



Order F23-44

MINISTRY OF HEALTH

Celia Francis
Adjudicator

June 8, 2023

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Summary: A journalist requested from the Ministry of Health (Ministry), under the *Freedom of Information and Protection of Privacy Act* (FIPPA), all records associated with a newspaper article the Provincial Health Officer issued regarding masks and COVID-19. The Ministry disclosed the responsive records except for a third party’s email addresses, which it withheld under s. 19(1)(a) (harm to public health and safety) and s. 22(1) (harm to third-party privacy) of FIPPA. The adjudicator found that s. 19(1)(a) applied to the email addresses and confirmed the Ministry’s decision to withhold them. It was not necessary to consider s. 22(1).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, s. 19(1)(a).

INTRODUCTION

[1] The applicant, a journalist, submitted a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Ministry of Health (Ministry) for records related to a November 2020 “op-ed”¹ by the Provincial Health Officer (PHO) about the wearing of masks as protection from COVID-19. The journalist specifically requested “all internal and external correspondence about the conception, writing, production and publication of this op-ed including approvals and drafts”.

[2] The Ministry responded by disclosing the responsive records, withholding some information under four FIPPA exceptions. The journalist requested a review by the Office of the Information and Privacy Commissioner (OIPC) of the Ministry’s decision to withhold information. As a result of mediation by the OIPC, the Ministry disclosed some of the previously withheld information. The matter

¹ An “op-ed” is a newspaper article appearing opposite the editorial page.

did not settle and proceeded to inquiry. The OIPC received submissions from the Ministry and the journalist.

[3] In its initial submission to the inquiry, the Ministry said it had dropped two of the exceptions and disclosed most of the withheld information. The Ministry said it continued to withhold two email addresses under ss. 19(1)(a) (harm to safety) and 22(1) (harm to third-party personal privacy).

ISSUE

[4] The issues to be decided in this inquiry are whether the Ministry is authorized by s. 19(1)(a) and required by s. 22(1) to withhold the information in dispute.

[5] Under s. 57(1) of FIPPA, the Ministry has the burden of proof regarding s. 19(1)(a). Under s. 57(2), the journalist has the burden to prove disclosing the information at issue would not unreasonably invade a third party's personal privacy under s. 22(1). However, the Ministry has the initial burden of proving the information at issue is personal information.²

DISCUSSION

Background

[6] The PHO issued an op-ed in November 2020 about the wearing of masks as protection from COVID-19. While preparing the op-ed, the PHO requested editorial assistance from a third party. The third party provided some editorial suggestions on the op-ed to the PHO.

Information in dispute

[7] The responsive records comprise emails and drafts of the op-ed. The information in dispute is the third party's home and work email addresses which appear in three places in the emails between the PHO and the third party on the op-ed.

Threat to safety or health

[8] The Ministry said that s. 19(1)(a) applies to the email addresses. The journalist disagreed.

[9] Section 19(1)(a) reads as follows:

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

Disclosure harmful to individual or public safety

19 (1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to

(a) threaten anyone else's safety or mental or physical health ...

Standard of proof for s. 19(1)(a)

[10] A number of past orders have considered s. 19(1)(a) and the standard of proof for harms-based exceptions, for example, Order F21-65:

The standard of proof applicable to harms based exceptions, like s. 15(1) and 19(1), is “a reasonable expectation of probable harm”. The Supreme Court of Canada has described this as a middle ground between that which is probable and that which is merely possible. The standard does not require proof that harm will occur on the balance of probabilities, but something well beyond the merely possible or speculative must be shown. In addition, the evidence needs to be detailed and convincing enough to establish a clear and direct connection between disclosure of the specific information and the alleged harm.³

[11] Past orders have said that “a threat to ‘mental health’ is not raised merely by the prospect of someone being made upset” but rather “where disclosure can reasonably be expected to cause ‘serious mental distress or anguish’”.⁴

[12] I have kept these principles in mind in considering the parties’ arguments.

Does s. 19(1)(a) apply?

[13] The Ministry argued that disclosure of the email addresses could reasonably be expected to harm the safety and physical or mental health of both the PHO and the third party. It provided detailed affidavit evidence from both individuals in support of its arguments. The journalist said the Ministry had not provided sufficient evidence to support its arguments.

[14] I am satisfied that s. 19(1)(a) applies to the email addresses, for reasons which follow.

[15] The affidavits of the PHO and the third party provide ample and heartfelt evidence of their negative experiences to date, as well as of the severe negative effects they fear would likely flow from disclosure of the information in dispute.

³ Order F21-65, 2021 BCIPC 76 (CanLII), at para. 30.

⁴ See, for example, Order F20-54, 2020 BCIPC 63 (CanLII), at para. 16.

