



Order F23-103

CITY OF BURNABY

Alexander R. Lonergan
Adjudicator

November 30, 2023

CanLII Cite: 2023 BCIPC 119
Quicklaw Cite: [2023] B.C.I.P.C.D. No. 119

Summary: An applicant requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to all records pertaining to himself in the City of Burnaby's (City) correspondence with the Royal Canadian Mounted Police and the Canada Border Services Agency. The City provided the applicant with partial access to the records but withheld some information under several FIPPA exceptions to access. The adjudicator determined that some of the withheld records were not responsive to the applicant's request. The adjudicator further determined that the City was authorized to withhold all of the information it withheld under ss. 14 (solicitor-client privilege) and 16(1)(b) (harm to intergovernmental relations or negotiations), and most of the information withheld under s. 13(1) (advice or recommendations). The adjudicator determined that the City was required to refuse to disclose almost all of the information withheld under s. 22(1) (harm to personal privacy) that could not be withheld under other exceptions. The adjudicator ordered the City to provide the applicant with access to the information it was not required or authorized to refuse to disclose.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 13(1), 13(2), 13(3), 14, 16(1)(b), 22(1), 22(2)(f), 22(2)(g), 22(2)(h), 22(3)(b), 22(3)(d), 22(3)(h), 22(4), 22(4)(e).

INTRODUCTION

[1] The applicant asked the City of Burnaby (City) for access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to records pertaining to himself in the City's correspondence with the Royal Canadian Mounted Police (RCMP) and the Canada Border Services Agency (CBSA).

[2] The City identified 32 pages of responsive records but refused to disclose some information in those records under ss. 13(1) (policy advice or recommendations), 14 (solicitor-client privilege), 16(1)(b) (harm to intergovernmental relations or negotiations), 17 (harm to public body's financial

or economic interests), 21 (harm to third party business interests), and 22 (harm to personal privacy) of FIPPA.

[3] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the City's decision. At mediation, the City said it was no longer relying on ss. 17 and 21. Mediation did not resolve the remaining issues in dispute and the matter proceeded to inquiry.

[4] The City's evidence includes pre-approved *in-camera* materials (i.e., material that a party submits, with OIPC's consent, for the OIPC to see, but not the applicant).

Preliminary Matters

New Issue, s. 6 complaint

[5] During the course of the inquiry, I wrote to the parties to clarify which records are in dispute. Both parties provided additional materials.¹

[6] The applicant's material also raised a new issue that was not included in the Notice of Inquiry or the investigator's fact report. The applicant complains that the City has failed to acknowledge the existence of all of the records that respond to his access request, and he asks the OIPC to "look into everything on city servers and at city hall".² I interpret this to be a complaint that the City failed to comply with its duty under s. 6(1) of FIPPA to adequately search for, or identify, all the records that respond to his access request. Section 6(1) requires a public body to make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately, and completely.

[7] Past orders have consistently said that parties may only add new issues in an inquiry if the OIPC permits them to do so.³ The OIPC's Notice of Inquiry and its *Instructions for Written Inquiries* clearly explain the process for adding new issues to an inquiry. The applicant did not seek prior approval to add s. 6(1). Furthermore, the OIPC must have an opportunity to investigate a s. 6(1) complaint before deciding if the complaint warrants proceeding to inquiry. Finally, adding a new issue now would require further submissions from the parties and that would introduce a delay that I consider unreasonable in the circumstances.

¹ The City provided a September 19, 2023, letter with an accompanying lawyer's affidavit and table of records. The applicant provided a September 23, 2023 letter with attachments.

² Applicant's September 23, 2023 letter.

³ See for example: Order F07-03, 2007 CanLII 30393 (BC IPC) at paras 6-11; and Order F10-37, 2010 BCIPC 55 (CanLII), at para 10.

[8] In conclusion, I am not persuaded that it would be fair to add this new issue or that there is any exceptional circumstance to warrant adding s. 6(1). Therefore, I decline to add s. 6(1) to this inquiry or to consider it any further.

Matters Unrelated to FIPPA

[9] The parties' submissions refer to various matters, such as the end of the applicant's employment relationship with the City, the applicant's defence of certain regulatory proceedings, a workers compensation claim, and the effects of these matters on the applicant's personal life.

[10] The purpose of an inquiry under s. 56 is to decide the FIPPA issues in dispute between the parties. I do not have the authority to decide the outcome of matters unrelated to the application of FIPPA. Therefore, although I have read all of the parties' submissions, I will only comment on those matters insofar as they directly relate to an issue under FIPPA.

ISSUES

[11] The issues I must decide in this inquiry are:

1. Is the City authorized to refuse to disclose the disputed information under ss. 13(1), 14, or 16(1)(b)?
2. Is the City required to refuse to disclose the disputed information under s. 22(1)?

[12] Section 57(1) places the burden on the City, which is a public body, to prove that the Applicant has no right of access to the records or parts thereof that were withheld under ss. 13(1), 14, and 16(1)(b).

[13] Meanwhile, s. 57(2) places the burden on the applicant to prove that disclosing the information withheld under s. 22(1) would not unreasonably invade a third party's personal privacy. However, the public body has the initial burden of proving the information at issue is personal information about a third party.⁴

⁴ Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

DISCUSSION

Background⁵

[14] The applicant is a former employee of the City. The City reduced the applicant's hours of work during the Covid-19 pandemic. The applicant travelled across the Canada–U.S.A. border on several occasions during this time.

[15] The City viewed the applicant's movements as contravening the then-effective federal and provincial public health orders. The applicant said his movements were necessary and lawful at all times.

[16] The RCMP investigated the applicant's cross-border movements and post-crossing activities. The RCMP initially issued one violation ticket to the applicant, which was later cancelled and replaced with three other violation tickets.⁶ The Director of Public Prosecutions then stayed the proceedings for all of the violation tickets.⁷

[17] The applicant asked the City for access under FIPPA to "all records generated pertaining to [himself] and [the City's] correspondence with the RCMP and the CBSA." He also provided a list of individuals who he suspects are named in the records.

Records and Information in Dispute⁸

[18] The City is withholding information from 32 pages of responsive records. The records are comprised entirely of correspondence and attachments to that correspondence.

Additional Records

[19] In its submissions, the City stated that it withheld additional information and records in their entirety under s. 14 (the Additional Records).⁹ The Additional Records were not set out in the City's index of records or provided for my review. I asked the City to provide an index and description of the Additional Records as well as submissions on the application of s. 14 to them. The City provided a submission and an affidavit with an index from a lawyer describing the

⁵ The information in this background section is based on the parties' submissions and is not in dispute.

