



OFFICE OF THE  
INFORMATION &  
PRIVACY COMMISSIONER  
FOR BRITISH COLUMBIA

Order F23-56

## PROVINCIAL HEALTH SERVICES AUTHORITY

Erika Syrotuck  
Adjudicator

July 26, 2023

CanLII Cite: 2023 BCIPC 65  
Quicklaw Cite: [2023] B.C.I.P.C.D. No. 65

**Summary:** An applicant requested their own personal information from the Provincial Health Services Authority (PHSA) under the *Freedom of Information and Protection of Privacy Act* (FIPPA). PHSA disclosed some information in the responsive records but withheld the remaining information under several exceptions under Part 2 of FIPPA. The adjudicator found that ss. 13(1) (advice or recommendations) and s. 15(1)(l) (harm to the security of a property or system) applied to the information that PHSA withheld under those exceptions. The adjudicator also required PHSA to withhold some, but not all, of the information it withheld under s. 22(1) (unreasonable invasion of a third party's personal privacy). The adjudicator ordered PHSA to disclose the information to which s. 22(1) did not apply.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, ss. 13(1), 15(1)(l), 22(1).

### INTRODUCTION

[1] This inquiry is about an applicant's access request, under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Provincial Health Services Authority (PHSA) for information about herself in communications between named individuals within a specified date range.

[2] In response, PHSA provided 153 pages of records to the applicant but withheld some information under ss. 13(1) (advice or recommendations), 15(1)(a) (harm to a law enforcement matter), 15(1)(l) (harm to the security of a property or system), 17(1) (harm to a public body's financial or economic interests), and 22(1) (unreasonable invasion of a third party's personal privacy).

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review PHSA's decision to withhold the information from the responsive records.

[4] During mediation by the OIPC, PHSA disclosed additional information to the applicant. However, it continued to withhold some information in the responsive records.

[5] Mediation did not resolve the issues and the applicant requested that the matter proceed to inquiry.

[6] At the inquiry, PHSA did not rely on ss. 15(1)(a) or 17(1) to withhold any information, so I find that those issues are no longer in dispute.

[7] The applicant did not make inquiry submissions.

## **ISSUES**

[8] At this inquiry, I must decide the following issues:

1. Is PHSA authorized to withhold the information in dispute under ss. 13(1) or 15(1)(l) of FIPPA?
2. Is PHSA required to withhold the information in dispute under s. 22(1) of FIPPA?

[9] Under s. 57(1) of FIPPA, the burden of proof is on PHSA to show that the applicant has no right of access under ss. 13(1) or 15(1)(l). However, under s. 57(2), the applicant must prove that disclosure of a third party's personal information would not be an unreasonable invasion of that third party's personal privacy under s. 22(1).

## **DISCUSSION**

### ***Background***

[10] PHSA is a provincial health authority responsible for coordinating and delivering specialized health care services across British Columbia.<sup>1</sup> Among other things, PHSA provides administrative and operational oversight of British Columbia Emergency Health Services (BCEHS). In particular, PHSA supports BCEHS in managing its labour, human resources and is responsible for receiving and responding to access requests submitted to BCEHS under FIPPA.

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<sup>1</sup> The background includes information from the affidavit of PHSA's Manager, Information Access, Education and Intake at paras 2-5.

[11] The applicant was an employee of BCEHS. The information in the responsive records relates to the applicant's employment with BCEHS, such as information relating to workplace complaints involving the applicant.

### **Information at issue**

[12] The information at issue is mostly portions of emails. PHSA also withheld some records in their entirety.

### **Section 13(1) – advice or recommendations**

[13] Section 13(1) allows a public body to refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

[14] The purpose of s. 13(1) is to prevent the harm that would occur if a public body's deliberative process was exposed to public scrutiny.<sup>2</sup>

[15] The term "advice" is broader than "recommendations"<sup>3</sup> and includes an opinion that involves exercising judgment and skill to weigh the significance of matters of fact.<sup>4</sup> "Recommendations" include material relating to a suggested course of action that will ultimately be accepted or rejected by the person being advised.<sup>5</sup> Section 13(1) also encompasses information that would allow an individual to make accurate inferences about any advice or recommendations.<sup>6</sup>

[16] The first step is to determine whether the information is advice or recommendations under s. 13(1). If it is, I must decide whether the information falls into any of the categories in s. 13(2) or whether it has been in existence for more than 10 years under s. 13(3). If ss. 13(2) or 13(3) apply to any of the information, that information cannot be withheld under s. 13(1).

