



Order F23-83

MINISTRY OF ATTORNEY GENERAL

Alexander Corley
Adjudicator

October 4, 2023

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Summary: An applicant requested access to all records held by the Ministry naming two individuals and created within a specific date range. The Ministry refused access to some information in the responsive records under several exceptions to disclosure in FIPPA but only s. 22 (unreasonable invasion of privacy) was in issue during the inquiry. The adjudicator confirmed that the Ministry correctly applied s. 22 to most of the information in dispute but ordered the Ministry to disclose the balance of the information to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165 ss. 22(1), 22(2)(a), 22(2)(e), 22(2)(f), 22(2)(h), 22(3)(d), 22(3)(f), 22(3)(i), 22(4); *Gaming Control Act*, SBC 2002, c. 14 ss. 56 & 94(b); *Gaming Control Regulation*, B.C. Reg. 96/2021 s. 30.

INTRODUCTION

[1] An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Ministry of Attorney General (Ministry) for all records held by the Ministry naming two individuals and created within a specific date range.¹

[2] The Ministry identified 388 pages of responsive records (initial records) and provided some of these to the applicant while withholding others either in part or in their entirety under ss. 13 (advice or recommendations), 15 (harm to law enforcement), 16 (harm to intergovernmental relations), 21 (harm to third-party business interests), and 22 (unreasonable invasion of privacy) of FIPPA.²

¹ Access Request dated February 27, 2019.

² Ministry Response #1 dated November 8, 2019.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Ministry's decision.³ During mediation, the Ministry reconsidered its severing decisions and released additional information to the applicant while also withdrawing its reliance on s. 13.⁴ Mediation did not resolve the remaining issues and the applicant requested that the matter proceed to an inquiry.⁵

[4] Before the notice of inquiry was issued, the public body withdrew its reliance on s. 15 and the applicant said they no longer wanted access to information withheld under s. 16.⁶

[5] Further, the registered gaming services provider (company) the two individuals were associated with was invited to participate in the inquiry and provide submissions regarding the information the Ministry had withheld under s. 21. Ultimately the company declined to make any submissions and indicated that it consented to that information being released to the applicant pursuant to s. 21(3)(a).⁷ The Ministry says that it will release this information to the applicant as part of the compliance required by this order.⁸

[6] Therefore, the only issue remaining in dispute is s. 22.

[7] The Ministry provided written submissions and evidence during the inquiry. The applicant did not provide evidence or submissions during the inquiry.

ISSUE

[8] In this inquiry I must decide whether s. 22(1) requires the Ministry to withhold the information at issue.

[9] Under s. 57(2) of FIPPA, the applicant bears the burden of proving that disclosure of the information the Ministry has withheld under FIPPA s. 22(1) would not be an unreasonable invasion of third-party personal privacy.⁹

³ Investigator's Fact Report at para. 3; Request for Review dated November 14, 2019.

⁴ Investigator's Fact Report at para. 4; Ministry Response #2 dated May 7, 2021.

⁵ Investigator's Fact Report at para. 5.

⁶ Investigator's Fact Report at paras. 8 and 9(a); Public Body's correspondence dated October 26, 2022; Applicant's correspondence dated November 14, 2022.

⁷ Correspondence from the company dated March 28, 2023.

⁸ Public Body's Initial Submission at para. 15 and note 2.

⁹ However, the Ministry bears the initial burden of demonstrating that the information it is withholding under s. 22(1) meets the definition of "personal information" under FIPPA: Order F23-49, 2023 BCIPC 57 at para. 5 and note 1, citing Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 9-11.

What Records and Information are in Dispute Under s. 22?

[10] The applicant requested records held by the Ministry naming two individuals (Individual 1, Individual 2). After the close of mediation, the applicant confirmed in writing that they did not dispute the Ministry's decision to refuse access to the personal information or financial information of anyone other than Individuals 1 and 2.¹⁰ Given the severing of that information is no longer in dispute, I will make no decision about the Ministry's decision to refuse access to it under s. 22.

[11] Further, while preparing for this inquiry the Ministry identified 11 additional pages of responsive records which were not initially provided to the applicant and were not considered during mediation (additional records).¹¹ The Ministry provided the additional records to the applicant well ahead of the applicant's deadline for filing a submission in this inquiry.¹² All of the information in dispute in the additional records is withheld under s. 22 only.

[12] Based on the above, and the explanation of the issues in the Investigator's Fact Report and the Notice of Inquiry, I find that only the following information remains in dispute:

1. The information the Ministry has withheld under s. 22 on pages 1, 2, 13, 14, 18, 20-24, 31, 33, 46, 56, 70, 81, 105, 108-119, 129-132, 183-186, 204, 206-210, 375, and 379-385 of the initial records, except where that information is the personal information or financial information of anyone other than Individuals 1 and 2; and,
2. The information the Ministry has withheld under s. 22 on pages 1-11 of the additional records, except where that information is the personal information or financial information of anyone other than Individuals 1 and 2.

