



Order F23-108

## MUNICIPALITY OF NORTH COWICHAN

Elizabeth Vranjkovic  
Adjudicator

December 18, 2023

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**Summary:** The applicant made an access request to the Municipality of North Cowichan (Municipality) for records relating to a society, an organization and certain named individuals. The Municipality provided the responsive records to the applicant but withheld some information under a number of exceptions in the *Freedom of Information and Protection of Privacy Act*. The adjudicator found that the Municipality was authorized to withhold some but not all of the information at issue under s. 13(1) (advice or recommendations) and required to withhold some but not all of the information at issue under s. 22(1) (unreasonable invasion of a third party's personal privacy).

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, ss. 13(1), 13(2), 22(1), 22(2), 22(2)(h), 22(3), 22(3)(d) and 22(4).

### INTRODUCTION

[1] An individual (applicant) requested access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to records relating to the Duncan Community Lodge Society (the Society), Rowing Canada Aviron (Rowing Canada), and certain individuals.

[2] The Municipality of North Cowichan (Municipality) provided the responsive records to the applicant but withheld some information under a number of FIPPA exceptions.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Municipality's decision. Mediation by the OIPC did not resolve the matter and it proceeded to inquiry.

[4] Prior to the inquiry, the Municipality disclosed some additional information and withdrew its reliance on some FIPPA exceptions. As a result, only ss. 13(1)

(advice or recommendations) and 22(1) (unreasonable invasion of a third party's personal privacy) of FIPPA remain in dispute.<sup>1</sup>

### ***Preliminary matters***

[5] After the close of the inquiry, the Municipality raised two additional matters.

[6] First, the Municipality said that the s. 22(1) redactions on page 68 “can be removed.” As a result, I conclude that information is no longer in dispute. However, as far as I know, the Municipality has not provided this information to the applicant. To ensure the applicant is given access to this information, I have highlighted it as part of the information to which the Municipality is required to give the applicant access on the copy of the records that will be provided to the Municipality with this order.

[7] Second, the Municipality advised that some of the personal information (the newly identified information), which was not withheld in the copy of the records initially before me or addressed in the Municipality's inquiry submissions, has been withheld from the applicant and is at issue under s. 22(1).<sup>2</sup> I find it necessary to consider the application of s. 22(1) to the newly identified information because s. 22(1) is a mandatory exception to disclosure.<sup>3</sup>

### **ISSUES**

[8] The issues to be decided in this inquiry are as follows:

1. Is the Municipality authorized to refuse to disclose the information at issue under s. 13(1)?
2. Is the Municipality required to refuse to disclose the information at issue under s. 22(1)?

[9] Under s. 57(1), the Municipality has the burden of proving that the applicant has no right to access the information in dispute under s. 13(1).

[10] Under s. 57(2), the applicant has the burden of proving that disclosure of the information in dispute under s. 22(1) would not unreasonably invade a third party's personal privacy. However, the Municipality has the initial burden of proving the information at issue qualifies as personal information under s. 22(1).<sup>4</sup>

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<sup>1</sup> From this point forward, whenever I refer to section numbers I am referring to sections of FIPPA.

<sup>2</sup> Information located on pages 209, 211, 214 and 216 of the records.

<sup>3</sup> To ensure fairness, I offered the applicant an opportunity, which he did not take, to respond to the Municipality's application of s. 22(1) to the newly identified information.

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

## DISCUSSION

### ***Background***

[11] In 2015, Rowing Canada expressed interest in potentially moving its National Training Centre (Training Centre) to the Municipality.

[12] In 2018, the Municipality submitted a formal proposal to Rowing Canada which identified two potential sites for the Training Centre. One of those sites was a property owned by the Society (the property).

[13] Rowing Canada has now executed an agreement with the Society regarding the relocation of its Training Centre to a portion of the property.<sup>5</sup>

### ***Information at issue***

[14] The responsive records total 351 pages with 91 pages containing the information in dispute. The records include emails, meeting records, court documents, presentation slides and reports.

