

<sup>26</sup> Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.

<sup>27</sup> DBC's initial submission at paras 104-112.

<sup>28</sup> *Ibid* at para 110.

[42] I find that the information withheld in the emails consists mostly of the opinions of the email authors. Those people are identifiable because their names have not been withheld, so their opinions are their personal information. Some, but not all, of the opinions are about the applicant, so they also contain his personal information. There is also information about a named individual's vacation, so that is that individual's personal information.

[43] I also find that none of the withheld information is contact information. Therefore, I conclude that all of the information withheld under s. 22 is the personal information of third parties, with some of it also being the personal information of the applicant.

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

[44] DBC submits that none of the provisions set out in s. 22(4) apply to the information withheld under s. 22.<sup>29</sup> I have considered the withheld information in light of the provisions listed in s. 22(4), and find that none of these provisions apply.

*Presumed unreasonable invasion – s. 22(3)*

[45] 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 would be a presumed unreasonable invasion of third party personal privacy.

*Gathered for the purpose of collecting a tax – s. 22(3)(e)*

[46] DBC submits that s. 22(3)(e) applies to information that I have already found must be withheld under s. 21(2).<sup>30</sup> However, I have considered whether it applies elsewhere and find that it does not.

[47] DBC does not argue that any other s. 22(3) presumption applies, and reviewing the list of presumptions, I do not find that any of them apply.

*Relevant circumstances – s. 22(2)*

[48] 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). DBC raises the following s. 22(2) circumstances:

22(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's

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<sup>29</sup> DBC's initial submission at para 113.

<sup>30</sup> Namely, the information in the records package at 22-23 and repeated at 32-33, 36, and 44.

personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,

...

(f) the personal information has been supplied in confidence,

Public scrutiny – s. 22(2)(a)

[49] DBC says that the disclosure of the information it has withheld under s. 22, including the opinions and vacation details of third parties, would not be desirable for subjecting DBC to public scrutiny, and the information at issue has “no broad or public significance”, so s. 22(2)(a) is not a factor favouring disclosure.<sup>31</sup> The applicant makes no submission about this factor.

[50] I find that the withheld third-party opinions and vacation details would not assist in subjecting the activities of DBC to public scrutiny, so this factor does not weigh in favour of disclosure.<sup>32</sup>

Supplied in confidence – s. 22(2)(f)

[51] DBC argues that third parties who provide their information to the province for taxation purposes expect their information not to be generally disclosed.<sup>33</sup> The applicant makes no submission about this factor.

[52] I agree with DBC’s submission as far as the taxpayer information is concerned. However, all of the information withheld under s. 22 alone consists of parts of emails sent in the ordinary course of business. In my view, nothing about their content or context suggests any expectation of confidentiality. I therefore find that s. 22(2)(f) is not a circumstance that weighs against disclosure of the personal information.

Other relevant circumstances

*Applicant’s personal information*

[53] Much of the information withheld under s. 22 consists of emailed opinions about the applicant, so it is both his personal information as well as the opinion-giver’s personal information.<sup>34</sup> In Order F14-47, the adjudicator said:

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<sup>31</sup> DBC’s initial submission at paras 122-125.

<sup>32</sup> See, e.g., Order F05-18, 2005 CanLII 24734 (BC IPC) at para 50.

<sup>33</sup> DBC’s initial submission at paras 126-7.

<sup>34</sup> Namely, the information at 39 (repeated at 114 and 124), 161 (repeated at 190 and 199), and 172.

it would only be in rare circumstances where disclosure to applicants of their own personal information would be an unreasonable invasion of a third party's personal privacy. One such circumstance is potentially relevant here – where the applicant's personal information is also the personal information of third parties and disclosure of that information would be an unreasonable invasion of the third party's personal privacy. Nonetheless, the fact that the applicant is seeking her own personal information is a factor in favour of disclosure of that information.<sup>35</sup>

I find that this factor favours disclosure where the comments are about the applicant.

*Sensitivity of the information*

[54] Previous orders have found that sensitivity is a relevant factor to consider when deciding whether disclosure of personal information is an unreasonable invasion of third party personal privacy. Where the information is particularly sensitive, this will weigh against disclosure, and where the information is not particularly sensitive, this will favour disclosure.<sup>36</sup>

[55] Some of the withheld personal information is not about the applicant.<sup>37</sup> This information consists of comments that are of a lighthearted, bantering nature or that reflect ordinary business-related observations. In my view, nothing about the content or context of these comments indicates that they are particularly sensitive. I also find that the comments that *are* about the applicant are likewise not sensitive because they are about the applicant's well-publicized concerns with the MRDT process and the opinion-givers' reactions to those concerns. The lack of sensitivity of this personal information favours disclosure.

[56] One piece of withheld information<sup>38</sup> relates to a third party's vacation. In Order F16-52, the adjudicator said:

In my view, details of a personal vacation should generally be considered sensitive in nature, as this is information about what an individual does in their private time away from the workplace. Most public body employees or representatives would not expect that any information about their personal vacations would be publicly disclosed.<sup>39</sup>

[57] I agree with and adopt this approach. Moreover, in this case, the third party is not a public body employee, but rather an unrelated party whose

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<sup>35</sup> 2014 BCIPC 51 (CanLII) at para 36, citing Order F10-10, 2010 BCIPC 17 at para 37 and Order F06-11, 2006 CanLII 25571 (BC IPC) at para 77.