[17] PHSA withheld information under s. 13(1) in five different email exchanges.<sup>7</sup> I will consider whether s. 13(1) applies to each in turn.

[18] **Page 100** – PHSA says that the withheld information reflects the deliberative process about how to arrange for the applicant's attendance at a meeting.

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<sup>2</sup> *Insurance Corporation of British Columbia v. Automotive Retailers Association* 2013 BCSC 2025 at para 52.

<sup>3</sup> *John Doe v Ontario (Finance)* 2014 SCC 36 [*John Doe*] at para 24.

<sup>4</sup> *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 113.

<sup>5</sup> *John Doe supra* note 3 at para 23.

<sup>6</sup> Order F19-28, 2019 BCIPC 30 at para 14.

<sup>7</sup> The information in dispute on pages 138-139 is the same information in dispute on pages 146-147, so I consider this to be one email exchange.

[19] I find that the withheld information constitutes “recommendations” within the meaning of s. 13(1). This is because it contains a proposed course of action and identifies a relevant consideration with regards to that course of action.

[20] **Pages 123-126** – This email exchange includes an attachment. PHSA withheld some of the email and the entire attachment under s. 13(1). PHSA says that the attachment is a document that contains options for a decision to be made by BCEHS leadership and the “facts underlying the options, collected in support of the decision-making process.”<sup>8</sup>

[21] I have no trouble concluding that the information in the email and the document constitutes “recommendations” within the meaning of s. 13(1). I can see that this information describes a set of circumstances and sets out clear options for a decision maker to consider with regards to those circumstances.

[22] **Pages 142-145** – PHSA says that the withheld information is editorial advice about how a letter should be drafted. It says that in Orders 03-37 and F16-06, OIPC adjudicators have found that s. 13(1) applies to advice and recommendations about the content and wording of documents.<sup>9</sup>

[23] The information in dispute is a back and forth between BCEHS employees about how to draft a letter. I find that it is “advice” within the meaning of s. 13(1) because the BCEHS employees are exchanging ideas using their professional judgment about how to best communicate information in the letter.

[24] **Pages 146-147**<sup>10</sup> – PHSA says that one of the withheld portions in this email exchange is a recommendation on a particular course of action. It says that the other withheld portion constitutes the facts and information necessary for considering the proposed course of action. It says that it has disclosed the decision resulting from the above discussion.

[25] In my view, the information that PHSA has withheld from this email exchange forms “recommendations” within the meaning of s. 13(1) because it sets out a proposed course of action that a person with decision-making authority could accept or reject. The disclosed information shows that the proposed course of action was accepted, which supports this finding.

[26] **Pages 148-151** – PHSA says that the information it withheld from this email exchange is part of an ongoing deliberative exercise about how to manage

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<sup>8</sup> PHSA's initial submission, para 19.

<sup>9</sup> PHSA's initial submission, para 24 citing Order 03-37, 2013 CanLII 49216 (BCIPC) and Order F06-16, 2016 CanLII 25576 at para 50.

<sup>10</sup> Duplicated at pages 138-139 of the records in dispute.

the applicant's employment, including a recommendation on a proposed course of action.

[27] I can see that the withheld portions describe a set of circumstances and a suggested course of action in relation to those circumstances. It is evident from the information in dispute that the course of action was meant to be accepted or rejected by someone with the authority to do so. I find that the withheld information constitutes "recommendations" within the meaning of s. 13(1).

*Sections 13(2) and (3)*

[28] If ss. 13(2) or 13(3) apply to any of the information, the public body cannot withhold that information under s. 13(1).

[29] Section 13(2) sets out types of records and information to which s. 13(1) does not apply. Only s. 13(2)(a) is at issue in this inquiry. This provision says that a public body must not refuse to disclose any "factual material" under s. 13(1).