DISCUSSION

Background

[13] At the relevant time, Individuals 1 and 2 were each employed by the company. As a registered gaming services provider regulated under the *Gaming Control Act*¹³ (GCA), the company was subject to the requirements in the GCA

¹⁰ Investigator's Fact Report at paras. 9(b) and 9(c); Applicant's correspondence dated November 14, 2022; Public Body's Initial Submission at paras. 10, 11, and 60.

¹¹ Public Body's correspondence dated March 30, 2023.

¹² Public Body's correspondence to Applicant dated March 23, 2023; Amended Inquiry Schedule dated February 3, 2023.

¹³ S.B.C. 2002, c. 14.

and the *Gaming Control Regulation* (regulation)¹⁴ and to oversight by the Provincial Gaming Policy and Enforcement Branch (GPEB).¹⁵ During the date range specified in the access request, GPEB was part of the Ministry but GPEB has since moved to the Ministry of Public Safety and Solicitor General.¹⁶

[14] One of GPEB's responsibilities is to oversee and administer the registration of gaming officials, workers, and companies.¹⁷ Registrants must comply with the conditions of registration set out in the regulation including the requirement to submit to and cooperate in background investigations which can include being interviewed by GPEB.¹⁸

[15] Registration of gaming companies and employees must be renewed at certain intervals.¹⁹ To support an application for registration or renewal of registration, gaming workers must submit an application and supporting documents as required by GPEB's General Manager.²⁰

[16] Individuals 1 and 2 each applied for renewal of registration as gaming workers in 2017.²¹ As a senior employee, Individual 1 completed a detailed application form which I refer to as the "Disclosure Form",²² provided significant supporting documentation, and attended an interview with a GPEB investigator in early 2018.²³ As a junior employee, Individual 2 completed a simpler application form and was not required to attend a GPEB interview.²⁴

[17] The initial records and the additional records (together, the "records") each relate to the registration renewal of the company and Individuals 1 and 2.

Section 22(1) Unreasonable Invasion of Privacy

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

¹⁴ B.C. Reg. 96/2021.

¹⁵ Affidavit #1 of GPEB's Director of Corporate Registration affirmed March 30, 2023 (Director's Affidavit) at para. 4.

¹⁶ Director's Affidavit at para. 4.

¹⁷ Director's Affidavit at para. 6.

¹⁸ Director's Affidavit at para. 7.

¹⁹ Director's Affidavit at paras. 8 and 37.

²⁰ Director's Affidavit at para. 9.

²¹ Director's Affidavit at paras. 27 and 35.

²² Director's Affidavit at para. 9.

²³ Director's Affidavit at para. 29.

²⁴ Director's Affidavit at paras. 9 and 35.

[19] The Ministry has withheld numerous kinds of information about Individuals 1 and 2 from the records under s. 22(1) including:²⁵

- Names and dates of birth;
- Addresses;
- Employment and financial information;
- Information about individuals’ “corporate associations” (i.e., their role as a board member, shareholder, trustee, volunteer, etc.);
- Identification document scans and numbers;
- Opinions of others about registration renewal for Individuals 1 and 2;
- Headshot photographs and descriptions of physical characteristics;
- Signatures; and
- Information related to background checks.

Personal Information

[20] 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.

[21] Schedule 1 of FIPPA provides the following definitions of “personal information” and “contact information”,

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

“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[.]

[22] Based on these definitions, information that is “contact information” is not “personal information” for the purposes of FIPPA. Whether information is contact information depends on the context in which it appears.²⁶

[23] The Ministry submits that none of the information it has withheld under s. 22(1) is “contact information” but that it is all “personal information” on the basis that the information “either directly identifies an individual by name or is reasonably capable of being attributed to a particular individual when combined with other available sources of information in the [r]ecords.”²⁷

²⁵ Public Body’s Initial Submission at para. 66.

²⁶ Order F20-13, 2020 BCIPC 15 at para. 42.

²⁷ Public Body’s Initial Submission at para. 70.

[24] I find that most of the information in dispute is about identifiable individuals and is therefore personal information. Although the Ministry has in places withheld the position name or title or business e-mail address of Individuals 1 and 2, I find that this information was provided in the context of the GPEB registration renewal applications, not to allow Individuals 1 and 2 to be contacted as part of conducting their business affairs. On that basis, I find that this information is not “contact information” but is personal information under FIPPA.

[25] Some of the information in dispute is also the opinions of others about Individuals 1 and 2 expressed during the registration renewal process. I accept that A’s opinion about B can be B’s personal information in some cases and I find that to be the case here.²⁸ Therefore, I find that the opinions about Individuals 1 and 2 contained in the records are Individuals 1 and 2’s personal information.

