



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F24-10

METRO VANCOUVER TRANSIT POLICE

Allison J. Shamas
Adjudicator

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Summary: An applicant requested access to records related to the Metro Vancouver Transit Police's (MVTP's) investigation into a dispute in which he was involved. The MVTP disclosed some information in the responsive records but withheld the remaining information and records under s. 22(1) (unreasonable invasion of a third party's personal privacy) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator determined that the MVTP was required to withhold most of the information under s. 22(1) and ordered the MVTP to disclose the remainder of the information.

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

INTRODUCTION

[1] The applicant requested access to records related to a dispute in which he was involved and the subsequent investigation by the Metro Vancouver Transit Police (MVTP). The MVTP disclosed some responsive records but withheld some information and an entire record under s. 22(1) (unreasonable invasion of third-party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the MVTP's response. He also complained that the MVTP failed to make reasonable efforts to locate records contrary to s. 6(1) (duty to assist) and to reasonably sever an audio recording contrary to s. 4(2) (information rights).¹

[3] Mediation did not resolve the s. 22(1) issue and it proceeded to this inquiry. However, in OIPC File F21-85612, an OIPC investigator decided the

¹ OIPC File F21-85612.

applicant's s. 6(1) complaint was unsubstantiated because the MVTP had conducted an adequate search under s. 6(1), and it could not reasonably sever an audio recording under s. 4(2).² As a result, the complaint file was closed, and the s. 6(1) issue was not included in the investigator's fact report or the notice of inquiry as issues to be decided in this inquiry.

Preliminary Matters

Duty to assist – s. 6(1)

[4] In his submissions in this inquiry, the applicant again argued that the MVTP failed to conduct an adequate search for responsive records as required by s. 6(1).

[5] The MVTP objected. However, during the inquiry, the MVTP introduced six video recordings which were responsive to the applicant's request and which it had not previously identified as responsive records.

[6] While I recognize that the video recordings call into question the adequacy of the MVTP's search for responsive records, for the reasons below, I decline to reconsider the s. 6(1) issue in this inquiry.

[7] The applicant did not comply with the OIPC's processes in seeking to add the s. 6(1) issue to the inquiry. Section 6(1) was not listed as an issue in the fact report or the notice of inquiry, and the applicant did not seek permission to add s. 6(1) as an issue. The notice of inquiry that the OIPC sent to the parties expressly states, "parties may not add new exceptions or issues without the OIPC's prior consent,"³ and previous OIPC orders have consistently held that new issues raised in a party's inquiry submission without the OIPC's prior authorization will not be considered.⁴ While the MVTP's introduction of new records is a relevant consideration, the applicant's failure to follow the OIPC's processes weighs against adding the s. 6(1) issue to the inquiry.

[8] Furthermore, as discussed above, an OIPC investigator has already determined the applicant's s. 6(1) complaint and concluded that the MVTP fulfilled its duty under s. 6(1) of FIPPA. As a result of the investigator's determination, the OIPC closed the complaint file. If the applicant wished to continue to pursue the s. 6(1) issue, the appropriate course was through a request to reconsider the investigator's decision, not to reargue the issue in this inquiry.

² The applicant did not seek reconsideration of the investigator's decision.

³ See Notice of Written Inquiry.

⁴ For examples where the OIPC has refused to permit a party to add a s. 6(1) issue without prior permission, see Order F21-23, 2021 BCIPC 28 (CanLII) at para 7, Order F18-11, 2018 BCIPC 14 (CanLII) at para 3, Order F23-31, 2023 BCIPC 37 (CanLII) at para 5, and Order F23-101, 2023 BCIPC 117 (CanLII) at para 9. See also the OIPC's Written Instructions for Inquiries at p. 3.

[9] In the circumstances, I decline to consider the s. 6(1) issue. However, as they are responsive to the applicant's request, in dispute, and the parties have made submissions about them, I will consider the MVTP's application of s. 22(1) to the new video recordings.

ISSUE

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

[11] Section 57(2) places the burden on the applicant to prove that disclosure of any personal information would not be an unreasonable invasion of a third party's personal privacy. However, the public body has the initial burden of proving the information at issue is personal information.

BACKGROUND

[12] The MVTP is the police force established to provide policing and law enforcement on Metro Vancouver's public transit system. The South Coast British Columbia Transportation Authority (TransLink) is the entity that operates Metro Vancouver's public transportation network. TransLink has multiple surveillance cameras installed on the interior and exterior of its buses.

[13] While on a TransLink bus, the applicant became involved in a verbal dispute with another passenger (the Passenger). The dispute took place during the Covid-19 pandemic and began when the Passenger confronted the applicant about the fact that he was not wearing a mask on the bus. Initially the dispute took place on a bus full of passengers. However, approximately three minutes into the dispute, the bus driver pulled the bus over and all passengers except the applicant and the Passenger left the bus. The dispute continued for 35 minutes. Two TransLink transit security officers became involved. Eventually, MVTP officers attended the scene and investigated.

[14] The applicant requests all records related to the dispute and ensuing investigation.

RECORDS AND INFORMATION IN DISPUTE

[15] The information in dispute is found in an audio recording, a transcript of that audio recording, six video recordings, and an MVTP general occurrence report (MVTP police report). The audio recording, video recordings, and transcript document the dispute, but end when the MVTP officers arrive. As a result, they do not document the MVTP's investigation. The MVTP police report is the only record that documents the MVTP's investigation into the dispute.

[16] The audio recording is from the interior of the bus. It records the dispute between the applicant and the Passenger, and occasionally includes the voices of the TransLink bus driver, and two TransLink transit security personnel.

[17] MVTP withheld the audio recording in full. Having compared the audio recording and the transcript, I find that the transcript accurately records the information in the audio recording. In this regard, despite minor imperfections, the transcript accurately reflects the meaning of the words spoken. Accordingly, the primary information the MVTP withheld from the audio recording is:

- the voices of the applicant, Passenger, bus driver, and two transit security personnel.

[18] I note that while the MVTP also withheld the applicant's voice, it did not do so under s. 22(1). Rather it is withholding his voice because, the audio recording cannot be reasonably severed under s. 4(2) to disclose only the applicant's voice.

[19] The transcript of the audio recording is 40 pages long, and it documents the words spoken by the applicant, the Passenger, the bus driver, and the two transit security personnel. During the dispute the Passenger shouted several personal details about herself to the applicant. While the MVTP disclosed most of the information in the transcript, it withheld:

- the names of the applicant and the Passenger, and
- detailed biographical information about the Passenger such as:
 - age and gender,
 - nationality,
 - medical information,
 - who her friends and family members are, and the nature of and details about her relationship with certain family members,
 - specific life events, intimate information, how and where she spends her time, and
 - her political and religious views.

[20] The video recordings are from six cameras installed on the bus, all of which document the 35 minute period during which the dispute took place. Two are exterior cameras and capture the view out the front and side of the bus. The remaining four are interior cameras and capture the front and rear passenger areas and the front and rear exits.

- Camera 1 (Forward Facing) is an exterior camera that captures the view out the front of the bus. Camera 1 captures pedestrians interspersed with background scenery, vehicles. The MVTP withheld the footage from Camera 1 in full.

