



Order F23-102

## VANCOUVER ISLAND HEALTH AUTHORITY

Jay Fedorak  
Adjudicator

November 29, 2023

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**Summary:** An applicant requested from the Vancouver Island Health Authority (VIHA) a copy of a police report concerning him in its possession. VIHA withheld portions of the report under s. 22(1) (unreasonable invasion of third-party personal privacy) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator found that ss. 22(1) applied to all of the information at issue and required VIHA to refuse to disclose it.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSCB 1996 c. 165, ss. 22(1), 22(2)(e), 22(2)(f), 22(2)(g), 22(2)(h) 22(3)(b), 22(3)(h), 22(4)(c).

### INTRODUCTION

[1] An applicant requested, under the *Freedom of Information and Protection of Privacy Act* (FIPPA) a copy of a police report (Report) concerning him that the Victoria Police Department (VicPD) provided to an emergency psychiatrist at the Vancouver Island Health Authority (VIHA) pursuant to a court order. VIHA initially withheld the entire Report under s. 15(1) on the grounds that disclosure would be harmful to a law enforcement investigation, and s. 22(1) on the grounds that disclosure would be an unreasonable invasion of the personal privacy of third parties.

[2] The applicant requested a review by the Office of the Information and Privacy Commissioner (OIPC). VIHA subsequently consulted with VicPD about the request and decided to disclose some of the information in the report but continued to withhold other information under ss. 15(1), 16(1) (harm to intergovernmental relations), and 22(1).

[3] Mediation did not resolve the outstanding issues and the applicant requested that the matter proceed to an inquiry. VIHA subsequently consulted

VicPD again and agreed to disclose further information and to cease to rely on ss. 15(1) and 16(1).

## ISSUES

[4] The issue to be decided in this inquiry is whether s. 22(1) requires VIHA to withhold the information at issue.

[5] Section 57(2) stipulates that the applicant has the burden to prove that disclosure would not be an unreasonable invasion of the personal privacy of a third party under s. 22(1). However, the public body has the initial burden to show that the information it is withholding under s. 22(1) is personal information.<sup>1</sup>

## DISCUSSION

[6] **Background** – The applicant was the subject of a police investigation under the *Mental Health Act*.<sup>2</sup> An official from a house of worship had contacted the VicPD about the applicant's conduct. The official was concerned about the applicant's behaviour towards a teenager who attended the house of worship. The official also reported that the applicant was accusing him of failing to fulfill a contractual agreement, specifically the applicant claimed he had paid the official to convert him and to facilitate the applicant's marriage to the teenager. The applicant had sued the official on these grounds and was attempting to enforce his alleged contractual right to marry the teenager.

[7] **Records at issue** – The Report responsive to the request is 61 pages. VIHA has withheld information on 34 of the pages.

### ***Section 22(1) – unreasonable invasion of third-party privacy***

[8] Section 22(1) requires public bodies to withhold the personal information where disclosure of that personal information would be an unreasonable invasion of a third party's personal privacy. The proper approach to the application of s. 22(1) of FIPPA is described in Order F15-03, where the adjudicator stated the following:

This section only applies to "personal information" as defined by FIPPA. Section 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy. If s. 22(4) does not apply, s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. However, this presumption can be rebutted. Whether s. 22(3)

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<sup>1</sup> Order 03-41, 2003 BCIPC 41 (CanLII), paras. 9-11.

<sup>2</sup> RSBC 1996, c. 288.

applies or not, the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party's personal privacy.<sup>3</sup>

[9] I have taken the same approach in considering the application of s. 22(1) here.

*Step 1: Is the information “personal information”?*

[10] Under FIPPA, “personal information” is recorded information about an identifiable individual, other than contact information. “Contact information” is “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>4</sup>

[11] VIHA submits that the personal information at issue consists of the names, private (not business) contact information and testimony of witnesses who provided information to officers of VicPD and other police departments.<sup>5</sup> The applicant does not make submissions on whether the information in dispute constitutes personal information.

[12] I have reviewed the information in dispute and can confirm that it is information about identifiable third parties. I find that none of this information is “contact information”.

[13] For these reasons, I find that all of the information I am considering under s. 22(1) is personal information.