⁶ Applicant's submissions at Appendix E, at pages 6-7.

⁷ Applicant's submissions at Appendix F.

⁸ The City has withheld varying amounts of information from different locations in the records under multiple sections of FIPPA. To avoid permitting accurate inferences of this information, I will only refer to specific pages of the records where necessary.

⁹ City's initial submission at paras 28 and 48.

Additional Records. I provided the applicant with an opportunity to respond to these materials, which he did.

[20] The City's index shows that the Additional Records are entirely comprised of correspondence only between employees of the City and the City's legal counsel. Neither the RCMP nor the CBSA are included as participants in this correspondence.

[21] The applicant's access request did not ask for copies of the City's correspondence with its own legal counsel. None of the Additional Records are records that respond to the applicant's access request. Therefore, the Additional Records are outside the scope of this inquiry, and it is unnecessary for me to consider the application of FIPPA to them. I will not consider the Additional Records any further.

Section 14 - Solicitor-Client Privilege

[22] Section 14 states that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege. Solicitor-client privilege encompasses both legal advice privilege and litigation privilege.¹⁰

[23] The information withheld under s. 14 is on page 25 of the records. It is a partial sentence in an email sent from a City employee to two RCMP email addresses.

[24] The City argues that, if disclosed, this information would both reveal the City's intention to seek legal advice on a particular matter¹¹ or that it would reveal the advice that was sought and received.¹² The City submits that this engages legal advice privilege.¹³

[25] The applicant did not provide any submissions that directly address s. 14. I understand that he disputes the severing of information on other grounds.

Evidentiary Basis for Assessing Solicitor-Client Privilege

[26] The City did not provide the partial sentence severed under s. 14 for my review. Section 44(1)(b) empowers me to order production of records so I may review them during the inquiry. Due to the importance of solicitor-client privilege to the proper functioning of the legal system, and in order to minimally infringe on

¹⁰ *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [College] at para 26.

¹¹ City's initial submission at para 48.

¹² City's initial submission at paras 49 and 50.

¹³ City's initial submission at paras 27-29 and 48.

solicitor-client privilege, I will only order production if absolutely necessary to decide the issues in dispute.¹⁴

[27] The City provided four affidavits in support of its position that the partial sentence is privileged. These affidavits were sworn by a general manager of community safety (General Manager), a former city manager (City Manager), a director of human resources (HR Director), and a lawyer. The City employees held those positions at the time the responsive records were created. While a lawyer's sworn evidence is preferable for establishing the applicability of s. 14, evidence from a lawyer's client may also be acceptable, depending on the circumstances.¹⁵

[28] All three employee affiants say that the City communicated with legal counsel for the purpose of obtaining privileged and confidential legal advice and that the information severed from the records contains or refers to that legal advice. Of the three employees, only the City Manager says that he has directly reviewed the information severed under s. 14.¹⁶ However, what the General Manager and the HR Director say in their affidavits satisfies me that they have also reviewed the disputed records before swearing their affidavits despite not expressly stating so.

[29] Based on the content of the City's affidavit evidence and the submissions from the parties, I am satisfied that I have enough information to decide whether s. 14 applies to the information in dispute without first ordering production under s. 44(1)(b).

Analysis and findings, s. 14

[30] Legal advice privilege serves to promote full and frank communications between solicitor and client, thereby facilitating effective legal advice, personal autonomy, access to justice and the efficacy of the adversarial process.¹⁷ Legal advice privilege applies where the communication is made for the purpose of seeking or providing legal advice, opinion, or analysis.¹⁸

[31] Past orders have held that legal advice privilege applies to information that reveals an intention to seek legal advice, provided the advice was in fact sought. The fact that there is information that reveals the intent or need to seek legal

¹⁴ Order F19-14, 2019 BCIPC 16 (CanLII) at para. 10; *Canada (Privacy Commissioner) v Blood Tribe Department of Health*, 2008 SCC 44 at para. 17; and *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53 (CanLII) at para. 68.

¹⁵ *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 at paras 86-88 and 92; and Order F22-34, 2022 BCIPC 38 (CanLII) at 43.

¹⁶ Affidavit #1 of LC at paras 2 and 3.

¹⁷ *College*, *supra* note #10 at para 30.

¹⁸ *College*, *supra* note #10 at para 31.

advice at some point in the future does not suffice on its own to establish that privilege applies. There must also be evidence that disclosure of this information would reveal the existence or content of actual confidential communications between legal counsel and the client.¹⁹

[32] The City says the partial sentence is privileged because it would “directly disclose or allow an accurate inference to be made about confidential legal advice given from external legal counsel to the City.”²⁰ The City also says that disclosing the information “would reveal the City’s intention to seek legal advice on a particular matter.”²¹

[33] The City’s affidavit evidence satisfies me that the withheld information reveals the City’s intention to seek legal advice. Furthermore, by comparing the dates in the records against the dates set out in the City’s lawyer’s affidavit evidence,²² I can see that the City did in fact seek and receive advice about a particular matter.

[34] These findings satisfy the two requirements of legal advice privilege for information that reveals an intention to seek legal advice. I conclude that the withheld partial sentence comprises information that is subject to legal advice privilege.

Waiver

[35] Once legal advice privilege is established it will remain in place indefinitely²³ until it is waived by the client who possesses the privilege.

[36] Waiver is clearly a relevant issue in this matter because the City employee disclosed the privileged information by emailing it to the RCMP.

[37] Disclosing privileged information to parties outside of the solicitor-client relationship may amount to a waiver of privilege where the client is aware of the privilege and voluntarily exhibits an intention to waive it (express waiver), or where fairness and consistency require disclosure in the absence of such an intention (implied waiver).²⁴

¹⁹ Order F17-23, 2017 BCIPC 24 (CanLII), at para 49; Order F21-63, 2021 BCIPC 72 (CanLII), at para 40.

²⁰ City’s initial submission at para 50.

²¹ City’s initial submission at para 48.

²² Affidavit #1 of SW at Exhibit A.

²³ *Blank v. Canada (Minister of Justice)*, 2006 SCC 39 (CanLII), [2006] 2 SCR 319, at para 37.

²⁴ *S. & K. Processors Ltd. v. Campbell Ave. Herring Producers Ltd.*, 1983 CanLII 407 (BC SC), at para 6; see also Order F23-65, 2023 BCIPC 75 (CanLII) at para 87.