### ***Advice or recommendations, s. 13***

[15] Section 13(1) authorizes the head of a public body to refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister, subject to certain exceptions.

[16] The purpose of s. 13(1) is to allow full and frank discussion of advice or recommendations on a proposed course of action by preventing the harm that would occur if the deliberative process of government decision and policy-making were subject to excessive scrutiny.<sup>6</sup>

[17] Past OIPC orders and court decisions have established the following principles for the interpretation of s. 13(1):

- Section 13(1) applies not only to advice or recommendations, but also to information that would allow someone to accurately infer advice or recommendations.<sup>7</sup>
- The terms “advice” and “recommendations” are distinct, so they must have distinct meanings.<sup>8</sup>

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<sup>5</sup> The information in this section is from the public body’s initial submissions at paras 4-8.

<sup>6</sup> *John Doe v Ontario (Finance)*, 2014 SCC 36 at paras 45-41 [*John Doe*].

<sup>7</sup> Order 02-38, 2002 CanLII 42472 (BC IPC) at para 135.

<sup>8</sup> *John Doe*, *supra* note 6 at para 24.

- “Recommendations” relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised.<sup>9</sup>
- “Advice” has a broader meaning than “recommendations.”<sup>10</sup> It includes setting out relevant considerations and options, and providing analysis and opinions, including expert opinions on matters of fact.<sup>11</sup> Advice can be an opinion about an existing set of circumstances and does not have to be a communication about future action.<sup>12</sup>
- “Advice” also includes factual information “compiled and selected by an expert, using his or her expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body.”<sup>13</sup> This is because the compilation of factual information and weighing the significance of matters of fact is an integral component of an expert’s advice and informs the decision-making process.

[18] The first step in the s. 13 analysis is to determine whether the information in dispute would reveal advice or recommendations developed by or for a public body or minister. If it would, then I must decide whether the information falls into any of the categories listed in s. 13(2). If information falls within one or more of these categories, a public body must not refuse to disclose it under s. 13(1).

[19] Finally, s. 13(3) says s. 13(1) does not apply to information in a record that has been in existence for 10 or more years. In this case, the records are not that old, so I find s. 13(3) does not apply.

*Would the disputed information reveal advice or recommendations?*

[20] The Municipality says that the information withheld under s. 13(1) clearly contains advice and recommendations.<sup>14</sup> The applicant does not say anything about s. 13(1).

Emails

[21] The Municipality partially withheld six emails under s. 13(1). In one of those emails, the Municipality withheld a draft memorandum of understanding (MOU), which I will address separately below.

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<sup>9</sup> *John Doe*, *supra* note 6 at paras 23-24.

<sup>10</sup> *Ibid* at para 24.

<sup>11</sup> *Ibid* at paras 26-27 and 46-47; *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at paras 103 and 113 [*College of Physicians*].

<sup>12</sup> *College of Physicians*, *supra* note 11 at para 103.

<sup>13</sup> *Provincial Health Services Authority v British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 at para 94 [*PHSA*].

<sup>14</sup> Public body’s initial submission at para 23.

[22] I find that some of the information at issue in the emails qualifies as advice or recommendations. For example, some of the information is a consultant's advice to the Municipality on how to handle a situation and some of the information reveals a Municipality employee's advice to a representative of Rowing Canada.<sup>15</sup> There is also advice from a Rowing Canada representative to employees of the Municipality about how to move forward with the Training Centre.<sup>16</sup>

[23] In one of the emails, the Municipality's chief administrative officer (Chief Administrative Officer) informs a Municipality employee of a decision he has made, the advice he received that led to that decision and next steps resulting from that decision.<sup>17</sup> The advice he received is clearly advice developed for the Municipality. I find that in the context of this particular email, disclosing the decision and the next steps would allow someone to accurately infer that advice.