[30] "Factual material" includes source materials accessed by experts or background facts not necessary to the advice or deliberative process.<sup>11</sup> It is distinct from factual "information," which includes information compiled from source materials by experts, using their expertise to aid in the deliberative process.<sup>12</sup>

[31] PHSA submits that s. 13(2)(a) does not apply to the information. It says that the information is not "factual material." Rather, it says that it is factual "information" because it was compiled and selected by an expert, using their expertise, judgment and skill for the purpose of providing explanations necessary to its deliberative process.<sup>13</sup>

[32] I find that none of the information in dispute is factual material. The information in dispute includes facts, but those facts are an integral part of the advice or recommendations. It is not the kind of discrete material contemplated by s. 13(2)(a).

[33] Section 13(3) says that s. 13(1) does not apply to a record that has been in existence more than 10 years. None of the email exchanges are more than 10 years old. I find that s. 13(3) does not apply.

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<sup>11</sup> *Provincial Health Services Authority v British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 (CanLII) [PHSA] at paras 91-94.

<sup>12</sup> *Ibid.*

<sup>13</sup> PHSA's initial submissions at paras 31 and 32 citing *PHSA supra* note 11 at paras 91-95.

*Conclusion, s. 13(1)*

[34] In conclusion, I find that s. 13(1) applies to the information that PHSA withheld under this provision.

**Section 15(1)(l) – harm to security of a property or system**

[35] Section 15(1)(l) allows a public body to refuse to disclose information to an applicant if the disclosure could reasonably be expected to harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

[36] It is well established that the phrase “could reasonably be expected to” means that the standard of proof is a “reasonable expectation of probable harm.” This means that a public body must show that the likelihood of the harm occurring is “well beyond” or “considerably above” a mere possibility.<sup>14</sup> The amount and quality of the evidence required to meet this standard depends on the nature of the issue and the “inherent probabilities or improbabilities or the seriousness of the allegations or consequences.”<sup>15</sup>

[37] PHSA withheld an internal department code, an account code and a site code (together, the Codes) under s. 15(1)(l).<sup>16</sup>

[38] PHSA says that disclosing the Codes would harm the security of its financial management system, which it says is a “system” within the meaning of s. 15(1)(l), because it would make it more susceptible to fraud.

[39] PHSA says that it uses the Codes to pay employees and reimburse employee expense claims. As such, it says that the Codes form an integral part of PHSA’s internal financial management system.

[40] PHSA provided evidence that, according to its Executive Director of Financial Services and Controller (Executive Director), PHSA employees have received fabricated invoices from email addresses purporting to be a PHSA leader.<sup>17</sup> PHSA says that the Executive Director advised that PHSA employees are generally able to identify this kind of fraud by noting obvious deficiencies, such as the omission of a legitimate cost centre code.

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<sup>14</sup> *Ontario (Community Safety and Correctional Services) v Ontario (Information and Privacy Commissioner)* 2014 SCC 31 at para 54 citing *Merck Frosst v Canada (Health)* 2012 SCC 3 at paras 197 and 199.

<sup>15</sup> *Ibid* citing *FH v McDougall*, 2008 SCC 53 at para 40.

<sup>16</sup> Pages 20 and 86 of the records in dispute.

<sup>17</sup> Affidavit of PHSA’s Manager, Information Access, Education and Intake at paras 13-15.

[41] PHSA submits that this is a well-recognized mode of fraud, sometimes referred to as “fake president” or “behavioural” fraud. It explains that the success of this kind of fraud hinges upon accurate information in the fraudulent request.

[42] PHSA submits that including a legitimate cost centre code could make these kinds of fraudulent requests appear more legitimate. It says that its evidence from the Executive Director demonstrates that disclosing the Codes would increase the likelihood that this mode of fraud would harm PHSA’s financial management system. It confirms that the Codes are still active.<sup>18</sup>

[43] PHSA submits that the risk of harm in the present case is analogous the harm at issue in Order F18-22.<sup>19</sup> In that Order, the adjudicator accepted evidence that disclosing a telephone plan account number could allow an unauthorized individual to gain access to the account, which could in turn be used to deceive the service provider into believing that individual was the real account holder.

*Analysis – s. 15(1)(l)*

[44] I am satisfied that PHSA’s internal financial management system is a “system” within the meaning of s. 15(1)(l). I find that it is a “system” because it is a way that PHSA organizes its internal finances. I also accept that PHSA’s financial management system uses codes to identify and organize payments.