- Camera 2 (Front Door) is an interior camera that captures the front door entrance to the bus. The Passenger is in frame for most of the recording. In addition to the Passenger, Camera 2 also captures bus passengers, the bus driver, transit security personnel, and various pedestrians. The MVTP also withheld the footage from Camera 2 in full.
- Camera 3 (Front Seating) is an interior camera that captures the front of the passenger seating area. The first three minutes is of bus passengers. The remaining 32 minutes is of the applicant and background scenery. The MVTP withheld the first three minutes and disclosed the remaining 32 minutes.
- Camera 4 (Rear Door) is an interior camera that captures the rear door of the bus. Camera 4 captures a mix of bus passengers and pedestrians. The MVTP withheld the footage from Camera 4 in full.
- Camera 5 (Rear Seating) is an interior camera that captures the rear passenger seating area. The first three minutes is of the applicant and other bus passengers. The remaining 32 minutes captures only the applicant inside the empty bus. For the first three minutes the MVTP disclosed the footage of the applicant and blurred all other information. It disclosed the remaining 32 minutes in full.
- Camera 6 (External Camera) is an exterior camera that captures the view out the left side of the bus. It is greyscale and poorly focused. It captures background scenery, vehicles and pedestrians. While most pedestrians are far from the camera, a few pass by close to the camera. The MVTP withheld the footage from Camera 6 in full.

[21] The MVTP disclosed all parts of the videos showing the applicant (in some cases by blurring the video except a narrow window around the applicant) but withheld most other information. The video information the MVTP withheld from the video recordings can be categorized as follows:

- The Passenger, bus driver, transit security officers, other bus passengers, and pedestrians,
- background scenery such as the interior of the empty bus, the road, landscape, and buildings, and
- vehicles whose license plate numbers and interiors are not visible.

[22] Finally, the MVTP police report relates to the MVTP's investigation of the dispute and includes a synopsis of the events that led to the MVTP's attendance, information provided by the applicant and Passenger, and the investigating officer's conclusions. While the MVTP disclosed most information in the police report, it withheld:

- the names of the Passenger and bus driver, and
- additional biographical information about the Passenger.

SECTION 22(1) – UNREASONABLE INVASION OF THIRD-PARTY PERSONAL PRIVACY

[23] Section 22(1) of FIPPA requires a public body to refuse to disclose personal information that would be an unreasonable invasion of a third party's personal privacy. Numerous orders have considered the application of s. 22, and I will apply those same principles here.⁵

Section 22(1) – Personal Information

[24] As s. 22(1) applies to personal information, the first step in the s. 22(1) analysis is to determine whether the information in dispute is “personal information” within the meaning of FIPPA.

[25] Schedule 1 of FIPPA defines “personal information” as “recorded information about an identifiable individual other than contact information.” Information is “about an identifiable individual” when it is reasonably capable of identifying an individual, either alone or in combination with other available sources of information.⁶

[26] 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.”⁷ The purpose of the “contact information” exclusion is to clarify that information relating to the ability to communicate with a person at that person's workplace, in a business capacity, is not personal information.⁸ Whether information is “contact information” depends on the context in which it appears.⁹

Arguments

[27] The MVTP asserts that the bus driver's full name is clearly personal information. With respect to the Passenger's name and biographical information, the MVTP argues that the mosaic effect applies to render all information about the Passenger personal information for the purposes of FIPPA. I pause to note that the “mosaic effect” is a term that is sometimes used to describe the process

⁵ For example, see Order F15-03, 2015 BCIPC 3 at para 58.

⁶ Order 03-42, 2003 BCIPC 33644 (CanLII) at paras 19-23; Order F09-21, 2009 BCIPC 63565 (CanLII) at para 27; Order F21-40, 2021 BCIPC 48 (CanLII) at paras 47-49; and Order F21-64, 2021 BCIPC 75 (CanLII) at para 72.

⁷ Schedule 1.

⁸ Order F05-31, 2005 BCIPC 39585 (CanLII) at para 26. See also Order F08-03, 2008 BCIPC 13321 (CanLII) at para 82.

⁹ Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

by which seemingly innocuous information is linked with other already available information to yield information that is excepted from disclosure under FIPPA.¹⁰

[28] Turning to the audio recordings, the MVTP argues that a voice can convey a person's emotional state, as well as biographical information such as their gender, native language, and age. Again, relying on the mosaic effect, the MVTP asserts that the voices of the third parties constitute identifiable information.

[29] Finally, the MVTP submits that the video recordings show physical characteristics as well as non-verbal body language, cues, reactions, and mannerisms that are sufficiently specific to make the individuals identifiable even without knowing their names. Thus, the MVTP submits it is not enough to simply blur faces, because other data elements such as specific clothing, distinctive pets, and location will allow the viewer to identify individuals even without their faces.

[30] The applicant did not address s. 22(1).

Findings and analysis

[31] The information in dispute can be categorized as follows:

- Names of the applicant, Passenger, and bus driver,
- Biographical information of the Passenger,
- Voices of the Passenger, bus driver, and transit security personnel,
- Parts of videos that show the Passenger, bus driver, and transit security personnel, bus passengers, and pedestrians,
- Parts of videos that show vehicles, and
- Parts of videos that show background scenery.

I find that some, but not all the withheld information is “personal information” within the meaning of s. 22(1). The information that I find is personal information is as follows:

Personal information

[32] I find that the **names** of the applicant,¹¹ Passenger,¹² and bus driver¹³ are personal information. A name is the most direct means of identifying an individual.¹⁴ Furthermore, I am satisfied that the names are not contact

¹⁰ Order 01-01, 2001 BCIPC 21555 (CanLII) at para 40.

¹¹ The MVTP withheld the applicant's name from page 7 of the transcript.

¹² The MVTP withheld the Passenger's name from pages of the transcript and from the police report.

¹³ The MVTP withheld the name of the bus driver from the police report.

¹⁴ Order F21-47, 2021 BCIPC 55 (CanLII) at para 13.

information because they do not relate to the ability to contact any of the individuals at their place of business. In this regard, the records do not relate to the applicant or Passenger's workplace, and the context makes clear that the bus driver's name was recorded as part of the MVTP's investigation, not for a purpose related to contacting the bus driver.

[33] I also find that the Passenger's **biographical information**¹⁵ is about an identifiable individual because it is found in records that refer to her by name (the transcript and MVTP police report), and it is clear from the records that all the biographical information relates to the Passenger. As with the Passenger's name, because the records do not relate to her workplace, I find that her biographical information is not contact information.

[34] I now turn to the **voices** of the Passenger, bus driver, and transit security personnel. In addition to the information conveyed by the speakers, the very nature of an audio recording means that it includes additional personal information such as the tone and inflection of a person's voice and their emotional state.¹⁶ As a result, a voice can be personal information. The voices are not contact information because they were clearly not recorded to enable any individual to be contacted at their place of business. The key question is, therefore, whether the voices are *identifiable*.

[35] During the audio recording, the Passenger says her name. I find that the content of the Passenger's speech is enough to render her voice identifiable. I make the same finding about the voices of the bus driver and security personnel, but for different reasons. The content of the audio recording (the dispute between the applicant and Passenger) is specific. The content of the words spoken by the bus driver and transit security personnel make clear that they are present as employees. Finally, the recordings of their voices are clear. Together, I find that this information could allow someone familiar with the dispute and the bus driver and/or security personnel (such as a colleague) to identify them. For these reasons, I find that their voices are also identifiable information.