[24] However, I find that some of the information at issue in the emails does not reveal advice or recommendations, so the Municipality cannot withhold it under s. 13(1).

[25] To begin, some of the disputed information is a question and some information is a summary of a question.<sup>18</sup> A question does not amount to advice or recommendations unless it would allow for accurate inferences as to advice or recommendations actually received.<sup>19</sup> In my view, the questions at issue here would not allow for any such inferences.

[26] Additionally, some of the information is a Municipality employee recounting a discussion they had with a Rowing Canada representative.<sup>20</sup> Some of the information reveals that the Chief Administrative Officer visited both potential locations for the Training Centre with certain municipal councillors.<sup>21</sup> On its face, none of this information is advice or recommendations. I also do not see how any of this information would reveal advice or recommendations.

[27] Finally, the Municipality withheld the opinions of Rowing Canada representatives.<sup>22</sup> In my view, the opinions are not the result of the

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<sup>15</sup> Information located on pages 20-21 of the records.

<sup>16</sup> Information located on page 233 of the records.

<sup>17</sup> Information located on page 40 of the records.

<sup>18</sup> Information located on pages 20 and 284 of the records.

<sup>19</sup> For orders dealing with questions, see Order F14-19, 2014 BCIPC 22 at para 35; Order F12-01, 2012 BCIPC 1 at para 32, portions related to records 29, 37, 40, 66, 69, 127, and 225. For orders related to requests for advice, see Order F18-41 supra note 27 at paras 16 and 20; and Order F17-39, 2017 BCIPC 43 at para 37.

<sup>20</sup> Information located on page 21 of the records.

<sup>21</sup> Information located on page 40 of the records.

<sup>22</sup> Information located on page 284 of the records.

representatives exercising judgment and skill to weigh the significance of matters of fact. Instead, I find that they are the representatives' personal, subjective feelings about other individuals and events.<sup>23</sup> As a result, I find that s. 13(1) does not apply to those opinions.

#### Meeting record

[28] The Municipality partially withheld a meeting record under s. 13(1).<sup>24</sup> The meeting record includes a list of relevant considerations identified by Municipality employees for Rowing Canada about the Training Centre and background information about the circumstances giving rise to those considerations. In my view, this information is clearly advice developed by the Municipality for Rowing Canada.

[29] The information at issue in the meeting record also includes a heading that describe the meeting record. I do not see how this information would reveal advice or recommendations by or for a public body. I find that s. 13(1) does not apply to the heading.

#### MOU

[30] The Municipality withheld the entire MOU under s. 13(1).<sup>25</sup> The Municipality says that the MOU forms the background of numerous recommendations and advice by Municipality employees throughout the remainder of the Record, and so the MOU constitutes background explanation and analysis that "is integrated in the advice and recommendations."<sup>26</sup>

[31] However, the Municipality has not identified which advice and recommendations it means and where it is located. From my review of the records, I do not see how the MOU forms the background of any advice or recommendations. I am not satisfied that disclosing the MOU would reveal any advice or recommendations.

#### *Do any of the exceptions in s. 13(2) apply?*

[32] Next, I will consider if s. 13(2) applies to the information that I found above would reveal advice or recommendations. Neither of the parties say anything about s. 13(2).

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<sup>23</sup> For a similar finding, see Order F19-28, 2019 BCIPC 30 at para 46.

<sup>24</sup> Information located on page 241 on the records.

<sup>25</sup> Information located on pages 55-56 of the records.

<sup>26</sup> Municipality's submission at paras 27-28.

[33] In my view, s. 13(2)(a), which provides that a public body must not refuse to disclose “any factual material” under s. 13(1), is relevant. However, for the reasons set out below, I find that s. 13(2)(a) does not apply.