*Step 2: Does s. 22(4) apply?*

[14] The applicant submits that s. 22(4)(c) applies to the information at issue.<sup>6</sup> The relevant provision reads as follows:

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

...

(c) an enactment of British Columbia or Canada authorizes the disclosure,

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

<sup>4</sup> FIPPA provides definitions of key terms in Schedule 1.

<sup>5</sup> VIHA's initial submission, para. 28.

<sup>6</sup> Applicant's initial submission, para. 1.

[15] The applicant does not identify the enactment that he believes applies. VIHA notes that the applicant has failed to identify an applicable enactment.<sup>7</sup> It is not evident to me any enactments that might apply in this case. Therefore, I find that s. 22(4)(c) does not apply.

[16] Neither of the parties identifies any other provision of s. 22(4) that might apply. It does not appear to me that any of the provisions in s. 22(4) apply. Therefore, I find that s. 22(4) does not apply to any of the information.

*Step 3: Does s. 22(3) apply?*

[17] VIHA submits that ss. 22(3)(b) and (h) apply. Those provisions read as follows:

**22 (3)** A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if:

...

(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,

...

(h) the disclosure would reveal

(i) the identity of a third party who supplied, in confidence, a personal recommendation or evaluation, character reference or personnel evaluation, or

(ii) the content of a personal recommendation or evaluation, character reference or personnel evaluation supplied, in confidence, by a third party, if the applicant could reasonably be expected to know the identity of the third party

[18] **Section 22(3)(b) (investigation into a violation of law)** – VIHA submits that the records were created and collected by the VicPD during the course of a police investigation. It asserts that the VicPD has the statutory authority under s. 34(2) of the *Police Act*<sup>8</sup> to conduct investigations. VIHA submits that the investigation in this case was under the *Criminal Code of Canada*<sup>9</sup>. VIHA argues that the personal information at issue was collected as part of a police investigation into a possible violation of law.<sup>10</sup> The information access analyst

<sup>7</sup> VIHA's reply submission, para. 5.

<sup>8</sup> RSBC 1996 c. 367.

<sup>9</sup> RSC 1995, c. C-46.

<sup>10</sup> VIHA's initial submission, paras. 46-48.

responsible for responding the applicant's request confirmed with the investigating officer that VicPD had collected the personal information as part of an investigation into a possible violation of the *Criminal Code*.<sup>11</sup>

[19] The applicant does not make any submissions as to the application of s. 22(3)(b).

[20] I accept the affidavit evidence of the information access analyst that the VicPD had collected the personal information at issue as part of an investigation into a possible violation of law. My reading of the Report confirms this conclusion.

[21] Therefore, I find that s. 22(3)(b) applies to the personal information in dispute and that disclosure is presumed to be an unreasonable invasion of privacy.

[22] **Section 22(3)(h) (identities of third parties providing personal evaluations)** – VIHA submits that the third parties provided their statements to the police in confidence, and, since then, nobody had notified them of the applicant's request. VIHA argues that disclosure of their identities would affect the willingness of the third parties and others to provide frank statements to police in future.<sup>12</sup> The applicant does not make any submissions about s. 22(3)(h).

[23] Past orders have said that this provision applies to circumstances where individuals are providing personal recommendation or evaluation, character reference or personnel evaluations.<sup>13</sup> It usually applies in the context of recommendations by an expert or supervisor for an appointment or award. The personal information at issue in this case concerns factual statements about the actions of the applicant. They do not consist of evaluations of the applicant.

[24] Therefore, I find that s. 22(3)(h) does not apply in this case.

*Step 4: do the relevant circumstances in s. 22(2) rebut the presumption of unreasonable invasion of privacy?*

[25] The relevant provisions read as follows:

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

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<sup>11</sup> VIHA's initial submission, affidavit of information access analyst, para. 31.

<sup>12</sup> VIHA's initial submission, paras. 50-51.

<sup>13</sup> See for example, Order F10-08, 2008 BCIPC (CanLII), paras. 33-34; Order 00-53, 2000 BCIPC 57 (CanLII); F05-02, 2005 BCIPC 2 (CanLII); Order 00-44, 2000 BCIPC 48 (CanLII); F05-30, 2005 BCIPC 41 (CanLII).