[38] Evidence justifying a finding of waiver must be clear and unambiguous given the importance of solicitor-client privilege to the proper functioning of the legal system.²⁵ The onus of establishing a waiver of solicitor-client privilege is on the party seeking to displace it.²⁶

The parties' positions on waiver

[39] The City does not say in its submissions that it did not waive privilege. However, it provided affidavit evidence from City employees, including the one who emailed the information to the RCMP, and they all swear that they did not waive privilege over the City's legal advice in their capacity as City employees. Given that the City continues to withhold the disputed information under s. 14, I understand the City's position to be that it has not waived privilege over this information.

[40] The applicant generally questions the reliability of the City's affidavit evidence but does not expressly raise waiver.

Analysis and findings on waiver

[41] Privilege over the withheld information belongs to the client, who in this case is the City. Thus, only the City can waive that privilege. This raises the question of whether the City employee who sent the email knew of that privilege and had the authority to waive it on behalf of the City. In the context of a local government, this is a determination that must be based on all the circumstances after examining what the local government actually did and said through its authorized agents.²⁷

[42] The evidence of the City employee who sent the email is that they did not waive privilege over the City's legal advice in their capacity as an employee of the City. Based on what I see in the material before me and the employee's affidavit, I am satisfied the employee was aware that the information was privileged. I also find that the employee had significant executive powers to directly deal with the underlying subject matter on behalf of the City. They could bind the City to certain courses of action and had the authority to seek and implement legal advice on the City's behalf. In light of this, I find that the employee who emailed the information to the RCMP had the authority to waive privilege on behalf of the City.

²⁵ *SNC-Lavalin Engineers & Constructors Inc. v. Citadel General Assurance Co.*, 2003 CanLII 64289 (ON SC), at para 54; and *Maximum Ventures Inc. v. de Graaf et al.*, 2007 BCSC 1215 (CanLII), at para 40 (appealed on other grounds).

²⁶ *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.*, 2007 BCSC 1420 (CanLII), at para 22.

²⁷ For further discussion of an individual's authority to waive privilege in a local government context, see *Donofrio v. Vaughan (City)*, 2008 CanLII 37054 (ON SC), at para 12 and *Guelph (City) v. Super Blue Box Recycling Corp.*, 2004 CanLII 34954 (ON SC), at para 83.

[43] The second requirement of express waiver is a voluntary expression of an intention to waive it. To this point, the text of the email itself provides the reason it was sent. The twice-stated reason was that the information was being provided for the RCMP's "awareness". While this clearly establishes a voluntary intention to make the RCMP aware of this privileged information, the question remains whether this is sufficient to establish a voluntary intention to waive privilege on the part of that employee.

[44] Answering this question requires a closer examination of the circumstances at the time the City revealed its intention to seek legal advice to the RCMP. The records and affidavit evidence confirm that both the City and the RCMP shared an interest in safeguarding the health of City staff from the applicant's past and future behaviour and, when the email was sent, they were both concerned that his actions could jeopardize staff safety.²⁸

[45] Furthermore, the correspondence establishing a shared concern in City staff safety, the correspondence revealing the City's intention to seek legal advice, and the City's act of seeking this advice all occurred within the span of one week.

[46] While I cannot determine with certainty what the City's legal advice was about, these circumstances suggest that the advice was likely relevant to the interests of both the City and the RCMP. In light of this and the general lack of evidence supporting an intention to waive privilege, I conclude that there is insufficient evidence to find that the City waived privilege over this information.

Conclusion on s. 14

[47] The City has withheld information under s. 14 that reveals its intention to seek legal advice. This information is subject to legal advice privilege. The applicant has not established that the City intended to waive privilege by sharing this intention with the RCMP. Therefore, I confirm the City's decision to withhold this information under s. 14.

[48] The email that contains the privileged information was entirely withheld under s. 22(1). I will consider that remaining information in the s. 22(1) analysis section of this order.

Section 13(1) – Advice or Recommendations

[49] The City withheld some correspondence between City employees from the records under s. 13(1). Section 13(1) says that the head of a public body may to

²⁸ This is established by the contents of the emails at pages 23, 24, and 25 of the records, Affidavit #1 of DC at para 8, and Affidavit #1 of PT at paras 4, 6, and 7.

refuse to disclose information that would reveal advice or recommendations developed by or for a public body or minister.

[49] Past orders state that 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.²⁹ Section 13(1) protects “a public body’s internal decision-making and policy-making processes, in particular while the public body is considering a given issue, by encouraging the free and frank flow of advice and recommendations.”³⁰

[50] Section 13(1) applies not only where the information directly reveals advice or recommendations, but also where knowledge of the information would permit an accurate inference of the advice or recommendations.³¹ This extends to factual or background information that is a necessary and integrated part of the advice or recommendation, including factual information compiled and selected by an expert, using their expertise, judgment and skill, for the purpose of providing explanations necessary to the deliberative process of the public body.³²

[51] The term “advice” is broader than “recommendations”³³ and includes an opinion that involves exercising judgment and skill to weigh the significance of matters of fact.³⁴ “Recommendations” include material relating to a suggested course of action that will ultimately be accepted or rejected by the one being advised.³⁵

[52] The City argues that the information it withheld under s. 13(1) reveals advice or recommendations developed by and for the City. Wherever the severed information is a statement of fact, the City argues that these facts are inextricably intertwined with the advice.³⁶ The applicant does not address whether s. 13(1) applies or whether any of the withheld information constitutes advice generally.

²⁹ *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 (CanLII) at para 52.

³⁰ Order 01-15, 2001 CanLII 21569 (BCIPC) at para 22; and Order F23-13, 2023 BCIPC 15 (CanLII) at para 16.

³¹ Order 02-38, 2002 CanLII 42472 (BC IPC) at 135; and Order F17-19, 2017 BCIPC 20 (CanLII) at para 19.

³² *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 (CanLII) at para 94.

³³ *John Doe v. Ontario (Finance)*, 2014 SCC 36 (CanLII), [2014] 2 SCR 3 [*Doe*] at para 24.

³⁴ *College*, *supra* note #10 at para 113.

³⁵ *Doe*, *supra* note #33 at para 23.

³⁶ City’s initial submission at paras 22 and 24.

Analysis and findings, s. 13(1)

[53] The first step in the s. 13 analysis is to determine whether disclosure of the withheld information would reveal advice or recommendations developed by or for the City. If so, I must determine whether any of the circumstances listed at s. 13(2) apply to the information, in which case the City must not refuse disclosure under s. 13(1). Finally, s. 13(3) says that s. 13(1) does not apply to information in a record that has been in existence for 10 or more years.

[54] The information withheld under s. 13(1) comprises emails summarizing certain events and draft correspondence with accompanying editorial commentary. I will consider each type of information separately.