[34] The term “factual material” is not defined in FIPPA. However, in distinguishing it from “factual information” which may be withheld under s. 13(1), the courts have interpreted “factual material” to mean “source materials” or “background facts in isolation” that are not necessary to the advice provided.<sup>27</sup> Where facts are compiled and selected by an expert as an integral component of their advice, then it is not “factual material” under s. 13(2)(a).<sup>28</sup>

[35] The background information that I have found is “advice” is intermingled with and an integral part of the advice and recommendations. It is not the kind of distinct source material or isolated facts that courts have found is factual material. Accordingly, I am satisfied that the background information I have found is advice is not “factual material” under s. 13(2)(a).

[36] I find that none of the information that I have found would reveal advice or recommendations falls within any of the circumstances described in s. 13(2).

#### *Summary, s. 13*

[37] In conclusion, I find that some of the information withheld under s. 13(1) would reveal advice or recommendations developed by or for the Municipality. I also find that ss. 13(2) and 13(3) do not apply to that information. As a result, the Municipality is authorized to refuse to disclose this information. However, there is other information that the Municipality can not withhold under s. 13(1) because this information would not reveal advice or recommendations developed by or for the Municipality.

#### ***Unreasonable invasion of a third party’s personal privacy, s. 22***

[38] 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.<sup>29</sup>

[39] There is some overlap between the Municipality’s application of ss. 13(1) and 22(1) to the records. I will only consider below information that I have not already found may be withheld under s. 13.

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<sup>27</sup> PHSA, *supra* note 13 at para 94.

<sup>28</sup> PHSA, *supra* note 13 at para 94.

<sup>29</sup> Schedule 1 of FIPPA says: “third party” in relation to a request for access to a record or for correction of person information, means any person, group of persons, or organization other than (1) the person who made the request, or (b) a public body.

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*Personal information*

[40] The first step in any s. 22 analysis is to determine if the information at issue is personal information.

[41] Personal information is defined in FIPPA as “recorded information about an identifiable individual other than contact information.”<sup>30</sup> FIPPA defines contact information as “information to enable an individual at a place of business to be contacted, and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”<sup>31</sup> Whether information is contact information depends on the context in which it appears.<sup>32</sup>

[42] The Municipality says the information in dispute is personal information.<sup>33</sup> The applicant does not say anything about whether the information at issue is personal information.

[43] I will first consider whether the information at issue is about identifiable individuals. I will then consider whether any of the information that I find is about identifiable individuals is contact information.

[44] To begin, I find that a company’s mailing address is not about an identifiable individual.<sup>34</sup> Companies do not have personal privacy rights under FIPPA.<sup>35</sup> The Municipality did not explain how the company’s address qualifies as information about an identifiable individual and I find that it does not.

[45] In my view, the balance of the information at issue is about identifiable individuals.

[46] Most of the information is about individuals who are identified by name. Some of the information does not directly identify an individual (i.e. by name) but given the context, it is reasonable to conclude that the applicant or other members of the public would be able to identify the individuals. For example, I am satisfied that individuals involved in the rowing community would be able to identify some of the individuals even though they are not identified by name. Therefore, this information is about identifiable individuals.

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<sup>30</sup> Schedule 1 of FIPPA.

<sup>31</sup> Schedule 1 of FIPPA.

<sup>32</sup> Order F20-13, 2020 BCIPC 15 at para 42.

<sup>33</sup> Public body’s initial submission at para 41.

<sup>34</sup> Information located on page 169 of the records.

<sup>35</sup> For example, see Order F23-91, 2023 BCIPC 107 at para 119 and Order F17-39, 2017 BCIPC 43 at para 75.



[47] I turn now to whether any of the information about identifiable individuals is contact information. If it is, it is not personal information.

[48] For the reasons that follow, I find that some of the information is contact information because, in the context of the records, its purpose is to enable an individual at a place of business to be contacted.

[49] To begin, I find that a lawyer's phone number is contact information.<sup>36</sup> I can see from the records that the lawyer sent an email about a legal matter and said that she could be reached at that phone number. In this context, I find that the phone number is to enable the lawyer to be contacted at her place of business and is contact information.

