



Order F23-60

## UNIVERSITY OF VICTORIA

Rene Kimmett  
Adjudicator

August 9, 2023

CanLII Cite: 2023 BCIPC 70  
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**Summary:** An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the University of Victoria (University) for access to records containing information about the University's response to an allegation that the applicant breached the University's Sexualized Violence Prevention and Response Policy. The University withheld the majority of information in the records citing s. 22 (unreasonable invasion of third-party personal information) of FIPPA. The adjudicator found the University was required to withhold some, but not all, of the information it withheld under s. 22. The adjudicator ordered the University to disclose the information that it was not required to withhold under s. 22(1).

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165, ss. 4(2), 22(1), 22(2)(c), 22(2)(e), 22(2)(f), 22(3)(d), 22(4)(e), 22(5).

### INTRODUCTION

[1] The applicant made a request for access to records held by the University of Victoria (University) containing information about the University's response to an allegation that the applicant breached the University's Sexualized Violence Prevention and Response Policy (Policy) while enrolled as a student at the University.

[2] The University initially withheld the records citing s. 22 (unreasonable invasion of third-party personal information) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The University later released additional information but continued to rely on s. 22 to withhold most of the information in the records.

[3] The applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the University's decision to withhold information contained in the records.

[4] Mediation did not resolve the issue and the matter proceeded to inquiry.

## **ISSUE**

[5] The issue I must decide in this inquiry is whether s. 22(1) of FIPPA requires the University to withhold the information in dispute.

[6] Under s. 57(2) of FIPPA, the applicant has the burden to prove that disclosure of the personal information in dispute would not be an unreasonable invasion of a third party's personal privacy under s. 22(1). However, the University has the initial burden of proving the information at issue qualifies as personal information under s. 22(1).<sup>1</sup>

## **DISCUSSION**

### ***Background***

[7] In 2018, the applicant was a student at the University. During this time, another student made a disclosure to the University's Sexual Violence Resource Office (SVRO) alleging the applicant breached the Policy. The disclosure was resolved through an informal and voluntary process facilitated by the SVRO manager that involved the applicant, the student, and a University faculty member.

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

[8] The records in dispute are 27 pages. Twenty-three of these pages contain emails between the student and the SVRO manager and duplicates of these emails. The remaining four pages are the student's completed SVRO Disclosure Form.

### ***Unreasonable invasion of personal privacy, s. 22(1)***

[9] The University withheld the information in dispute under s. 22(1), which requires public bodies to refuse to disclose personal information to an applicant if its disclosure would be an unreasonable invasion of a third party's personal privacy.

[10] In this decision, I adopt the s. 22 analysis used in previous OIPC orders.<sup>2</sup> The questions asked in each step of this analysis are as follows:

1. Is the withheld information personal information as defined in FIPPA?

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

<sup>2</sup> For example, Order F15-03, 2015 BCIPC 3 at para. 58.

2. Is the disclosure of the personal information not an unreasonable invasion of a third party's personal privacy under s. 22(4)?
3. Is the disclosure of the personal information presumed to be an unreasonable invasion of a third party's personal privacy under s. 22(3)?
4. Would the disclosure of personal information constitute an unreasonable invasion of a third party's personal privacy, considering all relevant circumstances including those listed in s. 22(2)?

*Is the withheld information personal information as defined in FIPPA?*

[11] The first step in any s. 22 analysis is to determine if the information in dispute is personal information. Personal information is defined in FIPPA as “recorded information about an identifiable individual other than contact information.” Contact information is defined as “information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”<sup>3</sup> Whether information is “contact information” depends on the context in which it appears.<sup>4</sup>

[12] The University submits that the information in dispute is personal information of the student and the applicant because it is recorded information about them that is not contact information.<sup>5</sup> The University submits the information in dispute was provided by the student to the SVRO and is about the applicant.<sup>6</sup>

[13] The applicant's submission does not address this point. The applicant's submission largely concerns their disagreement with the University's statement that it does not formally document voluntary educational conversations about alleged breaches of the Policy. They wonder how 27 pages of records were generated if the process was informal. The applicant submits the University should disclose the full record in order to comply with sections of the Policy that state persons alleged to have caused harm will be treated fairly.<sup>7</sup>

[14] I find most of the information in dispute is about identifiable individuals, specifically the applicant and third parties.<sup>8</sup> This information is not contact information because, in the context of the records, its purpose is not to enable an

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<sup>3</sup> The cited definitions are in Schedule 1 of FIPPA.