[36] It is well-established that images and **video recordings of people** is recorded information about individuals.¹⁷ In this regard, a person is so intimately connected to their physical image and demeanour that it is reasonable to conclude that someone seeing a *clear* depiction of the image or video would be

¹⁵ The MVTP withheld the Passenger's biographical information from the transcript and the police report.

¹⁶ Order F18-47, 2018 BCIPC 50 (CanLII) at para 24; Order F22-10, 2022 BCIPC 10 (CanLII) at para 83.

¹⁷ Order F15-42, 2015 BCIPC 45 (CanLII) at paras 26 and 27; *British Columbia (Ministry of Public Safety and Solicitor General) v. Stelmack*, 2011 BCSC 1244 at para 510; Order P09-02, 2009 BCIPC 67292 (CanLII); and PIPEDA Report of Findings #2020-004, 2020 PCC 83156 (CanLII) at para 63.

able to identify them. Like the audio recording, I find that the video recordings are not contact information because they were clearly not recorded to enable any individual to be contacted at their place of business. Therefore, the only remaining question when deciding whether the video recordings of people are personal information is whether the individuals captured are identifiable.

[37] I find that some but not all parts of the videos are about identifiable individuals. The parts of the videos that constitute personal information are as follows:

- The parts of the videos that show the Passenger capture closeups of her face, body, and mannerisms.¹⁸ While the images are not always perfectly clear, there is sufficient detail to see her facial features, clothing, and mannerisms. I am satisfied that anyone watching who knows the Passenger could easily identify her. I find that the video recordings of the Passenger are about an identifiable individual and are therefore her personal information.
- The parts of the videos that show the bus driver and transit security personnel capture clear closeups of their faces, bodies, and clothing.¹⁹ In the case of the transit security personnel, the recordings also capture distinctive clothing that suggests an official role. As with the applicant, I am satisfied that anyone who knows these individuals could easily identify them from the videos. Accordingly, I find that these individuals are also identifiable from the videos, and that the parts of the videos that capture them are their personal information.
- The parts of the videos that show the bus passengers and pedestrians can be divided into three groups. For many passengers and pedestrians, the recordings capture clear images of their faces, bodies, and clothing.²⁰ I have no difficulty finding that anyone who knows these individuals could easily identify them, and accordingly, I find that the recordings of them is about identifiable individuals. The parties of the videos that capture these individuals is their personal information.
- A second group is made up of pedestrians only. The parts of the videos that show this group are less clear because the individuals are further from the camera, the image is blurry, and/or they spend less time in front

¹⁸ The footage of the Passenger is found in the last 32 minutes of Camera 2 (Front Door).

¹⁹ The footage of the bus driver is found at various points in Camera 2 (Front Door). The footage of the transit security officers is found at various points in Camera 2 (Front Door).

²⁰ The footage where passengers and pedestrians are easily identifiable from their appearance is found in the last 32 minutes of the recording from Camera 1 (Forward Facing), and the first 3:10 minutes of the recording from Camera 2 (Front Door), Camera 4 (Rear Door), Camera 5 (Rear Seating).

of the camera. However, for all these individuals the recordings reveal some combination of their facial features, bodies and clothing,²¹ location in the city, gait, and/or who (or what pets) they are with, and/or the fact that they rode the bus. Considering the appearance information together with the contextual information, I am satisfied that any observer familiar with these individuals could identify them. As such, I find that the recordings of these individuals are also about identifiable individuals and is their personal information.

[38] However, I find that the parts of the videos that show a third group of pedestrians, are not personal information for the purposes of s. 22(1).

- These persons fall into two groups: those for whom the cameras capture only brief, distant, ill-defined, mostly greyscale outlines, and those for whom the camera captures parts of bodies (usually legs and feet) but no faces. Even considering these recordings together with the available contextual information, I can see no way it could be used to identify of the individuals in this group. Their facial features, clothing, and who they are with is not clearly visible. The available information in these recordings is not sufficient to identify these individuals. Given the lack of other information about these individuals, I do not accept the MVTP's assertion that they are identifiable because of the mosaic effect. Accordingly, I find that the recordings of this third group is not personal information.

[39] I also find the parts of the video that show **vehicles** are not "personal information." The vehicles themselves are not unique, contain no identifying markers, and their interiors and license plates are not visible. In the circumstances, I see no way to connect the vehicles to any identifiable individual, and the MVTP has not explained how it is possible to do so. I find that the recordings of vehicles is not about an identifiable individual and, is therefore not personal information.

[40] Similarly, the **background scenery**²² is not about any individual and is, therefore, not personal information.

Conclusion – s. 22(1)

[41] In summary, I find that most, but not all the withheld information is "personal information" for the purposes of s. 22(1). The information that is not personal information for the purposes of s. 22(1) is the parts of the recordings

²¹ The footage where passengers and pedestrians are easily identifiable from their appearance is found in the last 32 minutes of the recording from Camera 1 (Forward Facing), and the first 3:10 minutes of the recording from Camera 2 (Front Door), Camera 4 (Rear Door), Camera 5 (Rear Seating).

²² The MVTP withheld background scenery from all six of the video recordings.

that capture background scenery, vehicles, and ill-defined and partial pedestrians.

Section 22(4) – Information presumed not to be an unreasonable invasion of a third party’s personal privacy

[42] The second step in the s. 22 analysis is to consider whether s. 22(4) applies to any of the “personal information.” Section 22(4) lists circumstances where disclosure of “personal information” is not an unreasonable invasion of a third party’s personal privacy. If information falls into one of the enumerated s. 22(4) circumstances, the public body is not required to withhold the information under s. 22(1).

[43] The MVTP argues that s. 22(4)(e) does not apply. The applicant does not address s. 22(4) but argues in general that he should have access to information about public body employees because of the public nature of their work.

Third party’s position, functions, or remuneration – s. 22(4)(e)

[44] Section 22(4)(e) provides that disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy if the information is about the third party’s position, functions, or remuneration as an employee of a public body.

[45] It is well-established that s. 22(4)(e) applies to “objective, factual statements about what the third party did or said in the normal course of discharging [their] job duties, but not qualitative assessments of those actions.”²³ In addition, past OIPC orders make clear that it is not an unreasonable invasion of privacy under s. 22 to disclose the identity of a public body employee in the context of information that relates to their ordinary employment responsibilities.²⁴ However, due to the nature of the personal information conveyed by some video recordings, past orders have introduced some nuance into these entrenched principles as they apply to video recordings.

[46] In Order F08-13 an adjudicator considered the application of s. 22(4)(e) to surveillance footage of a corrections officer, in circumstances where the applicant alleged that the officer had committed serious misconduct.²⁵ While the adjudicator initially found that the footage fell under s. 22(4)(e),²⁶ on judicial review, the British Columbia Superior Court determined that the correctional

²³ Order F09-15, 2009 BCIPC 58553 (CanLII) at para 15. See also Order F14-41, 2014 BCIPC 44 (CanLII) at para 24.

²⁴ See for example Order F08-03, 2008 BCIPC 13321 (CanLII) at para 101 and Order F10-14, 2010 BCIPC 23 (CanLII) at paras 41–44.

²⁵ Order F08-13, 2008 BCIPC 41151 (CanLII).