[50] Additionally, I find that a third party's phone number in his e-mail signature is contact information.<sup>37</sup> I can see from the records that the individual was communicating with a Municipality employee about drafting an agreement related to the lake that borders the property. I am satisfied that the individual is a contractor of the Municipality.<sup>38</sup> I find that the individual's phone number is contact information because it appears in his email signature to enable him to be contacted at his place of business as a contractor of the Municipality.

[51] Finally, I find that a caterer's email address is contact information.<sup>39</sup> Although this email address has a domain name commonly associated with personal email addresses, it appears in a list of caterers that a Municipality employee recommends to a representative of Rowing Canada. In this context, I find that the caterer's email address appears in the records to allow the caterer to be contacted at their place of business and is contact information on that basis.

[52] I find that the balance of the information at issue under s. 22 is personal information because it is about identifiable individuals and is not contact information.

*Disclosure not an unreasonable invasion of privacy, s. 22(4)*

[53] The second step in the s. 22 analysis is to determine if the personal information falls into any of the types of information listed in s. 22(4). If so, disclosure would not be an unreasonable invasion of a third party's personal privacy.

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<sup>36</sup> Information located on pages 41 and 43 of the records.

<sup>37</sup> Information located on page 219 of the records.

<sup>38</sup> The Municipality provided evidence that the records are between its employees and contractors as well as its employees and representatives of Rowing Canada and the Society. There is no indication that the individual is associated with Rowing Canada or the Society. The content of his emails suggests to me that he is a contractor of the Municipality.

<sup>39</sup> Information located on page 126 of the records.

[54] The Municipality says that none of the circumstances in s. 22(4) apply.<sup>40</sup> The applicant does not say anything about s. 22(4).

[55] I have reviewed the circumstances listed in s. 22(4) and I find that none of them apply.

*Presumptions of unreasonable invasion of privacy, s. 22(3)*

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

[57] The Municipality says that s. 22(3)(d) applies to some of the personal information.<sup>41</sup> The applicant does not say anything about s. 22(3).

[58] I have reviewed all of the presumptions listed in s. 22(3) and I find that only s. 22(3)(d) applies.

Employment, occupational or educational history, s. 22(3)(d)

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

[60] The Municipality says that s. 22(3)(d) applies to individuals' employment details and history, educational history and professional qualifications.<sup>42</sup>

[61] I find that s. 22(3)(d) applies to some of the personal information because it relates to the employment and educational history of identifiable individuals. For example, some of the information reveals where and when identifiable individuals attended school and is information that relates to the educational history of those individuals.<sup>43</sup>

[62] To summarize, I find that s. 22(3)(d) applies to some of the personal information at issue.

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<sup>40</sup> Public body's initial submission at para 52.

<sup>41</sup> Public body's initial submission at para 49.

<sup>42</sup> Information located on pages 1, 120, 128 and 180 of the records.

<sup>43</sup> Information located on pages 120 and 128 of the records.

*Relevant circumstances, s. 22(2)*

[63] The final step in the s. 22 analysis is to consider the impact of disclosure of the personal information in light of 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).

[64] The Municipality says that none of the relevant circumstances favour disclosure of the personal information.<sup>44</sup> The Municipality also says that s. 22(2)(h) (unfair damage to reputation) is relevant.<sup>45</sup>

[65] I have considered whether any relevant circumstances apply, including those listed under s. 22(2). I will address all of the circumstances I find relevant below.

Unfair damage to reputation, s. 22(2)(h)

[66] Section 22(2)(h) requires a public body to consider whether disclosure of personal information may unfairly damage the reputation of any person referred to in the record requested by the applicant. It has two requirements: first, the information must damage an individual's reputation; and second, the damage to an individual's reputation must be unfair.