<sup>4</sup> Order F20-13, 2020 BCIPC 15 at para. 42.

<sup>5</sup> University's Initial Submission at para. 27.

<sup>6</sup> *Ibid.*

<sup>7</sup> Applicant's Submission at p. 3.

<sup>8</sup> Under Schedule 1 of FIPPA, “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.

individual at a place of business to be contacted. As a result, I find this information is personal information of the applicant and third parties.

[15] However, there are instances where the University has withheld information that is not about identifiable individuals, for example, time stamps on emails. This information is not personal information and cannot be withheld under s. 22(1).

*Is the disclosure of the personal information not an unreasonable invasion of a third party's personal privacy under s. 22(4)?*

[16] The second step in the s. 22 analysis is to determine if the personal information falls into any of the categories of information listed in s. 22(4). If yes, s. 22(1) does not apply because the disclosure would not be an unreasonable invasion of a third party's personal privacy.

[17] The University submits that none of the exceptions in s. 22(4) apply.<sup>9</sup> The applicant's submission does not address this point.

[18] I have reviewed the personal information in dispute and find that s. 22(4)(e) applies to the SVRO manager and the faculty member's personal information.

[19] Section 22(4)(e) states:

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

[...]

(e) 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,

[...]

[20] In previous orders, OIPC adjudicators have found that s. 22(4)(e) applies to information that relates to a public body employee's job duties in the normal course of work-related activities, namely objective, factual information about what the individual did or said in the course of discharging their job duties.<sup>10</sup> However, s. 22(4)(e) does not apply to qualitative assessments or evaluations of how employees performed their duties.<sup>11</sup>

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<sup>9</sup> University's Initial Submission at para. 28.

<sup>10</sup> For example, Order F23-28, 2023 BCIPC 31 at para. 42.

<sup>11</sup> Order 01-53, 2001 CanLII 21607 (BCIPC) at para. 40.

[21] In this case, all of the SVRO manager and faculty member's personal information is objective, factual information about what they did or said as University employees while responding to the allegation that the applicant breached the Policy. I find that this information falls under s. 22(4)(e) and that it is not an unreasonable invasion of a third party's personal privacy to disclose this personal information; therefore, the University is not required or authorized to refuse to disclose it under s. 22(1).

*Is the disclosure of the personal information presumed to an unreasonable invasion of a third party's personal privacy under s. 22(3)?*

[22] The third step in the s. 22 analysis is to determine whether s. 22(3) applies to the personal information. If yes, disclosure of that personal information is presumed to be an unreasonable invasion of the third party's personal privacy.

[23] The University submits that s. 22(3)(d) applies to the personal information in the records because it arose in the context of a complaint of sexualized violence made in an educational setting as between two University students.<sup>12</sup> The University included in its submissions an affidavit of the SVRO manager, explaining the function of the SVRO within the University, the process used to resolve the alleged breach in 2018, and their role in facilitating that process.

[24] The applicant's submission does not address whether this presumption applies.

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

[26] I find that s. 22(3)(d) applies to all of the student's personal information. This information pertains to the time the student was enrolled at the University and reveals details about their academic activities and experiences as well as their interactions with University personnel. In past orders, OIPC adjudicators have found that this type of information forms part of a student's educational history.<sup>13</sup>

*Would the disclosure of personal information constitute an unreasonable invasion of a third party's personal privacy, considering all relevant circumstances including those listed in s. 22(2)?*

[27] The final step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of the relevant circumstances, including those

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<sup>12</sup> University's Initial Submission at para. 29.

<sup>13</sup> For example, F20-06, 2020 BCIPC 07 at para. 36.

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).

[28] The parties' submissions address the following s. 22(2) circumstances:

(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(c) the personal information is relevant to a fair determination of the applicant's rights,

[...]

(e) the third party will be exposed unfairly to financial or other harm,

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

[...]

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

[29] The applicant does not argue that they require the personal information in dispute to receive a fair determination of their rights. Instead, they submit that the Policy states persons alleged to have caused harm will be treated fairly and releasing the redacted information would contribute to their fair treatment.<sup>14</sup>

[30] The University submits that s. 22(2)(c) does not apply in the circumstances because the right asserted must “be related to a proceeding which is either underway or is contemplated”<sup>15</sup> and the alleged breach has already been resolved.