[55] **Emails Summarizing Events** - Some information withheld under s. 13(1) is contained in emails between City employees summarizing certain events.³⁷ The City argues that this specific correspondence was made in the context of considering and rejecting options in the course of developing the best plan for the City.³⁸

[56] The City does not explain, nor is it apparent to me, how the observations in this correspondence constitute necessary background information for advice or recommendations. Moreover, the City has not described what advice or recommendations these summaries relate to.

[57] I find that the information withheld under s. 13(1) from this specific correspondence does not constitute recommendations or advice within the meaning of s. 13(1).

[58] **Draft Correspondence and Commentary** - Some information that the City withheld under s. 13(1) is from an email chain between City employees.³⁹ This information includes draft correspondence and accompanying commentary by multiple individuals.

[59] Past orders have found that a document does not automatically contain advice or recommendations simply because it is a draft, and a public body may withhold only the information from a draft that would reveal advice or recommendations.⁴⁰

[60] In this case, I find the draft correspondence itself comprises recommendations within the meaning of s. 13(1). The draft correspondence was

³⁷ This information was withheld from the records at pages 3 and 27.

³⁸ City's initial submission at para 22.

³⁹ This information was withheld from the records at pages 13-15.

⁴⁰ See for example: Order 00-27, 2000 CanLII 14392 (BC IPC) at page 6; Order 03-37, 2003 CanLII 49216 (BC IPC) at para 59; and Order F23-36, 2023 BCIPC 43 at para 35.

a proposed course of action about how to respond to a certain issue which one individual would ultimately accept or reject. This finding is consistent with past orders that considered this kind of information.⁴¹

[61] I also find that the editorial commentary comprises recommendations. I can see that multiple City employees used their knowledge and expertise, as established by their positions and their affidavit evidence, to suggest specific changes to the proposed correspondence that the sender could choose to accept or reject.

[62] For these reasons, I find that disclosing the draft and the editorial commentary would reveal recommendations developed by and for the City.

[63] The parties did not provide any arguments about whether ss. 13(2) or 13(3) apply. Having reviewed the disputed information and all of the circumstances listed at s. 13(2), I find that none of those circumstances apply to any of the information that would reveal advice or recommendations. I also find that the records in this matter have not been in existence for more than 10 years, therefore, s. 13(3) does not apply to this information either.

Section 16(1)(b) – Intergovernmental Relations, Information Received in Confidence

[64] The City withheld several emails between City employees and the RCMP under s. 16(1)(b). In its submissions, the City argues that the information in these emails was received from the RCMP in confidence.⁴² The Applicant did not provide submissions regarding s. 16(1)(b).

Analysis and findings, s. 16(1)(b)

[65] The relevant parts of s. 16 state:

16(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

(a) harm the conduct by the government of British Columbia of relations between that government and any of the following or their agencies:

- (i) the government of Canada or a province of Canada;
- (ii) the council of a municipality or the board of a regional district;
- (iii) an Indigenous governing entity;

⁴¹ For similar reasoning, see Order F19-28, 2019 BCIPC 30 (CanLII) at para 30.

⁴² City's initial submissions at para 55.

- (iv) the government of a foreign state;
 - (v) an international organization of states,
- (b) reveal information received in confidence from a government, council or organization listed in paragraph (a) or their agencies...

[66] Section 16(1)(b) requires the City to establish two things in order to withhold information under that section. First, the City must first show that the information was received from a “government, council or organization” listed in s. 16(1)(a) or one of their agencies. Secondly, the City must establish that the information was received in confidence.⁴³

Did the City receive the information from an agency?

[67] Past orders have consistently held that the RCMP is an agency of the Government of Canada in the context of s. 16(1)(a), thereby bringing the RCMP within the scope of s. 16(1)(b).⁴⁴ I agree with the reasoning in those past orders and find that the RCMP is an “agency” of the Government of Canada for the purposes of s. 16(1)(b).

[68] Nearly all of the information withheld under s. 16(1)(b) is contained in correspondence that the City received from the RCMP. I can see that this information is comprised of information that the City received from the RCMP, with the exception of one email sent from a City employee to the RCMP. However, the whole of that email repeats information that was recently received from the RCMP. Therefore, I find that disclosing this information would also reveal information that the City received from the RCMP.

Did the City receive the information “in confidence”?

[69] In order for information to be “received in confidence,” there must be an implicit or explicit agreement or understanding of confidentiality between those supplying and receiving the information.⁴⁵

[70] Past orders have identified several non-exhaustive factors to consider when determining whether information was received in confidence. These factors include:

- The nature of the information;
- Explicit statements of confidentiality;

⁴³ Order 02-19, 2002 CanLII 42444 (BC IPC) at para 18; and Order F15-72, 2015 BCIPC 78 (CanLII) at para 48.

⁴⁴ See for example: Order F15-72, 2015 BCIPC 78 (CanLII) at 50; and Order 02-19, 2002 CanLII 42444 (BC IPC) at 58.

⁴⁵ Order No. 331-1999, 1999 CanLII 4253 (BC IPC), at page 7.

- Evidence of an agreement or understanding of confidentiality; and
- Objective evidence of an expectation of (or concern for) confidentiality.⁴⁶

[71] I can see that none of the information withheld under s. 16(1)(b) is accompanied by explicit statements, requests, or agreements regarding confidentiality. Given the absence of express statements of confidential expectations, I must proceed to examine all of the circumstances for implicit expectations of confidentiality.

[72] The City submits that the following factors support the determination that there was an understanding of confidentiality on the part of both the RCMP and the City:

- (a) The nature of the information relates to an investigation, which *prima facie* is treated as confidential;
- (b) The evidence shows that the City and the RCMP keep this information confidential in practice and do not disclose it except as expressly required by law;
- (c) The City did not at any point waive the expectation of confidentiality; and
- (d) The information was supplied in the course of an investigation into a possible violation of law, cooperation with the RCMP is an appropriate response to such an investigation, with the expectation that the information will be kept confidential.⁴⁷

[73] The City also provided a letter from the RCMP that the City submits confirms the expectation of confidentiality in these types of matters.⁴⁸

[74] The supporting letter from the RCMP does not, in my view, demonstrate an expectation of confidentiality for the information the City received from the RCMP. The letter merely says that the RCMP has “an expectation that all communications between the Burnaby RCMP and a complainant or witness in an investigation will only be used for the purposes of the investigation.” This letter does not state that the RCMP expects their communications to be treated as confidential once received by the City, nor does it speak to the specific communications in this matter. The RCMP letter is not persuasive evidence of an implicit expectation of confidentiality.