[45] I accept that PHSA has received fraudulent invoices in the past and that PHSA employees have identified these fraudulent invoices, in part, because they do not include a legitimate code. It follows that PHSA employees would find it more difficult to identify a fraudulent invoice if it included a legitimate code. I find that, if individuals seeking to perpetrate fraud gain access to legitimate codes, the Codes would help them use PHSA’s financial management system in an unauthorized way. As a result, I am persuaded that disclosing the Codes could reasonably be expected to harm the security of the PHSA’s financial management system.

[46] For these reasons, I find that s. 15(1)(l) applies to the information in dispute under this provision.

***Section 22(1) – unreasonable invasion of a third party’s personal privacy***

[47] Section 22(1) requires a public body to refuse to disclose personal information if the disclosure would be an unreasonable invasion of a third party’s personal privacy.

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<sup>18</sup> Affidavit of PHSA’s Manager, Access to Information, Education and Intake at para 17.

<sup>19</sup> 2018 BCIPC 25 (CanLII) at paras 9-12.

[48] PHSA withheld information in a number of records under s. 22(1). I found that s. 13(1) authorized PHSA to withhold some of the information that it withheld under s. 22(1), so I will not consider whether s. 22(1) also applies.<sup>20</sup>

### *Personal Information*

[49] Since s. 22(1) only applies to personal information, the first step in the s. 22 analysis is to determine whether the information in dispute is personal information.

[50] Schedule 1 of FIPPA defines “personal information” and “contact information” as follows:

"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;

[51] Under the above definitions, information that is “contact information” is not “personal information” for the purpose of FIPPA. Whether information is “contact information” depends on the context in which it appears.<sup>21</sup>

[52] PHSA submits that all the information in dispute is “personal information” under FIPPA. It says that the information at issue is all personal information because it relates to or describes various BCEHS employees’ activities in the workplace.

[53] I find that the information is personal information about the applicant and third parties<sup>22</sup> within the meaning set out in FIPPA. It is identifiable because it includes names and other identifying information. In the context in which it appears, the information is not contact information because the purpose of it is not to enable an individual at a place of business to be contacted.

[54] Having found that all the information is “personal information”, I will go on to decide whether disclosing it would result in an unreasonable invasion of a third party’s privacy.

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<sup>20</sup> Pages 142-143 of the records in dispute.

<sup>21</sup> Order F20-13, 2020 BCIPC 15 at para 42.

<sup>22</sup> Under schedule 1, “third party” in relation to a request for access to a record or for correction of personal information, means any person, group of persons or organization other than (a) the person who made the request, or (b) a public body.



*Section 22(4) – not an unreasonable invasion*

[55] The next step in the analysis is to determine if any of the circumstances in s. 22(4) apply to any of the personal information in dispute. If s. 22(4) applies, disclosure of personal information is not an unreasonable invasion of a third party's personal privacy, and the information cannot be withheld under s. 22(1).

*Positions, functions or remuneration – s. 22(4)(e)*

[56] Under s. 22(4)(e) 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.

[57] Section 22(4)(e) applies to “objective, factual statements about what the third party did or said in the normal course of discharging [their] job duties, but not qualitative assessments or evaluations of such actions.”<sup>23</sup>

[58] PHSA says that s. 22(4)(e) does not apply. It says that none of the information in dispute is the general, functional information that s. 22(4)(e) is intended to capture.

[59] For the reasons that follow, I find that s. 22(4)(e) applies to some information in dispute.

[60] First, I find that a small amount of information is about a third party's position as an employee of a public body.<sup>24</sup> PHSA characterizes this information as “discussion of a particular employee assuming a particular role.”<sup>25</sup> More specifically, this information is about what position the third party will be in and at what time as well as some related procedural information. In my assessment, the conversation in which the personal information appears is centred around the position, rather than the employee. For this reason, I find that s. 22(4)(e) applies.

[61] I also find that some of the information is the kind of objective factual information about what an employee did and said in the normal course of doing their work.<sup>26</sup>

[62] For example, PHSA has withheld one email chain that relates to an inquiry about the delivery of a program.<sup>27</sup> Two of the individuals on the email chain are

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<sup>23</sup> Order 01-53, 2001 CanLII 21697 (BC IPC) at para 40.

<sup>24</sup> Page 25 of the records in dispute.