[31] There is no evidence before me that there is any proceeding underway or contemplated. As a result, I find that s. 22(2)(c) does not apply in the circumstances.

#### Harm to third party – s. 22(2)(e)

[32] The University states that disclosure of the personal information contained in the records may have the effect of retraumatizing the student.<sup>16</sup> I take this argument to be about “other harm” under s. 22(2)(e).

[33] The applicant's submission does not address this point.

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<sup>14</sup> Applicant's Submission at p. 3.

<sup>15</sup> University's Initial Submission at para. 31, citing OIPC Order 02-21, 2002 CanLII 42446 (BC IPC) at paras. 20-22.

<sup>16</sup> University's Initial Submission at para. 30.

[34] Previous OIPC orders have established that “other harm” includes “serious mental distress or anguish or harassment.” However, such mental harm must exceed “embarrassment, upset or a negative reaction to someone’s behaviour.”<sup>17</sup>

[35] I am not satisfied, based on the information before me, that the disclosure of the personal information contained in the records rises to the level of “other harm” as defined in other OIPC orders. For example, the University has not provided information to suggest that the student in this specific situation would experience serious mental distress or anguish as a result of the disclosure. The University has also not provided evidence that disclosure would result in a new or increased risk of the student being harassed by the applicant or otherwise.

[36] I find that s. 22(2)(e) does not apply in the circumstances.

Supplied in confidence – s. 22(2)(f)

[37] The University submits that s. 22(2)(f) applies in the circumstances and supports withholding the personal information in the records.<sup>18</sup> To support its submissions, the University provided a copy of the 2017 version of the Policy, which includes several sections stating that the University will keep the personal information it receives, including the student and applicant's personal information, confidential.<sup>19</sup> The confidential nature of the SVRO process is also emphasized in the SVRO manager's affidavit.<sup>20</sup>

[38] The applicant's submission does not address this point.

[39] I find that the SVRO process surrounding the allegation that the applicant breached the Policy was conducted in a confidential manner with both the student and applicant expecting their communications with University staff and faculty to be held in confidence. I find that s. 22(2)(f) weighs in favour of withholding the student's personal information.

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<sup>17</sup> Order F15-29, 2015 BCIPC 32 at para. 32; Order 01-15, 2001 CanLII 21569 (BC IPC) at para. 49.

<sup>18</sup> University's Initial Submission at para. 30.

<sup>19</sup> For example, see University of Victoria's Sexualized Violence Prevention and Response Policy 2017 at pp. 14-17 and 29-30.

<sup>20</sup> SVRO manager's affidavit at para. 13.

### Sensitivity

[40] Sensitivity is not a circumstance listed in s. 22(2), but many past orders have considered it.<sup>21</sup> Where personal information is sensitive, this weighs in favour of withholding the information. Conversely, where information is not sensitive, this weighs in favour of disclosure.

[41] In its submission the University describes sexualized violence as “highly sensitive [...] subject matter”<sup>22</sup> and emphasizes it is withholding information in order to avoid retraumatizing the student.<sup>23</sup>

[42] In my view, the student's personal information is sensitive because it describes their feelings and actions related to an allegation they made about experiencing sexual violence. I find that sensitivity is a factor weighing in favour of withholding the student's personal information.

### Applicant's personal information

[43] I have also considered the fact that some of the personal information at issue is the applicant's personal information. This is a factor that weighs in favour of disclosure of the personal information.<sup>24</sup>

### Applicant's existing knowledge

[44] The applicant argues they should receive the disputed information because they already know who the complainant is, the date and time of the alleged occurrence, and the identities of everyone involved.<sup>25</sup>

[45] In reply, the University submits that the applicant's assertion that they know the student's identity does not outweigh the consideration that the student's name and communications with the SVRO were provided on a confidential basis and form part of the student's educational history.<sup>26</sup>

[46] Previous orders have found that the fact an applicant is aware of, or already knows, the third party's personal information in dispute is a relevant circumstance that may weigh in favour of disclosing this information.

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<sup>21</sup> For example, Order F21-50, 2021 BCIPC 58 at paras. 155-157; Order F18-30, 2018 BCIPC 33 at para. 43.

<sup>22</sup> University's Initial Submission at para. 7.

<sup>23</sup> *Ibid.* at para. 30.

<sup>24</sup> See for example, Order F20-13, 2020 BCIPC 15 at para. 76.