[26] However, I find that certain non-identifying header and footer information withheld by the Ministry is not personal information as it is not about any identifiable individual.²⁹ Section 22(1) does not apply to that information and I will not consider it further.

Section 22(4)

[27] Section 22(4) sets out circumstances where disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy. If any of the circumstances in s. 22(4) applies to the personal information in dispute, the public body is required to give the applicant access to that information.

[28] The Ministry submits that none of the circumstances set out in s. 22(4) applies to the information in dispute.³⁰

[29] I have reviewed the information in dispute with an eye to s. 22(4) and I find that none of the ten circumstances listed in that section applies in this case.³¹

Section 22(3)

[30] Section 22(3) lists circumstances where disclosure of personal information 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 those circumstances

²⁸ See, for example, Order F17-01, 2017 BCIPC 1 at para. 48.

²⁹ See page 70 of the initial records.

³⁰ Public Body’s Initial Submission at paras. 71-73.

³¹ While it is possible that a small amount of information on pages 13 and 108 of the initial records and pages 2, 10, and 11 of the additional records could fall within the scope of s. 22(4)(i), it is not clear from the record before me that this is the case and the applicant, who bears the burden of proof, did not make any submissions regarding s. 22(4)(i).

applies to the personal information in dispute. The Ministry submits that ss. 22(3)(d), (f), and (i) apply and I will consider each in turn.

Section 22(3)(d) – employment, occupational or educational history

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

[32] The Ministry submits that s. 22(3)(d) self-evidently applies to much of the information in dispute as it pertains directly to the employment, occupational, and educational histories of Individuals 1 and 2.³² The Ministry also points to a series of prior orders which it says hold that information related to a person's corporate associations, such as their role as an officer, shareholder, trustee, volunteer, etc., can constitute "occupational history" for purposes of s. 22(3)(d).³³

[33] Based on my review of the records, I find that s. 22(3)(d) applies to much of the personal information in dispute as revealing it would disclose the employment, occupational, or educational history of Individuals 1 and 2. Some of the information is résumé-type information detailing prior employment or educational achievement and s. 22(3)(d) has consistently been held to apply to this kind of information.³⁴ I also find that any information related to Individual 1's role in various corporate associations and societies is sufficiently detailed to constitute Individual 1's occupational history.³⁵

[34] Further, much of the information in dispute relates to GPEB's review of materials Individuals 1 and 2 submitted in support of their registration renewal as gaming workers. I find that this information is about Individuals 1 and 2's employment history given that maintaining their registration status under the GCA and the regulation was a requirement of maintaining their employment.³⁶ For that reason, s. 22(3)(d) applies.

[35] Therefore, I find that release of much of the personal information in dispute is presumed to be an unreasonable invasion of third-party personal privacy pursuant to s. 22(3)(d).³⁷

³² Public Body's Initial Submission at paras. 76 and 78, referencing pages 14, 18, 46, 70, 81, 109-114, 183-184, 186, 379-381, and 383 of the initial records and pages 2, 4-7, and 9-11 of the additional records.

³³ Public Body's Initial Submission at para. 77, citing Orders F21-66, 2021 BCIPC 77; F21-67, 2021 BCIPC 78; F21-68, 2021 BCIPC 79; F21-69, 2021 BCIPC 80; and F21-70, 2021 BCIPC 81.

³⁴ See, for example, Order F14-41, 2014 BCIPC 44 at para. 46, citing Order F09-24, 2009 CanLII 66961 (BC IPC) and Order No. 54-1995, 1995 CanLII 1713 (BC IPC), among others.

³⁵ Order F21-66, *supra* note 33 at paras. 41-42.

³⁶ Director's Affidavit at paras. 8-9; GCA, *supra* note 13 at s. 94(b).

³⁷ See pages 1-2, 13-14, 18, 20, 22-24, 31, 33, 46, 56, 70, 81, 105, 108, 110, 112-114, 116, 183-185, 206-210, 379-380, and 382-383 of the initial records and pages 2, 4-7, and 9-11 of the additional records.

Section 22(3)(f) – third party’s finances

[36] Section 22(3)(f) presumes that disclosure of personal information that describes a third party’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness is an unreasonable invasion of the third party’s personal privacy.

[37] The Ministry submits that it has applied s. 22(3)(f) to withhold information related to Individuals 1 and 2’s assets, liabilities, and creditworthiness.³⁸

[38] I accept that s. 22(3)(f) applies to the bulk of the information the Ministry submits is covered by that section. For example, I find that s. 22(3)(f) applies to information regarding employment compensation, share holdings, real estate holdings, net worth, income tax filings, and whether Individuals 1 or 2 have ever declared bankruptcy or had a credit card revoked as this information is clearly related to Individuals 1 and 2’s finances and financial history.