⁴⁶ *Ibid.*, at pages 8-9; The reasoning of Order No. 331-1999 was followed in Order F19-38, 2019 BCIPC 43 (CanLII) at para 117 and by Order F23-07, 2023 BCIPC 8 (CanLII) at para 76.

⁴⁷ City’s initial submission at para 63.

⁴⁸ City’s initial submission at para 64.

[75] However, the City's affidavit evidence speaks directly to the City and RCMP's expectations of confidentiality in their communications.⁴⁹ I find that these affidavits are strong evidence that most of the information provided to the City from the RCMP was received under a mutual, reasonable, and implicit expectation of confidentiality.

[76] Based on the information that I can see in the records; I conclude that an untimely disclosure of some of this information could have immediately compromised the RCMP's investigation. This was certainly true at the time that the information was supplied. In my view, a reasonable person would expect that the RCMP and the City strive to preserve the integrity of police investigations by maintaining confidentiality where necessary and possible to do so. This weighs in favour of finding that this information was implicitly received in confidence.

Conclusion on s. 16(1)(b)

[77] Having considered the relevant circumstances and evidence, I find that disclosing any of the information withheld under s. 16(1)(b) would reveal information that the City received from the RCMP, which is an agency of the Government of Canada, under an implicit understanding of confidentiality. I confirm that the City may withhold this information under s. 16(1)(b).

Section 22 – Unreasonable Invasion of Third-Party Personal Privacy

[78] Section 22(1) requires a public body to refuse to disclose personal information if its disclosure would be an unreasonable invasion of a third party's personal privacy.⁵⁰

[79] The City refused to disclose information in the records under s. 22(1). The disputed information is contained in emails. It comprises names, descriptions of individuals' actions or behaviours, and statements made by individuals to City employees or the RCMP.⁵¹

[80] The City argues that this is personal information, that disclosure would constitute an unreasonable invasion of a third party's personal privacy, and that the City must therefore refuse disclosure.

⁴⁹ Affidavit #1 of AA at paras 5-8; Affidavit #1 of DC (*in-camera* pinpoint citation omitted); and Affidavit #1 of PT at para 7.

⁵⁰ Schedule 1 of FIPPA says that a "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.

⁵¹ It is unnecessary for me to additionally consider the application of s. 22(1) to the information that I found was properly withheld under ss. 13(1) or 16(1)(b). Accordingly, I will restrict my analysis to the other information withheld under s. 22(1).

Analysis, s. 22(1)

[81] The analytical framework of s. 22(1) is well-established by past orders⁵² and I will apply the same framework here.

Personal Information

[82] Section 22(1) only applies to personal information and so the first step is to determine whether 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.”⁵³

[83] Information is considered personal information if it reasonably permits identification of an individual, directly or indirectly, on its own or in combination with information from other sources.⁵⁴

[84] Nearly all of the information withheld under s. 22(1) permits identification of individuals. In some instances, this information consists of individuals’ names. In other instances, it is about unnamed individuals but, given the applicant’s involvement in the matters that the records address, I am satisfied he could easily identify these individuals using this information.

[85] The City withheld a small amount of information that does not permit identification of any individuals.⁵⁵ This is not personal information so I will exclude it from the s. 22(1) analysis below.

Contact Information

[86] The City argues that in this case, any of the withheld information that would otherwise be contact information should be considered personal information because revealing it would permit identification of the complainant and witnesses to an investigation.⁵⁶

[87] I agree that some of the withheld information would be considered contact information under other circumstances, namely, certain email addresses and

⁵² See for example: Order F15-03, 2015 BCIPC 3 (CanLII) at para 58; and Order F16-38, 2016 BCIPC 42 (CanLII) at para 108.

⁵³ Schedule 1 of FIPPA contains the definitions of “personal information” and “contact information”.

⁵⁴ See for example: Order F21-17, 2021 BCIPC 22 (CanLII) at para 12; Order F16-38, 2016 BCIPC 42 at para 112; and Order F13-04, 2013 BCIPC 4 at para 23.

⁵⁵ This information was withheld from pages 1 and 9 of the Records.

⁵⁶ City’s initial submissions at para 74.

names. In this matter, however, the location of these names and email addresses would permit the applicant or others to identify the complainants and witnesses to the RCMP's investigation. Consequently, I find that this information is not contact information.

[88] In summary, I find that all of the information withheld under s. 22(1) is third-party personal information.

Section 22(4) – Disclosure not an unreasonable invasion of privacy

[89] Next, I must determine whether any of the circumstances listed in s. 22(4) apply. Section 22(4) sets out specific circumstances in which a disclosure of a third party's personal information is not considered an unreasonable invasion of that third party's personal privacy.

[90] The applicant does not address s. 22(4) and the City submits that none of the circumstances listed in s. 22(4) apply to the withheld personal information.⁵⁷

[91] Section 22(4)(e) is relevant to some information in this inquiry. This provision says that disclosure of personal information about a public body employee's position, functions or remuneration is not an unreasonable invasion of that third party's personal privacy. Section 22(4)(e) applies to third-party identifying information that relates to a third party's job duties in the normal course of work-related activities.⁵⁸

[92] One of the disputed records is an email between City security staff members summarizing their interactions with the RCMP. This email contains some information about what third parties said or did in their capacity as City security staff. Other information in the email reveals what third-party City employees said or did in a personal capacity, with no direct connection to their position or function as City employees.

[93] It is common knowledge that security staff must liaise with local police and report such interactions to their superiors in the ordinary course of their work. In this case, the third-party security staff's participation in the investigation was limited to reporting their interactions with the RCMP, which is clearly within their ordinary functions as security staff. For this reason, I find that some of the information in this email is about those third parties' positions and functions as employees of the City and s. 22(4)(e) applies to it.⁵⁹ Disclosing this information is therefore not an unreasonable invasion of a third party's personal privacy.

⁵⁷ City's initial submission at paras 75-76.

⁵⁸ Order 01-53, 2001 CanLII 21607 (BC IPC), at para 40.

⁵⁹ This information was withheld from the records at page 3.

[94] I have considered all of the other circumstances and types of information listed in s. 22(4) and I find that none of them apply.

Section 22(3) – Presumptively unreasonable invasion of privacy

[95] The third step of the analysis is to determine whether the personal information in dispute falls within one of the categories listed at s. 22(3). If it does, then disclosure of that information is presumed to be an unreasonable invasion of a third party's personal privacy.

[96] The City argues that ss. 22(3)(b), 22(3)(d), and 22(3)(h) apply to the withheld information. The Applicant did not provide any arguments with respect to s. 22(3). For the reasons that follow, I find that either ss. 22(3)(b) or 22(3)(d) applies to most of the information withheld under s. 22(1).