<sup>25</sup> Applicant's Submission at p. 3.

<sup>26</sup> University's Reply Submission at p. 1.



[47] Much of the information in the emails from the SVRO manager to the student is about what took place in a meeting between the applicant, the SVRO manager, and the faculty member. The applicant is likely already aware of the information contained in these emails. In these instances, the applicant's knowledge weighs in favour of disclosure.

[48] However, there is nothing to suggest that the applicant knows all of the student's personal information in dispute. Specifically, there is no evidence the applicant knows exactly what the student shared with the SVRO about the alleged breach of Policy. I find that this factor does not support disclosing the student's personal information contained in the emails from the student to the SVRO manager or the student's completed SVRO Disclosure Form.

*Can the University reasonably sever the third party's personal information from the record under s. 4(2) allowing the applicant to access the remainder?*

[49] Section 4(2) of FIPPA states that, where it is reasonable to sever excepted information from a record, an applicant has the right of access to the remainder. In this case, the question is whether the student's personal information can be severed from the record in order to provide the applicant access to their own personal information.

[50] The University submits that the student's personal information is inextricably linked to and integrated with the applicant's personal information, making it "not practicable" to reveal more information without unreasonably invading the student's personal privacy.<sup>27</sup>

[51] I find there are instances in the withheld records where the applicant's personal information is not intertwined with the student's personal information and can be disclosed as part of the remaining record. For example, the emails from the SVRO manager to the student contain information about the applicant that is not intertwined with the student's personal information.

*Is the University required to provide the applicant with a summary of their personal information under s. 22(5)?*

[52] Under s. 22(5)(a), the public body must give a summary of personal information supplied in confidence about the applicant unless the summary cannot be prepared without disclosing the identity of the third party who supplied the information.

[53] I am not convinced that the information the student provided in confidence about the applicant can be summarized without revealing the student's personal

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<sup>27</sup> University's Initial Submission at para. 33.

information. As a result, I find the University is not required to provide the applicant with a s. 22(5) summary of the information confidentially supplied by the student.

### ***Summary of findings***

[54] I find that most of the information the University withheld is personal information within the meaning of FIPPA. However, there are instances in which the University has withheld information that is not personal information, for example, email timestamps. The University is not required or authorized to refuse to disclose that information under s. 22(1).

[55] I find that some of the personal information the University withheld is about the SVRO manager and faculty member's position, functions or remuneration as an employee of a public body within the meaning of s. 22(4)(e). Disclosing this personal information is not an unreasonable invasion of a third party's personal privacy and the University is not required or authorized to refuse to disclose it under s. 22(1).

[56] For the reasons that follow, I find that disclosing the student's personal information in dispute would be an unreasonable invasion their personal privacy. I find that the student's personal information forms part of their educational history and that disclosure of this information is presumed to be an unreasonable invasion of the student's personal privacy under s. 22(3)(d). I find that s. 2(2)(f) and the sensitivity of the student's personal information weigh in favour of withholding the student's personal information. I find that ss. 22(2)(c) and 22(2)(e) do not apply in the circumstances. I find that the fact that some of the withheld information is the applicant's personal information weighs in favour of disclosure. I find that the applicant's knowledge of the people and events involved does not weigh in favour of disclosing the personal information the student supplied in confidence in the context of making an allegation of sexualized violence. I find that overall, the applicant has not rebutted the presumption that disclosing the student's personal information related to their educational history would constitute an unreasonable invasion of the student's personal privacy.

[57] I find there are instances where the University can reasonably sever the student's personal information from the record and provide the applicant access to their own personal information contained in the remainder of the record without revealing the student's personal information.

[58] I find that the University is not required to provide the applicant with a summary of the withheld information that the student provided in confidence because it is not possible to do so without revealing the student's personal information.

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## CONCLUSION

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

1. Subject to item 2 below, I confirm, in part, the University's decision to refuse to disclose the information in dispute under s. 22(1).
2. The University is required to give the applicant access to the information I have highlighted in a copy of the records provided to the University with this order.
3. The University must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant together with a copy of the records described in item 2 above.

[60] Pursuant to s. 59(1) of FIPPA, the University is required to comply with this order by September 21, 2023.

August 9, 2023

### ORIGINAL SIGNED BY

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Rene Kimmitt, Adjudicator

OIPC File No.: F21-86359