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

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

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

(g) the information is likely to be inaccurate or unreliable,

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant,

[26] **Section 22(2)(e) (unfair harm)** – VIHA submits that disclosure of the information at issue would cause the third parties to be subject to harm, which it states includes “mental harm, harm to reputation, stigma or embarrassment arising from their involvement in police investigations if the Applicant were to further publish or disclose the Responsive Records.”<sup>14</sup>

[27] The applicant does not make submissions to refute VIHA’s arguments about the application of s. 22(2)(e).

[28] I have reviewed the Report. It is clear to me that disclosure of the applicant’s unproven allegations against some of the third parties could unfairly expose them to mental harm, harm to their reputations or embarrassment.

[29] Therefore, I find that s. 22(2)(e) is a relevant circumstance favouring withholding the personal information.

[30] **Section 22(2)(f) (supplied in confidence)** – While VIHA does not explicitly cite s. 22(2)(f), it notes that the third parties provided their statements to police in confidence.<sup>15</sup> The applicant does not make submissions to refute what VIHA says about this.

[31] I have reviewed the Report. Given the circumstances of this case, specifically the personal issues and relationships involved, I find it reasonable to conclude that the third parties had supplied their statements in confidence. Therefore, I find that s. 22(2)(f) applies and this is a relevant circumstance favouring withholding the personal information.

[32] **Section 22(2)(g) (information inaccurate)** – VIHA submits that the investigating officers found that the applicant’s allegations against the third parties were unsubstantiated and inaccurate. It asserts that this is

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<sup>14</sup> VIHA’s initial submission, para. 55.

<sup>15</sup> See para. 22 above.

a circumstance favouring withholding the information.<sup>16</sup> The applicant does not make submissions regarding the application of s. 22(2)(g).

[33] I have reviewed the Report and find that some of the personal information at issue is likely to be inaccurate, including the unproven allegations of the applicant against the third parties, which the third parties dispute. Further dissemination of this inaccurate information may misrepresent the third parties publicly. Therefore, s. 22(2)(g) applies to this information and this is a relevant circumstance favouring withholding the personal information.

[34] **Section 22(2)(h) (unfair damage to reputation)** – VIHA combines what it says about s. 22(2)(h) with its submission on the application of s. 22(2)(e).

[35] The applicant does not contest VIHA's arguments about the application of s. 22(2)(h).

[36] I have already found above when considering s. 22(2)(e) that it is reasonable to conclude that disclosure of the personal information could unfairly damage the third parties' reputations.

[37] Therefore, I find that s. 22(2)(h) is a relevant consideration favouring withholding the personal information.

[38] **Other considerations** – In addition to the circumstances listed in s.22(2), I may consider others that the parties have raised. I may also identify other relevant considerations.

[39] VIHA submits that the personal information at issue is sensitive, and this is a relevant circumstance favouring withholding the information. It refers to the following information as being particularly sensitive: information about race, creed and sexual orientation; private contact information; and medical information. The applicant does not contest the arguments of VIHA regarding the sensitivity of the information.

[40] I have reviewed the Report and conclude that medical information and information about race, creed and sexual orientation is sensitive, and this is a relevant circumstance favouring withholding the information.

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

[50] I found above that the information in dispute is personal information. I have found that none of the provisions of s. 22(4) applies to this information.

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<sup>16</sup> VIHA's initial submission, paras. 57-58.

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[51] I have found that the personal information was collected as part of an investigation into a possible violation of law under s. 22(3)(b) and disclosure of this personal information is presumed to be an unreasonable invasion of privacy.

[52] I have found that the third parties supplied their statements in confidence in accordance with s. 22(2)(f). I have also found that disclosure of their identities may cause the third parties to suffer unfair harm in accordance with s. 22(2)(e) and may damage their reputations in accordance with s. 22(2)(h). I have found that some of the information may be inaccurate in accordance with s. 22(2)(g). These circumstances all favour withholding the personal information, so I find the s. 22(3)(b) presumption that disclosure is an unreasonable invasion of third-party personal privacy has not been rebutted.

[53] In conclusion, I find that s. 22(1) applies to all the personal information at issue.

## **CONCLUSION**

[54] For the reasons given above, under s. 58 of FIPPA, I require VIHA to refuse access under s. 22(1) to the information at issue.

November 29, 2023

## **ORIGINAL SIGNED BY**

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Jay Fedorak, Adjudicator

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