Section 22(3)(b) - Part of an investigation into a possible violation of law

[97] Section 22(3)(b) 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 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." The City argues that s. 22(3)(b) applies to almost all of the information that it withheld under s. 22(1).

[98] Past orders have found that the term "law" refers to a statute or regulation enacted by, or under the statutory authority of, the Legislature, Parliament, or another legislature where a penalty or sanction could be imposed for a violation of that law.⁶⁰ I adopt this definition of "law" for the purposes of s. 22(3)(b).

[99] The records and both parties' submissions⁶¹ refer to federal and provincial legislation⁶² that regulated behaviour in the early months of the Covid-19 pandemic. A violation of the requirements set out in this legislation could lead to a penalty or sanction being imposed. Therefore, all of the federal and provincial legislation referred-to by the parties qualifies as "law" for the purposes of s. 22(3)(b). The material before me establishes that the RCMP investigated a possible violation of this legislation at the time the records were created.

⁶⁰ Order 01-12, 2001 CanLII 21566 (BC IPC) at para 17; and Order F21-64, 2021 BCIPC 75 (CanLII) at para 86.

⁶¹ City's initial submission at paras 11, 82-83; Applicant's submission at Appendix E.

⁶² *Quarantine Act, SC 2005 c. 20*; *OIC - Minimizing the Risk of Exposure to COVID-19 in Canada Order (Mandatory Isolation), No. 2* (issued April 14, 2020 PC Number: 2020-0260); and *OIC - Minimizing the Risk of Exposure to COVID-19 in Canada Order (Mandatory Isolation) No. 3* (issued June 29, 2020 - PC Number: 2020-0524); and *Travellers and Employers Order, an ORDER OF THE PROVINCIAL HEALTH OFFICER* (Pursuant to ss. 27, 28, 29, and 67 of the *Public Health Act, SBC 2008, c 28*).

[100] Having found there was an investigation into a possible violation of a law, the next question is whether the information at issue was compiled and identifiable as part of that investigation. I can see that the RCMP clearly compiled most of the information that the City says s. 22(3)(b) applies to, and that this information is immediately identifiable as part of the RCMP's investigation.

[101] However, I find that s. 22(3)(b) does not apply to the following types of information:

- information in the City's internal correspondence discussing the existence and implications of the RCMP investigation;⁶³ and
- information supplied to the RCMP, but which is not identifiable as part of the investigation or compiled by the RCMP at all.⁶⁴

[102] This information was not compiled as part of the RCMP's investigation. Rather, it is information about the City's reaction to the RCMP's investigation.

[103] I conclude that s. 22(3)(b) applies to most of the disputed personal information. Disclosure of this information is therefore presumed to be an unreasonable invasion of third-party personal privacy.

Section 22(3)(d) - Employment history

[104] Section 22(3)(d) says that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if that information relates to employment, occupational or educational history. Neither party provided any arguments for or against its applicability.

[105] The term "employment history" includes descriptive information about a third party's workplace behaviours or actions in the context of a complaint investigation, disciplinary matter, or allegations of wrongdoing in the workplace.⁶⁵ Employment history may also include information that clearly reveals the identity of subjects or witnesses that were interviewed as part of a workplace investigation, such as what the witnesses said to investigators about the role that they and others played in the matter under investigation.⁶⁶

⁶³ I determined that s. 13(1) applies to some of this kind of information. Accordingly, that information is not being considered in the s. 22(3)(b) analysis.

⁶⁴ This information was withheld from page 25 of the records.

⁶⁵ Order 01-53, 2001 CanLII 21607 (BC IPC) at paras 32-33; and Order F21-08, 2021 BCIPC 12 (CanLII) at para 132.

⁶⁶ Order F21-08, 2021 BCIPC 12 (CanLII) at para 137.

[106] The City has marked two types of information as being withheld under s. 22(3)(d):

1. Statements to an investigator about the applicant's actions in the context of allegations of wrongdoing in the workplace;⁶⁷ and
2. Statements to an investigator about both the applicant and third parties' actions in the context of allegations of wrongdoing in the workplace.⁶⁸

[107] Although information in the first category is a third party's personal information, this information only reveals a third party's description, comment or opinion about the applicant and his workplace behaviour. The third party was not the subject of the investigation nor is their workplace behaviour set out in this information. Consequently, I find that this information is not about a third party's employment history. Section 22(3)(d) does not apply to this information.⁶⁹

[108] For the second category of information, I find s. 22(3)(d) applies to this information because it reveals what one or more identifiable third parties said and did in relation to allegations of wrongdoing in the workplace. As this information includes the workplace behaviour of both the applicant and identifiable third parties, I find that it is about a third party's employment history and s. 22(3)(d) applies to it.

Section 22(3)(h) - Identity of person supplying personal recommendation or evaluation, character reference or personnel evaluation

[109] Section 22(3)(h) says that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if it 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.

[110] Past orders have interpreted "personal recommendations or evaluations, character references or personnel evaluations" as referring to formal performance reviews, to job or academic references, or to comments and views of investigators about an individual's workplace performance and behaviour in the context of a complaint investigation.⁷⁰ The purpose of s. 22(3)(h) is to protect

⁶⁷ This information was withheld from the records at pages 18 and 19.

⁶⁸ This information was withheld from the records at pages 18, 21, and 22.

⁶⁹ For examples of similar reasoning in past orders, see Order 01-53, 2001 CanLII 21607 (BC IPC) at para 41; and Order F20-13, 2020 BCIPC 15 (CanLII) at para 55.

⁷⁰ Order 01-53, 2001 CanLII 21607 (BC IPC) at paras 44-45; Order F05-30, 2005 CanLII 32547 (BC IPC), at paras 41-42; and Order F23-36, 2023 BCIPC 43 (CanLII) at paras 61-63.

the identity of a third party who supplied that type of evaluative material in confidence.⁷¹

[111] The City has marked s. 22(3)(h) as applying to a small amount of information.⁷² The information is contained in an individual's answer to an RCMP constable's question, summarizing what the individual was told by others about the applicant's actions. Neither the City nor the applicant discussed s. 22(3)(h) in their submissions.

[112] The disputed information is a repetition of third parties' personal opinions and observations. This information conveys the third parties' views of the applicant's actions but lacks the evaluative quality that engages s. 22(3)(h).⁷³ Neither the applicant's actions that were investigated nor the third-party commentary are related to the applicant's workplace performance at all.

[113] Additionally, the City has not produced any evidence establishing that the relevant third parties supplied their opinions and observations in confidence.