<sup>25</sup> PHSA initial submissions, para 54. PHSA did not specify which page it was referring to but I gather this description was meant to characterize the information on page 25 of the records in dispute.

<sup>26</sup> Pages 60-64 (full) and 65-66 (partial) of the records in dispute.

<sup>27</sup> Pages 60-64 of the records in dispute.

not employees of BCEHS but I can see that they are employees of other public bodies, as FIPPA defines that term.<sup>28</sup> It seems to me that these individuals exchanged the information in these emails in the normal course of performing their job duties.

[63] None of this information conveys any qualitative assessment about how an employee of a public body did their job.

[64] I find that s. 22(4)(e) applies to this information and that PHSA cannot withhold it.

#### *Section 22(3) – presumptions*

[65] Section 22(3) lists circumstances where disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. The next step in the analysis is to consider whether any of these circumstances apply.

[66] The presumptions in s. 22(3)(a) and (d) are relevant in this inquiry.

#### *Medical history – s. 22(3)(a)*

[67] Under s. 22(3)(a), 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.

[68] PHSA did not specifically identify this as a relevant presumption, but it is clear to me that some information describes a third party's medical, psychiatric or psychological history.<sup>29</sup> I find that s. 22(3)(a) applies to this information.

#### *Employment history – s. 22(3)(d)*

[69] Under s. 22(3)(d), disclosure of personal information that relates to a third party's employment, occupational or educational history is presumed to be an unreasonable invasion of that third party's personal privacy.

[70] In past orders, OIPC adjudicators have found that "employment history" includes qualitative information about a third party's workplace behaviour such as complaints, investigations or discipline relating to a third party's workplace conduct.<sup>30</sup>

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<sup>28</sup> I can tell because of the domain name of the individuals' email addresses.

<sup>29</sup> Page 104 of the records in dispute for example.

<sup>30</sup> See for example: Order 01-53 2001 CanLII 21607 (BCIPC) at paras 32-33 and Order F16-28, 2016 BCIPC 30 (CanLII) at para 94.

[71] Section 22(3)(d) has also been found to apply to personal information relating to the administration of a third party's employment, such as information relating to job applications,<sup>31</sup> resumes,<sup>32</sup> personal identifiers<sup>33</sup> and information about leaves to which the employee was entitled (for example, the type, amount or balance of parental, vacation, or sick leave).<sup>34</sup>

[72] PHSA says that s. 22(3)(d) applies to most of the information in dispute under s. 22(1).<sup>35</sup> There are several different types of information at issue, and so I will discuss each separately.

[73] **Information relating to workplace complaints** – PHSA says that some of the information relates to a complaint made by the applicant about another BCEHS employee.<sup>36</sup> It says that it has withheld the applicant's negative opinion about the other employee and information gathered during the investigation of the complaint. PHSA says that this information is the employment history of the other employee.

[74] PHSA also says that some of the information in dispute is a third party's complaint about the applicant.<sup>37</sup> It says that the complaint describes the third party's opinions and comments about the applicant. PHSA says that the complaint also includes detailed information about the third party's own employment history and experience at BCEHS.

[75] In past orders, OIPC adjudicators have found that a complaint about a third party's behaviour or actions in the workplace is that third party's employment history.<sup>38</sup>

[76] I find that the applicant's negative comments about another BCEHS employee's work performance and the information that PHSA gathered while investigating the employee's work performance are the employment history of that employee.

[77] I also find that the third party's complaint about the applicant is that third party's employment history. This is because the complaint describes how the applicant's behaviour has affected the third party's work performance. It also includes specific details about the third party's past employment.

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<sup>31</sup> Order F16-28, 2016 BCIPC 30 (CanLII) at para 94.

<sup>32</sup> Order 01-18, 2001 CanLII 21572 (BCIPC) at para 15.

<sup>33</sup> Order F14-41, 2014 BCIPC 44 (CanLII) at paras 46-47, for example.

<sup>34</sup> Order F21-62, 2021 BCIPC 71 (CanLII) at paras 22-25, for example.

<sup>35</sup> Except for the information on page 88.

<sup>36</sup> On pages 6, 8, 9, 10 and 11 of the records in dispute.

<sup>37</sup> Pages 12-15 of the records in dispute.

<sup>38</sup> Order 01-53, 2001 CanLII 21607 (BC IPC) at para 32.