²⁶ *Ibid* at para 65.

officer's privacy rights were not reasonably addressed and remitted the case for reconsideration.²⁷

[47] On reconsideration, the adjudicator determined that while the footage of the officer fell under s. 22(4)(e), their facial images did not.²⁸ She reasoned that the footage was covered by s. 22(4)(e) because it recorded the officer's "tangible activities" in the normal course of work-related activities.²⁹ However, emphasizing the fact-driven nature of her decision, the adjudicator reasoned that the officer's facial image was not covered by s. 22(4)(e) because the face was not "about" the officer's position, functions or remuneration as a public body employee.³⁰

[48] The distinction between written records and video footage was addressed in Alberta Order F2008-020, which involved video surveillance footage related to an incident involving a highly publicized, alleged assault by police officers.³¹ In that case, the adjudicator determined that disclosure of the video footage would result in an unreasonable invasion of personal privacy, reasoning in part, that video "captures more private or intimate personal information in the form of images," than other forms of information.³²

[49] Drawing on the cases discussed above, in Order F15-42, an OIPC adjudicator determined that s. 22(4)(e) did not apply to audio and video footage of teachers and youth workers who were recorded in a classroom over a 10 day period.³³ While recognizing that the information was, on its face, about what the employees did and said in the normal course of discharging their job duties, the adjudicator nonetheless held that s. 22(4)(e) did not apply because the additional amount of detail available made the information more about the specific employees at issue, than about their ordinary job functions, tasks and activities.³⁴

[50] In this inquiry, the MVTP argues that the exemption in s. 22(4)(e) does not apply to the bus driver's name because it appears in the context of an investigation into a specific incident in which the driver was the subject of a complaint.

[51] The applicant argues that the public nature of the bus driver's job and the fact that the driver agrees to work in full view of video surveillance diminishes the bus driver's privacy rights. I will consider these submissions as an argument that s. 22(4)(e) applies to the audio and video recordings of the bus driver.

²⁷ *British Columbia (Ministry of Public Safety and Solicitor General) v. Stelmack*, 2011 BCSC 1244.

²⁸ Order F12-12, 2012 BCIPC 17 (CanLII) at paras 29 and 30.

²⁹ *Ibid* at para 29.

³⁰ *Ibid* at para 30.

³¹ Alberta Order F2008-020, [2009] A.I.P.C.D. No. 8.

³² *Ibid* at para 114.

³³ Order F15-42, 2015 BCIPC 45 (CanLII).

³⁴ Order F15-42, 2015 BCIPC 45 (CanLII) at para 35.

[52] In addition to the information about the bus driver, I will also consider the application of s. 22(4)(e) to the audio and video recordings of the transit security personnel.³⁵

[53] I accept the MVTP's argument that s. 22(4)(e) does not apply to the bus driver's name.³⁶ The driver's name is found in the police report, which makes clear that the driver participated in the police investigation as a witness, and that the applicant complained to police about the driver's conduct during the investigation. Disclosing the driver's name in this context would allow a reader to connect this information to the driver. This information is not the kind of objective, factual statements about what the third party did or said in the normal course of discharging their job duties to which s. 22(4)(e) applies.³⁷

[54] However, I find that s. 22(4)(e) does apply to the audio and video recordings of the bus driver and transit security personnel.³⁸ The audio and video recordings of the public body employees are short (a few seconds at a time) and mundane. The video recordings show the bus driver and transit security personnel entering and exiting the bus, and the transit security personnel speaking to the applicant and Passenger. In both the video and audio recordings the driver and security personnel look and sound calm and unreactive. As the MVTP has already disclosed the content of the audio recordings through the transcript, the content of their speech is not at issue.

[55] In the circumstances of this inquiry, the recordings of the bus driver and transit security personnel contain no more personal information than would a dry, written narrative of their actions. Accordingly, I see no reason to depart from a straightforward application of the usual test under s. 22(4)(e). The video recordings and voices of the driver and security personnel is objective, factual statements about what these individuals did in the normal course of discharging their job duties. Applying the usual test, I find that s. 22(4)(e) applies.

[56] I come to the same conclusion about the facial images of the bus driver and transit security officers. In making this determination, I have carefully considered the ruling in Order F08-13 that a face is not "about" an individual's position, functions or remuneration as a public body employee. However, as the adjudicator in Order F08-13 made clear, her decision was highly fact specific.³⁹

³⁵ Section 22(4)(e) applies only to "employee or member of a public body or as a member of a minister's staff." The bus driver and transit security personnel are TransLink employees. While TransLink is not the public body at issue in this inquiry, it has been recognized as a public body under FIPPA in past OIPC orders. See for example Order F20-39, 2020 BCIPC 58 (CanLII).

³⁶ The driver's name is found at page 7 of the police report.

³⁷ For a similar analysis, see Order 01-53, 2001 BCIPC 21607 (CanLII) at para 40.

³⁸ The video recordings of the bus driver and transit security personnel is found in the Camera 2 footage.

³⁹ 2008 BCIPC 41151 (CanLII) at para 30.

[57] In this inquiry, the facial images of the public body employees are in focus for only a few seconds and convey no specific emotion or information. As a result, the only impact of disclosing the faces is to make the public body employees identifiable. Like all of s. 22, s. 22(4)(e) applies to *identifiable* personal information. Furthermore, past orders confirm that it is not an unreasonable invasion of privacy under s. 22 to disclose the identity of a public employee in the context of information that relates to their ordinary employment responsibilities.⁴⁰ On the facts before me, I see no justifiable reason to diverge from the usual test or otherwise to sever the faces of the bus driver or transit security personnel from the remaining s. 22(4)(e) information. Thus, I find that s. 22(4)(e) also applies to the faces of the public employees.

[58] In summary, I find that s. 22(4)(e) applies to the parts of the video recordings that show the bus driver and transit security personnel, but not to the bus driver's name in the police report. It is, therefore, not an unreasonable invasion of the bus driver and transit security personnel's privacy to disclose the audio and video recordings of them.⁴¹ As it is not an unreasonable disclosure of personal privacy to disclose information that falls under s. 22(4), I will not consider this information further under s. 22(3) or s. 22(2).

[59] I have considered the other circumstances in s. 22(4), and I find that no other circumstances apply.

Section 22(3) – Disclosure Presumed to be an Unreasonable Invasion of Third-Party Personal Privacy

[60] 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.

⁴⁰ See for example Order F08-03, 2008 BCIPC 13321 (CanLII) at para 101 and Order F10-14, 2010 BCIPC 23 (CanLII) at paras 41 – 44.

⁴¹ In coming to this conclusion, I considered whether to give the bus driver and transit security personnel notice as appropriate persons under s. 54 of FIPPA. The OIPC does not and cannot give notice to every third party whose personal information is captured by a request for review. Many inquiries involve the personal information of tens (or even hundreds, or thousands) of third parties. Were the OIPC to give notice to every affected third party, the OIPC's processes would quickly grind to a halt. In this inquiry, I find that the bus driver and transit security personnel are not appropriate persons. The information about them is short, mundane, and contains very little personal information, all of which is very clearly covered by s. 22(4)(e). While in some cases video and audio recorded information may merit a different outcome, in this case, as discussed above, the personal information at issue is no different than a brief, written narrative. It is not the kind of information that typically attracts notice, and I find that it is not appropriate to vary from the OIPC's practice in this case. For these reasons, I determined that the bus driver and transit security personnel were not appropriate persons under s. 54 of FIPPA.