[39] However, I do not see, and the Ministry does not explain, how information related to the denial, suspension, or cancellation of a licence or information related to administrative sanctions imposed by a regulatory agency relates to Individuals 1 and 2’s creditworthiness. Therefore, I find that s. 22(3)(f) does not apply to that information.

[40] Based on the above, I find that s. 22(3)(f) applies to some of the personal information in dispute and disclosure of that information is presumed to be an unreasonable invasion of third-party personal privacy.³⁹

Section 22(3)(i) – racial or ethnic origin, sexual orientation or religious or political beliefs or associations

[41] Section 22(3)(i) says that disclosure of personal information is presumed to be an unreasonable invasion of a third party’s personal privacy if the personal information indicates the third party’s racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

[42] The Ministry provides the following examples of information withheld from the records that it says falls under s. 22(3)(i): racial origin; place of birth and citizenship status; headshot photographs and descriptions of physical characteristics such as height, weight, and eye or hair colour; and, gender and marital status, which the Ministry says relate to sexual orientation.⁴⁰

³⁸ Public Body’s Initial Submission at paras. 80-81, referencing pages 14, 18, 46, 70, 115-119, 204-210 [page 205 is no longer in dispute], 380, and 383-4 of the initial records and page 7 of the additional records.

³⁹ See pages 14, 18, 46, 70, 115, 117-119, 204, 206-210, 383-384 of the initial records and page 7 of the additional records.

⁴⁰ Public Body’s Initial Submission at para. 83.

[43] I accept that revealing the racial origin of Individuals 1 and 2 would be a presumptively unreasonable invasion of personal privacy under s. 22(3)(i). I also accept that releasing photographs of Individuals 1 and 2 or a description of their physical characteristics (height, weight, eye colour, hair colour) could potentially reveal their racial or ethnic origin to the applicant given that the applicant already knows their family names.

[44] However, I am not able to find any authority supporting the Ministry's submission that releasing the place of birth or citizenship status of Individual 1 or 2 would be presumptively unreasonable under s. 22(3)(i) and, on the evidence before me, I do not find that it would.

[45] Finally, I also do not find that an individual's gender or marital status indicates that individual's sexual orientation, as the Ministry asserts, given the formal recognition of marriage equality in Canada. Therefore, I find that this information also falls outside the scope of s. 22(3)(i).

[46] Based on all of the above, I find that s. 22(3)(i) applies to some of the information in dispute and disclosing that information is presumed to be an unreasonable invasion of third-party personal privacy.⁴¹

Section 22(2)

[47] 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 weigh against. Relevant circumstances that weigh in favour of disclosure may rebut any applicable presumptions under s. 22(3).

[48] I have considered several enumerated circumstances and two additional circumstances. I will discuss each circumstance in turn.

Section 22(2)(a) – public scrutiny of a public body

[49] Section 22(2)(a) recognizes that, where disclosure of the information in dispute would foster accountability of a public body, this may provide a foundation for finding that disclosure would not constitute an unreasonable invasion of a third party's personal privacy.⁴² It is well established that the purpose of s. 22(2)(a) is to make public bodies more accountable, not individual third parties.⁴³

⁴¹ See pages 110 and 131 of the initial records and pages 8 and 10 of the additional records.

⁴² Order F05-18, 2005 CanLII 24734 (BC IPC) at para. 49.

⁴³ See, for example, Order F18-47, 2018 BCIPC 50 at para. 32.

[50] The applicant did not make a submission in this inquiry. However, it is clear from the access request and the request for review that the applicant believes s. 22(2)(a) weighs in favour of disclosing the information in dispute.⁴⁴

[51] The Ministry says that it has already disclosed a detailed description of the process GPEB followed when renewing registration of the company and Individuals 1 and 2 and, therefore, disclosure of the specific personal information that remains in dispute is not desirable for the purpose of subjecting GPEB, the Ministry, or any other public body to public scrutiny.⁴⁵ The Ministry also submits that release of some of the information in dispute could work against effective scrutiny of the gaming industry in British Columbia. Specifically, the Ministry says that release of this information could lead to “[g]aming workers [becoming] reluctant to provide fulsome and complete information at first instance in their [application materials] for fear of disclosure of this information to the world at large”.⁴⁶

[52] Section 22(2)(a) is concerned with whether disclosure of the specific information in dispute is desirable for the purpose of subjecting a public body to public scrutiny. Arguments regarding unintended consequences of disclosing the information can be relevant to the analysis and can weigh in favour of withholding the information in dispute but are not dispositive.⁴⁷

[53] In this case, I find that the Ministry’s submission regarding potential increased reluctance to disclosing information to GPEB among registrants is not supported by any evidence. Therefore, I give this concern little weight. Notwithstanding this, I agree with the Ministry that s. 22(2)(a) is not implicated by the specific information which remains in dispute.