[16] For example, the PHO said the following:

- throughout the COVID-19 epidemic, she and her friends, family and colleagues have received “extremely hateful, abusive deeply unsettling messages” because of her work as PHO;⁵
- having to review these abusive emails and phone calls has made her colleagues “feel wary and fearful in public spaces, constantly tired and moody, overwhelmed by the sheer vitriol, unable to focus or be productive, listless, unsafe, scared, sad, and heartbroken”;
- the journalist published the name and work email address of one of her colleagues which resulted in the colleague receiving “many angry and hateful emails from others”;
- for more than two “incredibly stressful” years, she has been the target of email threats, hate messages, calls to her personal phone and confrontations in public spaces and at her home, and has had to curtail her personal activities;
- she is “extremely and legitimately concerned about the hatred and abuse” the third party is likely to receive if the third party’s email addresses are disclosed; and
- the third party has already “experienced harassment and abuse” because of their connection.⁶

[17] The third party deposed that the email addresses are not widely known or publicly available. The third party also deposed to the following:

- witnessing angry confrontations by members of the public, in public places, directed at the PHO and the third party, sometimes with “anger or spitting” or “obscenities or angry slogans at [the PHO] across the street”;
- being present during attempted break-ins to the PHO’s home;
- receiving alarming negative reactions to work-related posts on social media, due to the third party’s connection with the PHO;
- having stopped making any such posts as a result; and, based on this previous experience,
- the likelihood that the third party, the third party’s colleagues and other associated individuals would receive or be exposed to “hatred,

⁵ The PHO provided examples of the threatening, vitriolic, abusive and obscenity-laden emails that she and her colleagues have received.

⁶ PHO’s affidavit, paras. 9-14. Some of this evidence was received *in camera*.

harassment and abuse” and “unnecessary harm and hatred”, if the email addresses were disclosed.⁷

[18] I am aware that the journalist denied any intention of “carelessly” publishing the email addresses, saying that in this case “discretion must prevail”.⁸

[19] I have, however, approached this case on the basis that disclosing the information would effectively be disclosure to the world. There are no restrictions on an applicant’s use of information he receives under FIPPA.⁹

[20] I accept that the journalist’s past disclosure of the PHO’s colleague’s work email address (which he does not deny doing) resulted in that person receiving hateful email messages. I also accept that the third party has been subject to negative reactions on social media flowing from the third party’s connection with the PHO.

[21] The journalist argued there is “value” in receiving the email addresses, as he continues to investigate the PHO’s work-related decisions, activities and communications with the public on the COVID-19 pandemic.¹⁰

[22] However, the journalist has received all of the records in issue, except for the third party’s email addresses. It is clear from his submission that the journalist takes exception to a number of the PHO’s actions and decisions. However, I fail to see how the information in dispute would illuminate the issues the journalist said he is investigating.

[23] The journalist acknowledged that the emails the PHO has received are “truly vile” but questioned if they were “harassment and abuse”. He argued that there is no way of verifying whether any of the “colourful anecdotes” are true.¹¹

[24] The journalist’s assertions that the affiants’ evidence about this is not credible or believable is unsupported by any evidence of his own. I accept the affiants’ evidence that the vile, vitriolic and abusive email messages in question are genuine.

[25] I am also satisfied that the PHO, the third party and others associated with the PHO have all been targets of threatening, harassing and abusive behaviour, as a result of the PHO’s work. I readily conclude as a result that the PHO and the third party could reasonably expect to be exposed to more such vile abuse and harassment if the email addresses were disclosed.

⁷ Third party’s affidavit, paras. 4-21. Some of this evidence was received *in camera*.

⁸ Journalist’s response, para. 3.

⁹ See, for example, Order F21-65, 2021 BCIPC 76 (CanLII), at para. 65.

¹⁰ Journalist’s response, paras. 2-27.

¹¹ Journalist’s response, para. 6.

[26] This is not a case of merely being upset at the prospect of disclosure. On the contrary, I am satisfied, from the open and *in camera* evidence of the PHO and the third party about their past experiences that disclosure could reasonably be expected to cause these individuals to suffer serious mental distress if the email addresses were disclosed. I find, as a result, that s. 19(1)(a) applies to the information in dispute.

[27] Given this finding, it is not necessary to consider whether s. 22(1) also applies.

CONCLUSION

[28] For the reasons given above, under s. 58(2)(b) of FIPPA, I confirm the Ministry's decision that s. 19(1)(a) authorizes the Ministry to refuse the journalist access to the information in dispute.

June 8, 2023

ORIGINAL SIGNED BY

Celia Francis, Adjudicator

OIPC File No.: F21-86062