[61] The MVTP argues that ss. 22(3)(b) and (d) apply. The applicant does not address s. 22(3). I will also consider the applicability of s. 22(3)(i) to some of the withheld information.

Investigation into a possible violation of law – s. 22(3)(b)

[62] Section 22(3)(b) creates a presumption against disclosure of information that was compiled and is identifiable as part of an investigation into a possible violation of law.

[63] The MVTP submits that s. 22(3)(b) applies to all the disputed information because it is all part of the MVTP's investigation into a possible violation of the *Covid-19 Related Measures Act*, [SBC 2020] c. 8 (the CRMA).

[64] While the applicant does not address s. 22(3)(b), in his submissions he refers to the Covid-19 mask mandate⁴² and to two prior tickets that he received from MVTP officers for not wearing a mask on public transit.⁴³

[65] For the reasons below, I find that the presumption against disclosure in s. 22(3)(b) applies to all the information in dispute.

[66] Section 22(3)(b) sets out two requirements.

Compiled and identifiable as part of the investigation

[67] The first requirement is that the personal information in dispute must have been compiled and be identifiable as part of the investigation in question. While little has been written about the identifiable requirement, in past orders OIPC adjudicators have held that compiling information involves some exercise of judgment, knowledge, or skill on behalf of the public body.⁴⁴

[68] The information in dispute is found in the video recordings, audio recording, transcript, and MVTP police report. I will address the information in the recordings and police report first, followed by the information in the transcript.

[69] I find that the information in the audio and video recordings and the MVTP police report is identifiable as part of the MVTP's investigation. There is no question that information found in a formal police report is identifiable as part of an investigation. As for the audio and video recordings, they document the dispute that was the subject of the MVTP's investigation and the police report expressly states that surveillance footage was "requested for review to ensure

⁴² Applicant's response submission at page 4.

⁴³ Applicant's response submission at page 12.

⁴⁴ Order F19-02, 2019 BCIPC (CanLII) at para 39; Order F23-78, 2023 BCIPC 90556 (CanLII) at para 95.

that events were as reported.”⁴⁵ Given their clear connection to the investigation and police report, I find that the audio and video recordings are identifiable as part of the investigation.

[70] I also find that the information in dispute in the audio and video recordings and the MVTP police report was compiled as part of the MVTP’s investigation. The withheld information is found in the police report in the investigating officer’s synopsis of the incident, summary of witness statements, and conclusions. As set out in the report, the investigating officer requested the recordings to “ensure events were as reported.”⁴⁶ The disclosed portions of the report make clear that the investigating officer used judgement to collect and record relevant information (including the recordings) and relied on that information to conclude that there was no violation of law and that no further action was required. Accordingly, I find that the withheld information was clearly compiled as part of the MVTP’s investigation.

[71] I come to the same conclusion about the information in the transcript, notwithstanding the fact that the transcript was created after the MVTP’s investigation concluded.⁴⁷ The transcript and audio recording contain the same information, just in a different form. Section 22(3)(b) applies to “information,” not “records.”⁴⁸ Given the focus of s. 22(3)(b), I find that the appropriate focus is on the information itself, not on the form in which the withheld information came before the OIPC. Accordingly, in determining whether s. 22(3)(b) applies, I find that it is appropriate to treat the information in the transcript the same as the information in the audio recording, regardless of the origin of the transcript.

[72] For these reasons, I find that all the information in dispute was “compiled” and is “identifiable” as part of the investigation.

Investigation into a possible violation of law

[73] The second requirement is that there must have been an “investigation into a possible violation of law.” In Order 01-12 former Commissioner Loukidelis defined the term “law” under s. 22(3)(b) as follows:

... “law” refers to (1) a statute or regulation enacted by, or under the statutory authority of, the Legislature, Parliament or another legislature, (2) where a penalty or sanction could be imposed for violation of that law. ... I also

⁴⁵ Police report at page 10.

⁴⁶ *Ibid.*

⁴⁷ As set out above, the MVTP created the transcript during the OIPC’s mediation process. In so doing, the MVTP gave the applicant access to information found in the audio recording that he would not have otherwise had access to.

⁴⁸ FIPPA defines as “record” including books, documents, maps, drawings, photographs, letters, vouchers, papers, and any other thing **on which information is recorded or stored** by graphic, electronic, mechanical or other means,

consider that the definition of "regulation" in s. 1 of the Interpretation Act offers guidance in identifying things that may - where a penalty or sanction could be imposed for their violation - properly be considered a "law" for the purposes of [FIPPA]:

"regulation" means a regulation, order, rule, form, tariff of costs or fees, proclamation, letters patent, commission, warrant bylaw or other instrument enacted⁴⁹

[74] The OIPC has not previously considered whether the CRMA is a "law" within the meaning of s. 22(3)(b).

[75] Most statutes, regulations, and orders related to Covid-19 have been amended and/or repealed since the events that led to this inquiry. This includes the CRMA which was repealed on December 31, 2022.⁵⁰ I find that the relevant time for assessing whether the investigation was into a possible violation of "law" is the date of the altercation and MVTP investigation. Accordingly, where I refer to the CRMA or any other statute, regulation, or order in this section, I am referring to the version that was in effect on that date.

[76] The CRMA was a statute enacted by the BC Legislature.⁵¹ As a result, it satisfies the first requirement of the definition of "law" set out above.

[77] While the CRMA itself contains no penalties or sanctions for its violation, it lists ministerial orders and regulations that were enacted as provisions of it.⁵² These orders and regulations contain prohibitions and requirements related to Covid-19, including a requirement to wear a mask in public places. In addition, the Violation Ticket Administration and Fines Regulation B.C. Reg. 89/97 (Ticket Regulation) made violation of these orders and regulations an "offence" that was subject to a fine.⁵³ Accordingly, it also satisfies the second requirement of the test above. Collectively, I will refer to the CRMA, the regulations and orders, and the Ticket Regulation as the "Covid Measures."

[78] The Covid Measures establish monetary fines for failing to wear a mask in certain public spaces including on public transportation. They were in place at the time of the police investigation, and the investigating officer expressly wrote that the investigation concerned, in part, whether the applicant had violated the law

⁴⁹ 2001 BCIPC 21566 (CanLII) at para 17.

⁵⁰ <https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/20008>.

⁵¹ The CRMA has since been repealed. However, the version of the CRMA that was in effect on the date of the incident and investigation is that which was in effect between January 8, 2021 and February 7, 2021. A copy of the relevant version can be accessed here: <https://canlii.ca/t/54w91>.

⁵² Section 3(1) of the CRMA states that "Each of the EPA instruments is enacted as a provision of this Act."

⁵³ Fine amounts were specified in the Ticket Regulation. A copy of the version of the Ticket Regulation that was in place at the relevant time can be accessed here: <https://canlii.ca/t/54wjf>.

by not wearing a mask on the bus.⁵⁴ For the reasons above, I find that the requirements of s. 22(3)(b) are satisfied with respect to all the withheld information. Therefore, the presumption against disclosure in s. 22(3)(b) applies to all the information in dispute.

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

[79] Section 22(3)(d) creates a presumption against disclosure where personal information relates to the employment history of a third party.