[114] For these reasons, I find that the withheld information does not relate to any personal recommendations or evaluations, character references or personnel evaluations supplied by any third parties. Consequently, disclosing this information would not reveal the identity of any third parties who supplied such evaluative material in confidence. I find that s. 22(3)(h) does not apply to the disputed information.

Section 22(2) – Relevant Circumstances

[115] The final step of the analysis is to determine whether disclosure of the personal information would be an unreasonable invasion of a third party's personal privacy by considering all relevant circumstances, including those listed in s. 22(2). At this stage, the applicant may rebut any s. 22(3) presumptions.

Section 22(2)(c) - Relevant to a fair determination of applicant's rights

[116] Although the applicant does not specifically mention s. 22(2)(c), what he says in his submission necessitates consideration of that factor.

[117] When a public body assesses whether disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, s. 22(2)(c) requires that public body to consider whether the personal information

⁷¹ Order 01-53, 2001 CanLII 21607 (BC IPC), at para 47.

⁷² This information was withheld from page 18 of the records.

⁷³ For an example of a similar distinction, see: Order 01-53, 2001 CanLII 21607 (BC IPC) at para 45.

is relevant to a fair determination of an applicant's rights. Past orders have found that s. 22(2)(c) applies where all of the following circumstances exist:⁷⁴

1. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
2. The right must be related to a proceeding which is either under way or is contemplated, not a proceeding that has already been completed;
3. The withheld personal information must have some bearing on, or significance for, determination of the right in question; and
4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.

[118] I will apply the same analytical framework in this inquiry.

[119] The applicant says he desires a truthful account of the circumstances surrounding the end of his employment at the City, given the effects it has had on his life. He also says that the withheld information is necessary for his compensation claim with WorkSafeBC.⁷⁵ The attachments to the applicant's submissions confirm that he was, at one time, on leave through WorkSafeBC.⁷⁶ The City's position is that the applicant is making a bare assertion of relevance that is insufficient to engage s. 22(2)(c).⁷⁷

[120] Regarding the applicant's desire for a truthful account of the end of his employment, I consider this to be too vague to find that it engages a right derived from statute or common law. Consequently, the applicant's pursuit of a truthful account does not meet the first requirement of s. 22(2)(c).

[121] The parties' submissions differ on whether the applicant's WorkSafeBC claim is active or suspended, but it is clear that a claim exists, which means that the applicant has exercised his right to bring a claim for compensation. Based on what the applicant says, I interpret his submissions as arguing that the information is necessary to exercise his right to pursue his claim for compensation. The applicant's right to pursue a claim is not limited to the initial act of filing a claim.

[122] Although I accept that the applicant has a right to pursue his compensation claim and that a claim for compensation is underway, the applicant has not explained how the withheld information relates to his claim. Furthermore,

⁷⁴ Order 01-07, 2001 CanLII 21561 (BCIPC) at para 31; Order F15-11, 2015 BCIPC 11 (CanLII) at para 24.

⁷⁵ Applicant's submission at paras 6-7.

⁷⁶ Applicant's submission, Appendix E, at page 9.

⁷⁷ City's final submission at paras 21-23.

it is not apparent to me how the withheld personal information bears on his right to pursue the claim, why it is necessary to prepare for the claim, or why it is necessary to ensure that the claim proceeds fairly.

[123] As the third and fourth parts of the s. 22(2)(c) test have not been met, I am not satisfied that the withheld information is relevant to a fair determination of the applicant's rights.

Section 22(2)(f) – Supplied in confidence

[124] Section 22(2)(f) considers whether the personal information has been supplied in confidence. If so, this weighs in favour of withholding the information. In order for s. 22(2)(f) to apply, there must be evidence that an individual supplied the information and did so under an objectively reasonable expectation of confidentiality at the time the information was provided.⁷⁸ The City argues that s. 22(2)(f) applies to almost all of the information it withheld under s. 22(1).

[125] The records clearly show that third-party individuals provided the withheld information to City employees or to the RCMP by email, so I am satisfied the information was “supplied”.

[126] Regarding the personal information that was supplied to the RCMP, past orders have typically found that information supplied to the police is supplied in confidence even without specific evidence supporting that conclusion.⁷⁹ The courts have recognized that when people supply information to the police, generally, they have a reasonable expectation that the police will treat that information confidentially.⁸⁰

[127] In the present matter, the context of the investigation and the nature of the withheld personal information persuade me that it was supplied to the RCMP under an objectively reasonable expectation of confidentiality. Accordingly, I find that s. 22(2)(f) weighs against disclosing this information.

[128] There is also a small amount of information that a City employee emailed to another which discusses the City's response to the investigation.⁸¹ Notably, the subject line of the email includes the word “confidential”. Moreover, a reasonable person would expect the recipient to treat the personal information in the email confidentially given the circumstances in which it was sent. For these

⁷⁸ Order F11-05, 2011 BCIPC 5 (CanLII) at para. 41, citing Order 01-36, 2001 CanLII 21590 (BC IPC) at paras. 23-26; See also Order F23-02, 2023 BCIPC 3 (CanLII) at para 45.

⁷⁹ For example: see Order F18-05, 2018 BCIPC 7 (CanLII) at paras 26-27.

⁸⁰ Order F15-30, 2015 BCIPC 33 (CanLII) at para 92; *R. v. Quesnelle*, 2014 SCC 46 (CanLII), [2014] 2 SCR 390, at para 43.

⁸¹ This information was withheld from part of page 3 of the records.

reasons, I find that s. 22(2)(f) applies to the personal information in this correspondence that I did not find to engage s. 22(4)(e).

Section 22(2)(h) – Disclosure may unfairly damage reputation

[129] Section 22(2)(h) requires consideration of whether disclosure may unfairly damage the reputation of a person referred to in the records. In the context of allegations of misconduct, disclosing incomplete information could lead to unfair reputational harm if the information lacks details about whether the allegations were substantiated.⁸²

[130] The City argues that s. 22(2)(h) applies to some of the information it withheld because disclosing it would unfairly damage the reputation of the individuals involved in the investigation.⁸³ The City's *in-camera* evidence speaks directly to this point by explaining how one or more individuals referred-to in the records could be subject to inaccurate inferences that would damage their reputations if the information were disclosed.

[131] I recognize the City's concern that inaccurate inferences could be drawn because the withheld information does not tell a complete story about the underlying investigation and employment issues between the applicant and the City.

[132] However, I consider it exceptionally unlikely that disclosure would cause unfair damage to these third parties' reputations. I do not see anything in the records that reveals or implies improper conduct by those third parties. If the information withheld under s. 22(2)(h) were disclosed, I am not persuaded that it would reflect negatively on these third parties' reputations at all.