[78] **Scheduling and work location information** – PHSA says that some of the information in dispute is scheduling information, including hours worked and days taken off.<sup>39</sup> It says that this constitutes an employee's employment history.

[79] In my view, this personal information is the kind of administrative information about a third party's employment that past orders have considered to be an individual's employment history. I make the same finding here.

[80] Similarly, there is also some information about an employee's work location on a given day.<sup>40</sup> For the same reasons, I find that this personal information is that employee's employment history.

[81] **Records about another employee** – PHSA says that the information in 11 pages of records is the employment history of another BCEHS employee.<sup>41</sup> It says that the information is about this employee's medical leaves, dealings with their manager and related issues.

[82] I find that s. 22(3)(d) applies to this information. The records are clearly about the employee's employment history with BCEHS. The personal information largely relates to leaves, such as medical leave, that the employee was entitled to and related matters. Consistent with past orders, I find that this kind of information relates to a third party's employment history.<sup>42</sup>

[83] **Page 143** – PHSA withheld a small amount of information under s. 22(1) that conveys an employee's feelings about their own work performance. I find that this is the type of qualitative personal information to which s. 22(3)(d) applies.

[84] In conclusion, I find that s. 22(3)(d) applies to the above information.

*Section 22(2) – relevant circumstances*

[85] The next step in the analysis is to determine whether there are any relevant circumstances. Section 22(2) says that when a public body decides whether disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, it must consider all relevant circumstances, including those listed in s. 22(2). Some circumstances weigh in favour of disclosure and some against. Relevant circumstances that weigh in favour of disclosure may rebut any applicable presumptions under s. 22(3).

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<sup>39</sup> Pages 65-66 of the records in dispute.

<sup>40</sup> Page 100 of the records in dispute.

<sup>41</sup> Pages 103-113 of the records in dispute.

<sup>42</sup> For example, Order F17-01, 2017 BCIPC 1 (CanLII) at para 60.

### Sensitivity

[86] Sensitivity is not a circumstance listed in s. 22(2), but many past orders have considered it.<sup>43</sup> Where personal information is sensitive, it weighs in favour of withholding the information. Conversely, where information is not sensitive, this weighs in favour of disclosure.

[87] PHSA says that some of the personal information is highly sensitive, in part because it relates to the feelings or emotions of the third parties.<sup>44</sup>

[88] In my view, some of the information about third parties is sensitive.

[89] First, I find that some of the personal information is sensitive because of its subject matter.<sup>45</sup> It is the kind of information that would be treated tactfully due to its very nature.

[90] I also find that personal information describing a third party's thoughts and feelings in their complaint against the applicant is sensitive.<sup>46</sup>

[91] For these reasons, I find that sensitivity is a factor weighing in favour of withholding the above personal information.

### Applicant's knowledge

[92] In past orders, OIPC adjudicators have considered the applicant's knowledge of the information in dispute as a relevant circumstance.

[93] PHSA acknowledges that the applicant has seen or is aware of some of the information in dispute.<sup>47</sup> PHSA submits that, although an applicant's knowledge may favour disclosure in some cases, it should not in this particular case because it is clear from the records that the applicant was only privy to this information in the course of her duties as a BCEHS employee. In these circumstances, PHSA says that the applicant received the information subject to an implicit obligation of confidentiality. PHSA submits that, even if the applicant's knowledge is a factor that weighs in favour of disclosure, it does not rebut the presumption in s. 22(3)(d).

[94] I am not persuaded that, just because a person is an employee, every bit of information they receive in the course of their employment is subject to an

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<sup>43</sup> For example, Order F21-50, 2021 BCIPC 58 (CanLII) at paras 155-157; Order F18-30, 2018 BCIPC 33 (CanLII) at para 43.

<sup>44</sup> PHSA referred to Order F19-41, 2019 BCIPC 46 (CanLII) at para 77.

<sup>45</sup> Page 88 and 103-113 of the records in dispute.

<sup>46</sup> Pages 13-15 of the records in dispute.

<sup>47</sup> Specifically, on pages 6, 9, 88 and 110 of the records in dispute.

implied obligation of confidentiality. PHSA has not pointed to any specific obligations that the applicant was subject to, as a result of her employment, that would apply to the information in dispute.