[80] In past orders, OIPC adjudicators have found that “employment history” includes qualitative information about a third party’s workplace behaviour such as complaints, investigations or discipline relating to a third party’s workplace conduct.⁵⁵

[81] Section 22(3)(d) has also been found to apply to personal information relating to the administration of a third party’s employment, such as information relating to job applications,⁵⁶ resumes,⁵⁷ personal identifiers,⁵⁸ and information about leaves to which the employee was entitled (for example, the type, amount or balance of parental, vacation, or sick leave).⁵⁹

[82] The MVTP argues that the bus driver’s name is part of his employment history because the name connects the driver to the MVTP’s investigation (which the MVTP refers to as concerning a workplace incident), and to statements the applicant made about the driver that the investigating officer recorded in the MVTP’s police report (which the MVTP characterizes as a workplace complaint). In support of its position, the MVTP cites several OIPC decisions in which adjudicators have held that information related to workplace investigations and workplace complaints constitute employment history.

[83] The applicant does not address s. 22(3)(d).

[84] While I accept the MVTP’s assertion that the driver’s name connects him to the MVTP’s investigation and the applicant’s statements, I do not accept that the driver’s name relates to his “employment history.”

[85] To start, the facts before me are dissimilar to those in the typical workplace investigation and complaint cases cited by the MVTP. Those cases

⁵⁴ Page 10 of the police report.

⁵⁵ Order 01-07, [2001] B.C.I.P.C.D. No. 7 at paras 19 and 20, Order 01-53, 2001 BCIPC 21607 (CanLII) at paras 32-33, Order F16-28, 2016 BCIPC 30 (CanLII) at para 94, Order F20-08, 2020 BCIPC 9 (CanLII) at para 56, and Order F23-56, 2023 BCIPC 65 (CanLII) at paras 70 and 73-77.

⁵⁶ Order F16-28, 2016 BCIPC 30 (CanLII) at para 94.

⁵⁷ Order 01-18, 2001 CanLII 21572 (BCIPC) at para 15.

⁵⁸ Order F14-41, 2014 BCIPC 44 (CanLII) at paras 46-47.

⁵⁹ Order F21-62, 2021 BCIPC 71 (CanLII) at paras 22-25.

concern workplace investigations into the actions of employee(s) where their employer's conducted or participated in the investigation.⁶⁰

[86] This inquiry concerned a police investigation, not a workplace investigation. The driver was not under investigation, nor were his employer or workplace. Instead, the investigation concerned the conduct of two outsiders to the workplace (the applicant and Passenger). The driver's employer did not conduct the investigation, and there is no information before me to suggest that the investigation was ever communicated to the driver's employer, or that it had any impact whatsoever on the driver's employment.

[87] The applicant made the statements about the driver's conduct to the MVTP's investigating officer during the investigation. While the investigating officer recorded the statements in the police report, it is clear from the report that the MVTP took no action in response to the statements. As with the investigation itself, there is no information before me to suggest that the applicant or anyone else ever communicated his statements to the driver's employer, or that they had any impact on the driver's employment.

[88] Given the substantially different facts, I do not find the typical workplace investigation cases cited by the MVTP helpful. Instead, in my view, other orders with more similar facts provide more helpful guidance. In Order F20-08, Adjudicator Davis distinguished between third parties who were and were not the subject of workplace investigations, ruling that the latter's personal information was not part of their employment history.⁶¹ Addressing the issue from a different angle, in Order F23-13, Adjudicator Siew held that a complaint about a third party's conduct in relation to a personal, non-work dispute did not relate to the third party's employment history despite the fact that the complaint related to an incident that occurred at the third party's workplace.⁶² Finally, in Order F22-15, Adjudicator Davis declined to apply s. 22(3)(d) to information about a third party's work experience and expertise, where the third party provided that information to a public body that was not his employer. In that same order, Adjudicator Davis also held that s. 22(3)(d) did not apply to a brief description of a third party

⁶⁰ Most of the cases cited by the MVTP concerned workplace investigations conducted by employers into alleged misconduct by third party employees whose personal information is at issue that could result in discipline (see Orders F08-04, 2008 BCIPC 133 (CanLII) and Order F21-17 2021 BCIPC 22 (CanLII)). The MVTP also cited one case in which an adjudicator held that information about third parties who were interviewed as part of a WorkSafe BC investigation into a workplace fatality was those third parties' employment history (see Order F10-36, 2010 BCIPC 54 (CanLII) at paras 21-23). While in that case the investigation was conducted by an outside entity and the third parties were not the sole subject of the investigation, the investigation pertained to a workplace matter; was well-known to the third party employees' employer; and concerned, in part, the third parties' actions in relation to the incident in which a worker died.

⁶¹ Order F20-08, 2020 BCIPC 9 (CanLII) at paras 56 and 57.

⁶² Order F23-13, 2023 BCIPC 15 (CanLII) at para 95.

employee's work history explaining that because it described the temporary condition of a work situation, it was not part of the employee's work "history."⁶³

[89] OIPC adjudicators have also declined to apply s. 22(3)(d) to information that is generally insignificant to a third party's employment such as employment-related gossip,⁶⁴ and vacation information.⁶⁵

[90] As in Order F20-08, the driver in the present case was not a subject of the investigation. Like Order F23-13, the investigation relates to a personal dispute rather than a workplace dispute, and moreover one between two outsiders to the workplace. As in Order F22-15, there is insufficient evidence to support a finding that the driver's employer ever received a copy of the investigation, or otherwise learned the details of the investigation or the applicant's statements. Finally, both because they are not really about the driver's employment and because I find that the driver's employer was never made aware of them, I find that they are not particularly significant to the driver's employment.

[91] Relying on the cases set out above, while I accept that the applicant's name connects him to the MVTP's investigation and the statements about him recorded in the MVTP's police report, I do not accept that the bus driver's name forms part of his employment history.

Racial or ethnic origin and religious or political beliefs – s. 22(3)(i)

[92] Section 22(3)(i) creates a presumption against disclosure where the personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

[93] The MVTP withheld the information from the transcript that reveals the Passenger's ethnic origin, views about religion, and opinions about an issue that has recently received considerable attention from Canadian politicians and media. This information clearly reveals the Passenger's ethnic origin, as well as her political and religious beliefs. I find that the presumption against disclosure in s. 22(3)(i) applies to this information.⁶⁶

Section 22(2) – All Relevant Circumstances

[94] 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

⁶³ Order F22-25, 2022 BCIPC 17 (CanLII) at para 67.

⁶⁴ Order F23-101, 2023 BCIPC 117 (CanLII) at para 163).

⁶⁵ Order F20-20, 2020 BCIPC 23 at paras 129-131 and Order F21-32, 2021 BCIPC 40 (CanLII) at paras 100 and 101.

⁶⁶ The information to which s. 22(3)(i) applies is found at pages 16, 19, 32, 34 of the transcript.

listed in s. 22(2). It is at this stage of the analysis that the presumptions in s. 22(3) may be rebutted.

[95] The MVTP submits that ss. 22(2)(a), (e), and (h), the sensitivity of information, and the applicant's pre-existing knowledge are relevant considerations. While the applicant does not address s. 22(2) directly, I will consider his submissions about his motives for requesting access, the public nature of the bus driver's employment, and how other entities handle similar information. I will also consider the fact that some of the withheld information – the applicant's name - is about him.