<sup>36</sup> Order F16-52, 2016 BCIPC 58 (CanLII) at paras 87-91.

<sup>37</sup> Namely, the information at 75 (repeated at 77, 79, 80, 81, 82-83, 84, 91, 94, 96, 97, and 132-33) and 202 (repeated at 210).

<sup>38</sup> Records package at 58.

<sup>39</sup> 2016 BCIPC 58 (CanLII) at para 89.

information happened to have been entered in a spreadsheet. I find that the sensitivity of the vacation information weighs against its disclosure.

*Other circumstances*

[58] The applicant says that he has a right to the withheld information in the emails because the email correspondents have slandered him.<sup>40</sup> He does not refer to any provision of FIPPA or other authority for this proposition, and I am unable to conclude that this alleged slander is a relevant circumstance for the purposes of s. 22(2).

*Conclusion on s. 22*

[59] My findings about s. 22 apply only to the information that I did not already find must be withheld under s. 21(2). I have found that all of the information DBC withheld under s. 22 is the personal information of third parties.

[60] I have found that no s. 22(4) provisions apply to any of the personal information. I have also found that no s. 22(3) presumptions apply.

[61] I have found that for most of the personal information, none of the factors enumerated in s. 22(2), or other relevant factors, weigh against disclosure. In particular, I have found that the fact that some of the personal information is about the applicant weighs in favour of disclosure of that information to him. Only the sensitivity of a third party's vacation information weighs against disclosure of that specific information.

[62] Therefore, I conclude that it would be an unreasonable invasion of personal privacy to disclose the information about the third party's vacation on page 58 of the records. DBC must refuse to disclose that information under s. 22(1). However, s. 22(1) does not apply to the rest of the personal information because I am satisfied that its disclosure would not be an unreasonable invasion of third parties' personal privacy.

***Policy advice or recommendations – s. 13***

[63] Because I have found that s. 21(2) applies to most of the information withheld under both ss. 21(2) and 13, I need only consider the application of s. 13 to a small amount of information.<sup>41</sup> The withheld information is a Finance employee's response to a DBC employee's question.

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<sup>40</sup> Applicant's response submission at para 55.

<sup>41</sup> The information withheld under s. 13 alone is at 75 of the records (repeated at 79, 80, 83, and 131).

[64] Section 13(1) of FIPPA provides that:

The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

[65] The purpose of s. 13(1) is to allow “full and frank discussion of advice or recommendations on a proposed course of action by preventing the harm that would occur if the deliberative process of government decision and policy-making were subject to excessive scrutiny”.<sup>42</sup>

[66] Section 13(2) sets out categories of information to which s. 13(1) does not apply; for instance, s. 13(2)(a) says that the head of a public body must not refuse to disclose any factual material under s. 13(1). In addition, s. 13(3) provides that s. 13(1) does not apply to information in a record that has been in existence for 10 or more years.

[67] DBC says that the withheld information is advice developed by Finance for DBC.<sup>43</sup> It says that none of the exceptions set out in s. 13(2) apply. In particular, it asserts that any factual material is inextricably interwoven with the advice and recommendations, so s. 13(2)(a) does not apply.<sup>44</sup>

[68] The applicant’s submission does not say anything about the application of s. 13. In his request for review, he disputes that s. 13 applies.<sup>45</sup>

[69] I can see that the withheld information is part of a communication from a Finance employee to a DBC employee. Although it does not directly recommend a course of action to the DBC employee, it is an opinion about the import of facts DBC is considering. Previous orders have held that “‘advice’ includes an opinion that involves exercising judgment and skill to weigh the significance of matters of fact upon which a public body must make a decision for future action.”<sup>46</sup> I find that the withheld information falls within this definition.

[70] I also do not find that any provision of s. 13(2) applies. I am satisfied that the factual material in the statement is inextricably intertwined with the advice provided by Finance, so that s. 13(2)(a) does not apply. I have also considered the other provisions under s. 13(2), and find that none of them apply.

[71] Since the information dates from 2015, s. 13(3) does not apply.

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<sup>42</sup> Order F17-13, 2017 BCIPC 14 (CanLII) at para 17.

<sup>43</sup> DBC’s initial submission at paras 54-55.

<sup>44</sup> *Ibid* at paras 57-58.

<sup>45</sup> At 1.

<sup>46</sup> Order F18-19, 2018 BCIPC 22 (CanLII) at para 12, citing *College of Physicians of BC v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 113.

*Conclusion on s. 13*

[72] I find that DBC has established that disclosing the information that is withheld under s. 13 alone would reveal advice or recommendations developed by or for a public body. I also find that ss. 13(2) and 13(3) do not apply. Therefore, DBC is authorized to refuse to disclose that information under s. 13(1).

**CONCLUSION**

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

1. I confirm DBC's decision to withhold information under s. 21(2).
2. I confirm DBC's decision to withhold some of the information it withheld under s. 22(1), subject to item 3 below.
3. DBC is not required under s. 22(1) to refuse to disclose the information it withheld on pages 39, 75, 161, 172, and 202 of the records package (with repeats). It must disclose this information to the applicant.
4. I confirm DBC's decision to withhold information under s. 13(1).
5. DBC must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the pages described at item 3 above.

[74] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **May 11, 2023**.

March 28, 2023

**ORIGINAL SIGNED BY**

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David S. Adams, Adjudicator

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