[95] I find that the applicant's knowledge of the complaint she made against a co-worker weighs in favour of disclosure. This information is in an email that she wrote and so she obviously knows what it says.

[96] Also, I find that the applicant knows the contents of one page of information in dispute because it was sent to her.<sup>48</sup> I find that the applicant's knowledge weighs in favour of disclosing this information.

[97] However, there is one page in dispute that also contains information originating from the applicant, but she does not know the context in which it appears. I find that the applicant's knowledge of that information does not weigh in favour of disclosure in this case.

#### Applicant's personal information

[98] I have also considered the fact that some of the personal information at issue is the applicant's personal information.<sup>49</sup> Both the applicant's complaint about another BCEHS employee and the third party's complaint about the applicant are the applicant's personal information as well as those individuals' personal information.<sup>50</sup> Similarly, the records about another employee contain some of the applicant's personal information.<sup>51</sup>

[99] The fact that this is the applicant's personal information weighs in favour of disclosure.

#### *Conclusion - s. 22(1)*

[100] I found that the information PHSA withheld under s. 22(1) is personal information within the meaning of FIPPA.

[101] Above, I found that PHSA must disclose some of the personal information because it is about a third party's position, functions or remuneration as an employee of a public body within the meaning of s. 22(4)(e).

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<sup>48</sup> On page 88 of the records in dispute.

<sup>49</sup> Many past orders have considered the applicant's personal information as a relevant circumstance see Order F22-56, 2022 BCIPC 63 at paras 78-80, Order F21-57, 2021 BCIPC 66 (CanLII) at para 58.

<sup>50</sup> Pages 6, 9 and 13-15 of the records in dispute.

<sup>51</sup> Pages 103-113 of the records in dispute.

[102] For the reasons that follow, I find that disclosing the remaining personal information in dispute would be an unreasonable invasion of a third party's personal privacy.

[103] First, I find that s. 22(1) applies to the information in the workplace complaints<sup>52</sup> and the records about another employee.<sup>53</sup> This information is the workplace history of the third parties and so disclosure is presumed to be an unreasonable invasion of those third parties' personal privacy under s. 22(3)(d). Some of it is also a third party's medical, psychiatric or psychological history and so the presumption in s. 22(3)(a) applies to that information. Some of it is sensitive in nature. However, the applicant knows some of the personal information and some of it is her own personal information.

[104] After weighing these factors, I find that the presumptions are not rebutted. Although the applicant knows some of it, the applicant's personal information is inextricably intertwined with third parties' personal information. In other words, I find that it is not possible to disclose any part of a record that is only the applicant's personal information. In these circumstances, I find that s. 22(1) applies and therefore that PHSA must refuse to disclose this information.

[105] Additionally, the scheduling and work location information is subject to the presumption in s. 22(3)(d) and there are no factors weighing in favour of disclosure. The same goes for the information on page 143 about an employee's own work performance.

[106] The remaining personal information is sensitive, which I have found weighs in favour of withholding it.<sup>54</sup> The applicant knows this information because it was sent to her in an email, but it is not her personal information. In these circumstances, I find that s. 22(1) applies to this information.

[107] In summary, I find that s. 22(1) applies to all of the personal information in dispute, except for the information to which I found s. 22(4)(e) applies.

## **CONCLUSION**

[108] For the reasons above, I make the following orders under s. 58 of FIPPA:

1. I confirm PHSA's decision to refuse access to the information in dispute under ss. 13(1) and 15(1)(l).
2. Subject to item 3 below, I require PHSA to refuse to disclose the information, in part, that it withheld under s. 22(1).

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<sup>52</sup> Pages 6 and 8-15 of the records in dispute.

<sup>53</sup> Pages 103-113 of the records in dispute.

<sup>54</sup> Page 88 of the records in dispute.

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3. PHSA is required to give the applicant access to the information I have highlighted on pages 25 and 60-66 in the copy of the records that I have provided to PHSA along with this order.
  4. PHSA must concurrently copy the OIPC registrar of inquiries on its letter to the applicant, along with a copy of the records described at item 3 above.

[109] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **September 8, 2023**.

July 26, 2023

**ORIGINAL SIGNED BY**

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Erika Syrotuck, Adjudicator

OIPC File No.: F21-86395