[54] I find that the Ministry has already provided the applicant with a thorough description of the process GPEB followed in considering whether to renew registration of the company and Individuals 1 and 2⁴⁸ and has also released information in the records related to the approach GPEB took in making its determination.⁴⁹ Given this, I further find that any information in the records which could promote the public scrutiny of GPEB or the Ministry has already been released and that release of the personal information remaining in dispute would at most inappropriately subject Individual 1, Individual 2, or specific GPEB employees to public scrutiny. The applicant’s general concerns regarding public scrutiny of GPEB and the Ministry do not dislodge my findings on this point.

⁴⁴ Request for Review dated November 14, 2019.

⁴⁵ Public Body’s Initial Submission at paras. 86-87.

⁴⁶ Public Body’s Initial Submission at para. 88.

⁴⁷ See, for example, Order F21-49, 2021 BCIPC 57 at para. 36.

⁴⁸ See Director’s Affidavit at paras. 3-21 and 27-37.

⁴⁹ See, for example, pages 14, 54-61, 81, and 375-385 of the initial records.

[55] On this basis, I find that s. 22(2)(a) does not weigh in favour of releasing any of the information in dispute.

Section 22(2)(e) – unfair harm

[56] Section 22(2)(e) asks whether disclosure will unfairly expose a third party to financial or other harm. Past orders have interpreted “other harm” as serious mental distress, anguish, or harassment.⁵⁰

[57] The Ministry says that it has withheld the addresses, telephone numbers, dates of birth, driver’s licence numbers, descriptions of physical characteristics, and ethnicity of Individuals 1 and 2 on the basis that this information could unfairly expose Individuals 1 and 2 to identity theft and associated financial loss.⁵¹

[58] The Ministry further says that it has withheld Individual 2’s name, job title, and job duty information because Individual 2 holds a junior position with the company. The Ministry says that release of this information could lead to Individual 2 being targeted by organized crime in furtherance of criminal activities. On this basis, the Ministry submits that releasing this information could expose Individual 2 and their family members to harms including mental distress, anguish, and harassment.⁵²

[59] I accept that releasing the home contact, physical characteristic, ethnicity, date of birth, and identification number information of Individuals 1 and 2 could expose them to unfair harm. This information could clearly be used to harass or impersonate Individual 1 or 2 and could therefore lead to unfair economic or other harm if released.

[60] Turning to the Ministry’s argument regarding Individual 2’s name, job title, and job duty information, the Ministry relies on an affidavit from GPEB’s Director of Corporate Registration (Director) in support of this submission.⁵³ The Director deposes that they are aware that: the company has concerns regarding disclosing name, job title, and job duty information for junior employees; the company keeps this information private; and, the company believes its employees could be subject to harm if this information were made public.⁵⁴ The Ministry provides no other evidence on this point.

[61] As an administrative tribunal OIPC is not bound by strict rules of evidence and it is open to me to accept sworn evidence based on information and belief as

⁵⁰ Order 01-37, 2001 CanLII 21591 (BC IPC) at para. 42.

⁵¹ Public Body’s Initial Submission at para. 92, citing Order F18-48, 2018 BCIPC 51 at para. 23.

⁵² Public Body’s Initial Submission at paras. 93-95.

⁵³ See Director’s Affidavit.

⁵⁴ Director’s Affidavit at para. 44.

opposed to first-hand knowledge in some cases.⁵⁵ However, I find that the Ministry's argument regarding Individual 2's name, job title, and job duty information is not supported by sufficient evidence to warrant serious consideration here.

[62] In the first place, I find that the company, which is best placed to provide evidence regarding these concerns, was made aware of this inquiry and invited to make submissions but declined to do so.⁵⁶ Further, the second-hand evidence provided by the Director on this point does not rest on a firm factual basis as it would if, for example, a communication from the company setting out its concerns were attached to the Director's affidavit as an exhibit. I find that the Director's second-hand evidence is not persuasive, and I give it little weight on that basis.

[63] Based on all of the above, I find that revealing some of the information in dispute could subject Individual 1 or 2 to unfair harm and that this weighs in favour of withholding that information.⁵⁷

Section 22(2)(f) – supplied in confidence and expectation of public disclosure

[64] Under s. 22(2)(f), a public body must consider whether the personal information in dispute was supplied in confidence. If it was, this circumstance weighs in favour of withholding the information.