[67] The Municipality says that it is reasonable to expect that disclosing certain personal opinions may unfairly damage the reputation of some individuals.<sup>46</sup>

[68] Some of the opinions at issue are about the Society as a whole.<sup>47</sup> Although disclosure of those opinions might damage the reputation of the Society, I am not satisfied that it would damage the reputation of any individual members of the Society.

[69] However, I find that disclosing some personal opinions and comments could unfairly damage the reputation of the individuals those opinions and comments are about.<sup>48</sup> The personal opinions and comments are of a negative character and I am satisfied that disclosing them could damage the reputations of those individuals. I find that the damage would be "unfair" because the individuals the opinions and comments are about have not had an opportunity to respond to the opinions and comments, or if they have, it is not reflected in these records.

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<sup>44</sup> Public body's initial submission at para 51.

<sup>45</sup> Public body's initial submission at para 48.

<sup>46</sup> Public body's initial submission at para 48.

<sup>47</sup> Information located on page 284 of the records.

<sup>48</sup> Information located on pages 16, 18, 20, 206 and 284 of the records.

[70] As a result, I find that disclosing some of the personal information could unfairly damage the reputations of some of the individuals referred to in the records requested by the applicant. This factor weighs against disclosing that information.

*Conclusion, s. 22(1)*

[71] To begin, some of the information is not personal information under FIPPA.<sup>49</sup> The Municipality cannot withhold this information under s. 22(1).

[72] The balance of the information at issue under s. 22 is personal information.

[73] None of the s. 22(4) circumstances apply to any of the personal information.

[74] Section 22(3)(d) applies to the personal information about individuals' employment and educational history. I find that the presumption against disclosure has not been rebutted and disclosure of that information would be an unreasonable invasion of third parties' personal privacy.

[75] Section 22(2)(h) applies to some of the personal opinions and comments at issue and weighs against disclosing that information. No circumstances weigh in favour of disclosing those opinions and comments. I find that disclosing this information would be an unreasonable invasion of third parties' personal privacy.

[76] I find that it would not be an unreasonable invasion of a third party's personal privacy to disclose some information because I find the identifying information of third parties can be severed from it and the balance disclosed without identifying the third parties.<sup>50</sup> As a result, I find it is not an unreasonable invasion of third parties' personal privacy to disclose that information.

[77] No presumptions apply to the balance of the personal information at issue and no circumstances weigh for or against disclosing that information. From the context of the records, most of the remaining personal information appears to be about members of the public. Previous orders have found that s. 22(1) applies to the personal information of members of the public where no relevant circumstances weigh for or against disclosure and I see no reason to depart from those orders here.<sup>51</sup> Ultimately, the burden is on the applicant to establish that disclosure would not result in an unreasonable invasion of a third party's personal privacy. The applicant has not satisfied that onus. I find that disclosing

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<sup>49</sup> Information located on pages 41, 43, 126 and 219 of the records.

<sup>50</sup> Information located on page 44 of the records.

<sup>51</sup> Order F17-19, 2017 BCIPC 20 at para 54; 2020 BCIPC 32 at para 54.

the remaining personal information would be an unreasonable invasion of third parties' personal privacy.

## **CONCLUSION**

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

1. I confirm, subject to item 3 below, the Municipality's decision to refuse the applicant access to the information withheld under s. 13(1).
2. I confirm, subject to item 3 below, the Municipality's decision to refuse the applicant access to some of the information withheld under s. 22(1).
3. The Municipality is required to give the applicant access to the information that I have determined it is not authorized or required to withhold under ss. 13(1) and 22(1). I have highlighted this information in yellow on pages 20-21, 40-41, 43-44, 55-56, 68, 126, 169, 219 and 241 of the copy of the records that will be provided to the Municipality with this order.
4. The Municipality must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the records/pages described at item 3 above.

[79] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **February 1, 2024**.

December 18, 2023

## **ORIGINAL SIGNED BY**

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Elizabeth Vranjkovic, Adjudicator

OIPC File No.: F21-85974