[133] I have determined that disclosure would not expose any third parties to unfair reputational harm. Therefore, s. 22(2)(h) is not, as the City submits, a circumstance that weighs against disclosure of the personal information in dispute.

Applicant's personal information

[134] Where the withheld information is an applicant's own personal information, this will weigh against finding it to be an unreasonable invasion of a third party's personal privacy.⁸⁴ In the present matter, nearly all of the information that is purely the applicant's personal information has already been disclosed to him.

⁸² See for example: Order F23-48, 2023 BCIPC 56 (CanLII) at para 52.

⁸³ City's initial submission at paras 100-101.

⁸⁴ Order F10-10, 2010 BCIPC 17 (CanLII) at para 37; and Order F20-13, 2020 BCIPC 15 (CanLII) at para 73.

[135] The City withheld some information referring to the file number associated with the RCMP's investigation of the applicant. This information is not identifiable with anyone other than the applicant. The City does not explain, nor is it apparent to me, how revealing this information could unreasonably invade the personal privacy of a third party. Consequently, the fact that this is the applicant's personal information weighs strongly in favour of disclosing it.

[136] The rest of the applicant's personal information is simultaneously, and in my view inextricably, the personal information of third parties. That is because the information is about their interactions or it is the individuals' opinions about the applicant's behaviour. Despite this information being third party personal information, the fact that much of it is also the applicant's personal information weighs in favour of disclosing it.

Sensitivity

[137] Past orders have considered the sensitivity of the withheld personal information as a relevant factor to the s. 22(1) analysis. Highly sensitive information will weigh against disclosure whereas insensitive information weighs in favour of disclosure.⁸⁵

[138] The information in dispute describes the overlap between a law enforcement investigation and the professional lives of several third parties. However, in my view, the information in dispute does not implicate or impugn the conduct of any identifiable third parties. Disclosing all of this information would not reveal very much about the third parties at all other than their roles in the investigation. Additionally, none of the third-party information is of a kind typically considered sensitive, such as medical or intimate relationship information.⁸⁶ For these reasons, I find that the third parties' personal information at issue is not sufficiently sensitive to weigh against its disclosure.

Applicant's Existing Knowledge

[139] Past orders have found that an applicant's existing knowledge of the personal information in dispute will weigh in favour of disclosure.⁸⁷ The parties did not provide arguments directly related to this factor, but it is relevant.

[140] The applicant already knows that communications took place between the City and the RCMP, the names of senior City employees, and some information

⁸⁵ Order F16-52, 2016 BCIPC 58 (CanLII) at para 87; and Order F10-09, 2010 BCIPC 14 (CanLII) at para 123.

⁸⁶ See for example: Order F16-38, 2016 BCIPC 42 (CanLII) at para 138; and Order F16-52, 2016 BCIPC 58 (CanLII) at para 87.

⁸⁷ Order F17-02, 2017 BCIPC 2 (CanLII) at paras 28-30; and Order F15-14, 2015 BCIPC 14 (CanLII) at paras 72-74.

about the RCMP's investigation of him. The applicant's submission also shows that his counsel believed that the City filed an RCMP complaint against him.⁸⁸

[141] In comparing the applicant's knowledge against the content of the withheld third-party personal information, I find that the applicant does not have sufficiently detailed knowledge of that information to weigh in favour of disclosure.

Summary of the applicant's personal information, s. 22(5)

[142] Under s. 22(5)(a), the City must give a summary of personal information supplied in confidence about the applicant unless the summary cannot be prepared without also disclosing the identity of a third party who supplied that information. Neither party addressed whether s. 22(5) applies.

[143] I am not satisfied that any of the information supplied in confidence about the applicant can be summarized without revealing the suppliers' identities due to the applicant's employment relationships with them, and due to the specificity of the supplied information. I find the City is not required to provide the applicant with a s. 22(5) summary of any personal information about the applicant.

Conclusion on s. 22(1)

[144] Apart from the few exceptions described at the outset of this s. 22(1) analysis, all of the information that the City withheld under s. 22(1) is personal information.

[145] Some information is about third parties' positions and functions as City security staff. Under s. 22(4)(e), disclosure of this information is not an unreasonable invasion of their personal privacy. Other personal information is only capable of identifying the applicant. I do not see how this information would unreasonably invade any third parties' personal privacy given that it does not reveal anything about any third parties. I find that s. 22(1) does not apply to this information and the City is not required to refuse disclosure of it.

[146] Most of the remaining personal information relates to third parties' employment history or is identifiable as part of an investigation into a possible violation of law. Under s. 22(3)(b) and (d), disclosing this information is presumptively an unreasonable invasion of third-party personal privacy. Finally, the remaining information that does not fall under s. 22(3) are descriptions and discussions of events that constitute third-party personal information. While this information is not sensitive insofar as it relates to third parties and it does not expose any third parties to reputational harm, it was supplied in confidence and is not within the knowledge of the applicant. None of it is relevant to a fair determination of the applicant's rights.

⁸⁸ Applicant's submission at Appendix E, page 3.

[147] After weighing these considerations, I conclude that disclosing this personal information would constitute an unreasonable invasion of one or more third parties' personal privacy. The applicant has not met his burden of rebutting any of the presumptions established by s. 22(3), nor has he generally established that disclosure would not be an unreasonable invasion of third parties' personal privacy.

[148] Subject to the exceptions described above, I confirm that the City is required to refuse to disclose the personal information it withheld under s. 22(1).⁸⁹

CONCLUSION

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

1. Subject to item 5 below, I confirm, in part, the City's decision to refuse to disclose the information it withheld under s. 13(1).
2. I confirm the City's decision to refuse to disclose the information it withheld under s. 14.
3. I confirm the City's decision to refuse to disclose the information it withheld under s. 16(1)(b).
4. Subject to item 5 below, I require the City, in part, to refuse to disclose the information that it withheld under s. 22(1).
5. I require the City to give the applicant access to the information that I have highlighted in green on pages 1, 3, 9 and 27, in a copy of the records that I have provided to the City along with this order.
6. The City must concurrently provide the OIPC Registrar of inquiries a copy of the City's cover letter to the applicant, along with a copy the records that it provides to the applicant in compliance with item 5 above.

⁸⁹ This determination does not apply to the information that I determined was properly withheld under ss. 13(1) or 16(1)(b) because that information was excluded from the s. 22(1) analysis.

[150] Pursuant to s. 59(1) of FIPPA, the City of Burnaby is required to comply with this order by January 16, 2024.

November 30, 2023

ORIGINAL SIGNED BY

Alexander R. Lonergan, Adjudicator

OIPC File No.: F21-86830