[65] The Ministry says that all information supplied to GPEB as part of the registration process is intended to be kept confidential.⁵⁸ The Ministry further says the registration forms that Individuals 1 and 2 provided to GPEB are marked as confidential when completed⁵⁹ and that the Disclosure Form includes a consent form detailing the limited circumstances where an applicant's personal information may be shared absent consent (consent form).⁶⁰ Based on this, the Ministry submits that Individuals 1 and 2 provided the related personal information to GPEB in confidence and would have had no reasonable expectation that the information would be disclosed publicly.

⁵⁵ See Order F21-15, 2021 BCIPC 19 at para. 65, citing Order F20-16, 2020 BCIPC 18 at para. 10.

⁵⁶ While the company was invited to provide submissions on s. 21, I find that the company could have provided evidence in support of this point either directly or via the Ministry if they felt it important to do so.

⁵⁷ See pages 109-110, 131, 183, 375 and 384 of the initial records and pages 1-2, 4-6, and 8-11 of the additional records.

⁵⁸ Public Body's Initial Submission at paras. 102 and 104.

⁵⁹ Public Body's Initial Submission at paras. 100 and 103.

⁶⁰ Public Body's Initial Submission at para. 101.

[66] Prior orders have found that template language on forms may indicate an intention regarding confidentiality, but what is most important to consider is the context in which the information was provided to the public body and the kinds of information provided.⁶¹

[67] In this case, I find that much of the information provided by Individuals 1 and 2, including information related to family members, detailed financial information, and complete scans of identification documents is not information that someone would generally volunteer publicly. Therefore, I find that the fact these kinds of details occur throughout information provided to GPEB is evidence of an expectation that the information provided to GPEB would be held in confidence. Further, I find that the context in which the information was provided, that being as part of a regulatory registration process, provides further evidence that Individuals 1 and 2 would have expected their information to remain confidential.

[68] Finally, regarding Individual 1's information, I find that in addition to the template language on the Disclosure Form, Individual 1 was also required review and sign the consent form.⁶² The consent form explains that, absent Individual 1's consent, the information provided would only be shared outside of GPEB in very limited circumstances and only for purposes related to assessing Individual 1's application for renewal of registration.⁶³ I find that this is further evidence that Individual 1 had a reasonable expectation of confidentiality regarding the personal information they provided to GPEB.

[69] On the other hand, there is one instance where I find that information in the records was not supplied in confidence. The evidence makes clear that certain information related to the registration of Individuals 1 and 2, such as their GPEB registration numbers, registration statuses, and registration expiry dates must be made publicly available by GPEB pursuant to the regulation.⁶⁴ While this is information that would have been generated by GPEB and not in each case "supplied" to the Ministry, I find that some of this information is present in materials provided by Individuals 1 and 2 to GPEB. Given GPEB's obligation to make this information public, I am not persuaded that Individuals 1 and 2 supplied this personal information to GPEB in confidence.⁶⁵

⁶¹ See, for example, Order F21-66, *supra* note 33 at para. 76.

⁶² Page 129 of the initial records.

⁶³ Individual 2 was also required to sign a consent regarding the use and disclosure of their personal information but I find the wording of that consent does not provide clear evidence regarding Individual 2's subjective expectation of confidentiality regarding the information they provided to GPEB. See page 5 of the additional records.

⁶⁴ See Public Body's Initial Submission at para. 99 and Director's Affidavit at para. 6; see also GCA, *supra* note 13 at s. 56(1)(c) and regulation, *supra* note 14 at s. 30.

⁶⁵ See pages 13 and 108 of the initial records and pages 1, 2, 5, and 9-10 of the additional records.

[70] Based on the above, I find that most of the personal information Individuals 1 and 2 provided to GPEB as part of their renewal of registration was supplied to GPEB in confidence.⁶⁶ This factor weighs in favour of withholding that information.⁶⁷

Section 22(2)(h) – unfair damage to reputation

[71] Under s. 22(2)(h), a public body must consider whether disclosure of the personal information would unfairly damage the reputation of any person referred to in the records requested by the applicant. Section 22(2)(h) has two requirements. First, the information must damage an individual's reputation. Second, the damage to that individual's reputation must be unfair.⁶⁸ Where s. 22(2)(h) applies to information, it weighs in favour of withholding that information.

[72] The Ministry says that certain information provided by Individuals 1 and 2 or compiled by GPEB during the due diligence and background check process could unfairly damage the reputations of Individuals 1 and 2.⁶⁹ In support of this submission, the Ministry says that “[g]aming employees are required to disclose very personal information about their background and character that may appear negative on its face, but in its full context is not a bar to their registration or renewal of registration.”⁷⁰

[73] I accept that the information the Ministry asserts is covered by s. 22(2)(h), and a small amount of additional information, appropriately falls within the scope of that section.⁷¹ I find that this information could damage the reputations of Individuals 1 and 2 if disclosed. Further, I find that the records are one-sided, in that they do not in each case include an explanation from Individual 1 or 2 regarding the information at issue. On that basis, I find that the reputational damage which could occur if the information were released to the applicant would be unfair as someone reviewing the information would not have the full context before them.