Scrutiny of a public body – s. 22(2)(a)

[96] Section 22(2)(a) requires a public body to consider whether “the disclosure is desirable for the purpose of subjecting the activities of ... a public body to public scrutiny.”

[97] What lies behind s. 22(2)(a) is the concept that where disclosure of records would foster accountability of a public body, this may support a finding that the release of third-party personal information would not constitute an unreasonable invasion of personal privacy.⁶⁷

[98] The MVTP states that it considered s. 22(2)(a) and determined that it does not apply.

[99] While the applicant does not address s. 22(2)(a) directly, it is clear from his submissions that he believes he was victimized by the Passenger during the altercation and that the bus driver and MVTP officers did not respond appropriately. From his submissions, I infer that the applicant believes that the withheld information, and in particular the audio and video recordings document this, and that disclosure of the withheld information would provide him supporting evidence should he need it in the future.

[100] The applicant also states that he was victimized in several past incidents that took place on public transit. I also understand the applicant to argue that there are problems with policing and transit in general (though I note that the materials the applicant submits in support of this position do not relate to the MVTP). On these bases the applicant argues that his right to safety and security should trump any other consideration.

[101] While the video and audio recordings of the public employees are no longer in issue due to my findings under s. 22(4)(e), I will briefly address them here for the sake of clarity as to what information is in dispute in this inquiry.

⁶⁷ Order F05-18, 2005 BCIPC 24734 (CanLII) at para 49.

[102] It is important that government be held to account for the way it treats citizens who use public services. If the disclosure of the withheld information could result in public scrutiny of police conduct or the treatment of public transit users by public employees, this would be a relevant consideration. However, having examined the information in dispute in this inquiry, I can see no connection between the disputed information and the scrutiny of a public body. To put it more plainly, I see no evidence of the kind of victimization and mistreatment suggested by the applicant.

[103] Furthermore, I note that little of the information the MVTP withheld relates to the conduct of public officials at all. Rather, most of it is about private individuals – the Passenger, other bus passengers, and pedestrians. The only information the MVTP withheld about employees of public bodies is the bus driver's name, and very brief (a few seconds at a time) audio and video recordings of the bus driver and transit security personnel. Conversely, the MVTP disclosed what the bus driver and transit security personnel said during the dispute and the substance of the MVTP police report (with the exception of a limited amount of personal information). For these reasons, I find that very little of the withheld information bears any relationship whatsoever to the activities of a public body.

[104] While I do not question the applicant's feelings about how he was treated, I can see no evidence that the records at issue in this inquiry capture what the applicant seeks, namely evidence that he was mistreated by the Passenger, the bus driver, or MVTP officers. However, recognizing that I cannot foresee all possible uses the applicant may make of the withheld information, and the fact that some of it relates to a police investigation, I accept that s. 22(2)(a) weighs in favour of disclosure, but for the reasons described above, attribute extremely limited weight to this factor.

*Unfair exposure to financial or other harm and damage to reputation –
ss. 22(2)(e) and (h)*

[105] Section 22(2)(e) requires a public body to consider whether disclosure of a third party's personal information will unfairly expose the third party to financial or other harm, while s. 22(2)(h) requires a public body to consider whether disclosure of personal information may unfairly damage a third party's reputation.

[106] The MVTP argues that ss. 22(2)(e) and (h) support withholding information that relates to a third party's medical information and relationship history because disclosure of the information may be harmful, stigmatizing and embarrassing to third parties.

[107] Past OIPC orders have interpreted “other harm” in s. 22(2)(e) as including serious mental distress, anguish,⁶⁸ and harassment,⁶⁹ but have made clear that embarrassment, upset, or having a negative reaction do not rise to the level of mental harm.⁷⁰ They have also recognized that disclosure of potentially stigmatizing information can damage a third party’s reputation within the meaning of s. 22(2)(h).⁷¹

[108] The MVTP argues that if the names of the Passenger or bus driver were disclosed to the applicant, the applicant may make repeated and persistent attempts to contact or harass them. In support of this assertion, the MVTP relies on affidavit evidence from its employee responsible for processing FIPPA requests (the Records Employee). The Records Employee states that because the applicant has made repeated requests to the MVTP for information, the MVTP is concerned that if he learned the third parties’ names, he would turn his attention toward them. As this argument relates to harassment, I will consider this argument under s. 22(2)(e).

[109] While I accept the Records Employee’s evidence that the applicant has made repeated FIPPA requests to the MVTP, I do not accept the Records Employee’s concern about what that history means about the applicant’s likelihood of harassing individual third parties. The act of making repeated FIPPA requests of a public body is not the same as harassing or making persistent attempts to contact private citizens. For instance, while making repeated requests for access to information under FIPPA is legal, harassing individual citizens is not. The two contexts are simply too different for me to accept that the applicant’s conduct in relation to FIPPA access requests makes it any more likely that the applicant would use the withheld information to harass or persistently attempt to contact the affected third parties. Accordingly, I do not accept that disclosure of the withheld information will result in “other harm” within the meaning of s. 22(2)(e).

[110] The MVTP also argues that the affected third parties may experience mental distress or anguish because the disclosure of potentially stigmatizing information may result in reputational harm. While the MVTP cites both ss. 22(2)(e) and (h), in relation to this argument, I find that it is best understood under s. 22(2)(h).

[111] While I cannot disclose much about the medical information or relationship history information without risk of revealing that information, I can say that it relates to life experiences and personal characteristics that can attract stigma

⁶⁸ Order 01-37, 2001 BCIPC 21591 (CanLII) at para 42.

⁶⁹ Order 01-37, 2001 BCIPC 21591 (CanLII) at para 42.

⁷⁰ Order F20-37, 2020 BCIPC 43 (CanLII) at para 120; Order 01-15, 2001 BCIPC 21569 (CanLII) at paras 49-50; and Order 01-37, 2001 CanLII 21591 (BCIPC) at para 42.

⁷¹ Order F16-33, 2016 BCIPC 37 (CanLII) at para 35.

and shame. Due to the stigma associated with this kind of information, I accept that its disclosure may unfairly damage the reputation of a third party within the meaning of s. 22(2)(h).

[112] In summary, I find that disclosure of the medical information and relationship history information may unfairly damage a third party's reputation and that this factor weighs against disclosure of this information,⁷² but that ss. 22(2)(e) and (h) are not relevant to any other information.

Applicant's personal information

[113] Past OIPC decisions have recognized that if information is also the applicant's personal information, this is a factor that weighs in favour of disclosure.⁷³

[114] In one instance, the MVTP withheld the applicant's name from the transcript. I find that the fact that the name is the applicant's personal information weighs in favour of disclosure.

Sensitivity

[115] Sensitivity is not an enumerated factor under s. 22(2), however, many past orders have considered it as a relevant circumstance. Where information is sensitive, this is a circumstance weighing in favour of withholding the information.⁷⁴ Conversely, where information is not sensitive, past orders have found that this weighs in favour of disclosure.⁷⁵

[116] The MVTP submits that the sensitivity of the withheld information is also a relevant consideration but does not identify specifically which information is sensitive.

[117] Some of the withheld information is potentially stigmatizing, embarrassing, or relates to personal details that are generally accepted to be private. In addition to the relationship history and medical information discussed above, this information includes detailed information about medical diagnoses and intimate information.⁷⁶ I find that the sensitivity of this information weighs strongly in favour of withholding it.