[74] While being careful to not reveal the information in dispute, I will say that my findings on this point are not in each case dependant on the specific information provided by Individuals 1 and 2. In some cases my findings are

⁶⁶ For clarity, I find that s. 22(2)(f) also applies where information provided to GPEB as part of the registration process is reproduced in internal GPEB correspondence or related records.

⁶⁷ See pages 14, 18, 46, 70, 108-119, 129, 131-132, 183-186, 204, 206-210, 375, and 379-384 of the initial records and pages 1-2 and 5-11 of the additional records.

⁶⁸ See Order F19-02, 2019 BCIPC 2 at para. 69.

⁶⁹ Public Body's Initial Submission at paras. 106-107, referencing pages 14, 18, 46, 70, 81, 113-116, 118-119, 380, 382, and 385 of the initial records and pages 6-7 of the additional records.

⁷⁰ Public Body's Initial Submission at para. 108.

⁷¹ See pages 14, 18, 46, 70, 81, 113-116, 118-119, 185, 380, 382, and 385 of the initial records and pages 6-7 of the additional records.

based on the inferences one can draw from the fact that GPEB required an individual to answer certain questions during the registration process.

[75] Based on the above, I find that s. 22(2)(h) applies to some of the information in dispute and weighs in favour of withholding that information.

Sensitivity

[76] Sensitivity of information is not an enumerated factor under s. 22(2). However, many past orders have considered it as a relevant circumstance. Where information is sensitive, this is a circumstance weighing in favour of withholding the information.⁷² Conversely, where information is not sensitive, past orders have found that this weighs in favour of disclosure.⁷³

[77] The Ministry says that some of the information in dispute is sensitive, including dates of birth,⁷⁴ identification document numbers, personal contact information, signatures, information about family members, and opinions of GPEB staff about Individuals 1 and 2.⁷⁵ The Ministry also submits that Individuals 1 and 2's answers to questions regarding pending criminal charges or a criminal record; involvement in civil litigation or the existence of pending court orders; past or present bankruptcy or insolvency proceedings; or, suspension or revocation of a permit or licence are sensitive.⁷⁶ The Ministry cites prior orders which it says hold that even negative answers to these kinds of questions can be sensitive personal information.⁷⁷

[78] I agree with the Ministry that even a negative response to a question regarding sensitive matters such as a criminal record or past bankruptcy can reveal sensitive personal information.⁷⁸ I find that certain information which Individuals 1 and 2 provided to GPEB in their registration packages is sensitive given that the questions asked are clearly about sensitive matters.⁷⁹

[79] I also find that information such as dates and places of birth, identification document numbers, personal contact information, signatures, headshot photographs, scans of identification documents, citizenship statuses, opinions of investigators about applicants, and information related to family history is

⁷² Order F19-15, 2019 BCIPC 17 at para. 99.

⁷³ Order F16-52, 2016 BCIPC 58 at para. 91.

⁷⁴ The Ministry cites Order F21-66, *supra* note 33 at para. 90 and note 46 for the proposition that dates of birth are sensitive information.

⁷⁵ Public Body's Initial Submission at paras. 110 and 114-115.

⁷⁶ Public Body's Initial Submission at para. 112.

⁷⁷ Public Body's Initial Submission at para. 113, citing Order F21-66 at paras. 85-86, and Orders F21-67, F21-68, F21-69, and F21-70, generally; all *supra* note 33.

⁷⁸ See Order F21-66, *ibid*.

⁷⁹ See pages 113-116, 118-119, and 379 of the initial records and pages 6-7 of the additional records.

generally understood to be sensitive and is sensitive here. I find that this weighs in favour of withholding that information.

[80] However, some of the personal information in dispute is clearly not sensitive and I find that this weighs in favour of disclosing that information. For example, I find that information related to availability to attend an interview at a particular date and time or the date a document was signed is non-sensitive information.

[81] Based on the above, I find that some of the information in dispute is sensitive and that this weighs in favour of withholding that information.⁸⁰ Conversely, I find that other information in dispute is not sensitive and this weighs in favour of releasing that information.⁸¹ I find that sensitivity is a neutral factor in assessing the other personal information in dispute.

Information already known by or available to the applicant

[82] Pre-existing knowledge of withheld information can be a factor weighing in favour of disclosing that information.⁸² However, where information is not widely known but is known only to an applicant or a small group of people this factor will carry little weight.⁸³

[83] The situation may be different, however, where a public body relies on s. 22 to withhold information which is already revealed somewhere in the records at issue or the public body's submissions or is otherwise already publicly available.⁸⁴ The fact that this information is already available to an applicant can be a factor weighing strongly in favour of releasing it to the applicant wherever it appears in the records at issue.

[84] It is clear from the applicant's access request and request for review that a small amount of the personal information in dispute is already known to the applicant.⁸⁵ However, there is no indication that this information is more widely known and I place relatively little weight on the applicant's existing knowledge of this information as a result.

[85] I find that the Ministry has been somewhat inconsistent in its severing and it is withholding certain personal information that it has already disclosed

⁸⁰ See pages 14, 18, 46, 70, 81, 109-111, 113-119, 129-132, 185-186, 375, 379-382, and 384-385 of the initial records and pages 1-2 and 4-11 of the additional records.

⁸¹ See pages 1-2, 22-24, 31, 56, 70, 105, and 129-130 of the initial records.

⁸² Order F15-12, 2015 BCIPC 12 at para. 28, citing Order F14-47, 2014 BCIPC 51 at paras. 37-39.

⁸³ See Order F22-31, 2022 BCIPC 34 at paras. 80-82.

⁸⁴ See Order F22-31, *ibid* at paras. 78 and 83.

⁸⁵ See pages 111, 117, 186, and 381 of the initial records.

elsewhere in the records.⁸⁶ I find that the Ministry should not have disclosed some of that personal information because ss. 22(3)(d) and (f) apply to it.⁸⁷ The fact that the Ministry disclosed personal information that it should not have disclosed is not a factor that weighs in favour of disclosure a second time. On the other hand, some of the information the Ministry is withholding that it has already disclosed elsewhere in the records is not subject to any of the presumptions under s. 22(3) and I find the fact this information is already available to the applicant to weigh in favour of disclosing it where it appears anywhere in the records.⁸⁸

[86] Considering information that is already publicly available elsewhere, as noted above I find that certain information related to Individuals 1 and 2, such as their GPEB registration numbers, registration statuses, and registration expiry dates must be made publicly available by GPEB pursuant to the regulation.⁸⁹ The Ministry has also withheld some information related to maximum Canada Pension Plan contributions by Individuals 1 and 2 in a given year.⁹⁰ This information would have been the same for regular income earners in Canada for the year in question and I find that this information is already publicly available on that basis. In both cases, I find that the public availability of the information referenced in this paragraph is a factor weighing strongly in favour of disclosing that information to the applicant wherever it appears in the records.⁹¹

Conclusion on s. 22.

[87] I have found that with one small exception the information in dispute is the personal information of Individuals 1 and 2. Considering s. 22(4), I have found that none of the circumstances listed in that section apply.

[88] Turning to s. 22(3), I have found that ss. 22(3)(d), (f), and (i) each apply to some of the personal information and that release of that information to the applicant is presumed to be an unreasonable invasion of personal privacy on that basis.

[89] Considering s. 22(2), I have found that some of the wider circumstances militate in favour of withholding the personal information in dispute and some militate in favour of disclosing it. Specifically, I have found that the majority of the

⁸⁶ See pages 108, 113, 115-117 and 131 of the initial records and pages 1, 3-5, 9, and 11 of the additional records.

⁸⁷ See pages 113, 115-116, and 131 of the initial records.

⁸⁸ See pages 108 and 117 of the initial records and pages 1, 3-5, 9, and 11 of the additional records.

⁸⁹ See Public Body's Initial Submission at para. 99 and Director's Affidavit at para. 6; see also GCA, *supra* note 13 at s. 56 and regulation, *supra* note 14 at s. 30.

⁹⁰ Page 204 of the initial records.

⁹¹ See pages 13, 108, and 204 of the initial records and pages 1, 2, 5, and 9-10 of the additional records.

personal information in dispute must be withheld under s. 22, but that a small amount of that personal information is either: already revealed in the records released to the applicant and not subject to any presumptions under s. 22(3); already otherwise publicly available; or, clearly non-sensitive. I have found that disclosure of this information would not be an unreasonable invasion of third-party personal privacy on those bases.

[90] Based on all of the above, I find that the Ministry is required to withhold most of the personal information in dispute under s. 22(1) but it is not authorized or required to refuse to disclose the information that I have highlighted in the copy of the records delivered to the Ministry alongside this order.

CONCLUSION

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

1. Subject to item 2 below, I confirm that the Ministry is required to refuse to disclose some of the information in dispute under s. 22(1).
2. The Ministry is not authorized or required by s. 22(1) to refuse to disclose the information that I have highlighted in the copy of the records package provided to the Ministry with this order. It must provide this highlighted information to the applicant.
3. The Ministry must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records described at item 2 above.

[92] Pursuant to s. 59(1) of FIPPA, the Ministry is required to comply with this order by November 16, 2023.

October 4, 2023

ORIGINAL SIGNED BY

Alexander Corley, Adjudicator

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