⁷² The information to which s. 22(2)(h) applies is found on pages 5 and 10 of the police report and pages 3 and 30 of the transcript.

⁷³ Order F23-56, 2023 BCIPC 65 (CanLII) at para 90; and Order F23-101, 2023 BCIPC 117 (CanLII) at paras 194-196.

⁷⁴ Order F19-15, 2019 BCIPC 17 (CanLII) at para 99.

⁷⁵ Order F16-52, 2016 BCIPC 58 (CanLII) at para 91.

⁷⁶ The information that I find is sensitive is found on pages 5 and 10 of the police report and pages 3, 8, 12, 17, 29, and 30 of the transcript.

Applicant's pre-existing knowledge

[118] Prior knowledge is not an enumerated factor under s. 22(2), but many past orders have held that the fact that an applicant already knows the third party personal information in dispute is a relevant circumstance that may weigh in favour of disclosure.⁷⁷

[119] The transcript documents a dispute between the applicant and the Passenger, and the MVTP withheld some of the words the Passenger said to the applicant during that dispute. Accordingly, to the extent that he can remember what was said, the applicant knows the information that the MVTP withheld from the transcript.

[120] The MVTP argues that the applicant should not retain or have any ongoing access to the identity or other personal information of the third party individuals, even if that information was known to him at some point, due to the sensitivity of the information and the potential reputational or other harm that would be caused by disclosure. It also argues that there is a difference between what the applicant recalls and disclosure of a written record containing third party personal information, especially given the nature of the withheld information.

[121] I find that the applicant's prior knowledge of what was said during the altercation weighs in favour of disclosure. However, I accept the MVTP's submission that the relevance of this factor is diminished by the fact that the extent of the applicant's knowledge is dependent on his ability to recall numerous specific statements from a heated, 35-minute verbal dispute that culminated in a police investigation. Therefore, while I find that the applicant's prior knowledge favours disclosure of the information withheld from the transcript, I find that the weight of this factor is diminished somewhat by the limitations of memory.

How other entities handle access to similar information

[122] The applicant makes several arguments that draw parallels between the instant inquiry and other contexts. With respect to the audio and video recordings, the applicant submits that other public bodies have released audio recordings to him and that as images and video recordings of transit users get released in other contexts by the media and by other public bodies, they should be released in this inquiry.

[123] I am not persuaded by these arguments. The factors determining whether a disclosure is an unreasonable invasion of a third party's personal privacy is a highly fact specific determination. Accordingly, the fact that the applicant may have received more or less information from his access requests to other public

⁷⁷ Order F17-02, 2017 BCIPC 2 (CanLII) at paras 28-30; Order 03-24, 2005 BCIPC 11964 (CanLII) at para 36; and Order F15-14, 2015 BCIPC 14 (CanLII) at paras 72-74.

bodies is not relevant to the instant inquiry. Furthermore, considerations affecting what the media can publish are different than those affecting a public body considering a disclosure of third party personal information. Therefore, the content of news media publications has no bearing on issues before me.

[124] While I have carefully considered the applicant's arguments, given the fact specific nature of s. 22, his submissions about how other entities respond to access request is of no assistance in determining the application of s. 22(1) to the information in dispute in this inquiry.

Conclusions – s. 22(1)

[125] The background scenery, vehicles, and the ill-defined and video of partial and ill-defined pedestrians are not "personal information" for the purpose of s. 22(1). Furthermore, the MVTP does not assert that s. 22(1) applies to the applicant's voice. For these reasons, the MVTP is not required to withhold this information under s. 22(1).

[126] As a result of my findings under s. 22(4)(e), disclosure of the audio and video recordings of the bus driver and transit security personnel is not an unreasonable invasion of these third parties' personal privacy. The MVTP is not required to withhold this information under s. 22(1).

[127] I also find that the MVTP is not required to withhold the applicant's name under s. 22(1). The MVTP withheld the applicant's name in one instance but disclosed it in all others. Its reasons for withholding the name in one context is not clear from the records, and the MVTP did not explain. Despite the fact that the applicant's name was part of the personal information compiled and identifiable as part of an investigation into a possible violation of law and thus attracts the presumption against disclosure in s. 22(3)(b), I can see no way in which disclosing the applicant's name could be an unreasonable invasion of any third parties' personal privacy. Therefore, I find the s. 22(3)(b) presumption is rebutted for the applicant's name and the MVTP is not required to withhold the applicant's name under s. 22(1).

[128] However, for the reasons below, I find that disclosure of the balance of the personal information would constitute an unreasonable invasion of third parties' personal privacy, and accordingly that the MVTP is required to withhold it under s. 22(1). The information the MVTP is required to withhold under s. 22(1) is:

- Names of the Passenger and bus driver,
- Biographical information of the Passenger,
- Voice of the Passenger, and
- Parts of the video recordings that show the Passenger, bus passengers, and some pedestrians.

[129] The presumption against disclosure of information that was compiled and is identifiable as part of an investigation into a possible violation of law in s. 22(3)(b) applies to all the above information. In addition, the presumption against disclosure of information that indicates a third party's racial or ethnic origin and political beliefs in s. 22(3)(i) applies to some of the Passenger's biographical information in the transcript. In addition to the presumptions, two other considerations weigh heavily against disclosure of some of the Passenger's biographical information – the s. 22(2)(h) consideration that disclosure could unfairly damage a third party's reputation and the sensitivity of the information.

[130] On the other side of the equation, two factors weigh in favour of disclosure that the information may be desirable for the scrutiny of a public body (s. 22(2)(a)) and the applicant's pre-existing knowledge of the information in the transcript. However, for the reasons discussed above, I attribute limited weight to these factors.

[131] While there are numerous presumptions and considerations in issue, the analysis comes down to a simple weighing exercise. The s. 22(3)(b) presumption against disclosure of information that was compiled and is identifiable as part of an investigation into a possible violation of law applies to all the information at issue (not to mention the other presumptions and considerations favouring withholding the information). Given their diminished weight, I find that the circumstances weighing in favour of disclosure (s. 22(2)(a) and the applicant's pre-existing knowledge) are not sufficient to rebut the s. 22(3)(b) presumption. For this reason alone, I find that disclosure of the information listed above would be an unreasonable invasion of third party personal privacy.

Section 4(2) - Severance

[132] Section 4(2) requires a public body to provide access to part of a record, if the information that is properly excepted from disclosure can reasonably be severed from the record.

[133] The MVTP's arguments about severance relate to the video recordings. It asserts that the information it is required to withhold under s. 22(1) cannot reasonably be severed because the process of blurring videos is time-consuming and challenging and can be onerous depending on what is occurring in the video. It explains that it was able to successfully blur out other individuals in the video recordings of the applicant because he was still, but that if the subject is moving, the blurring will be more time consuming as it requires tracking the subject's movement frame by frame so that the inverted blur follows them. According to the MVTP, even with adequate software and a subject that is not moving, it takes time and careful effort to blur the videos given the accuracy required.

[134] The applicant does not address s. 4(2).

[135] There are six recordings at issue, each from a camera that captures a different angle in and outside of the bus during the dispute. While the MVTP is required to withhold the parts of the videos that show the Passenger, other bus passengers, and identifiable pedestrians under s. 22(1), it is not required to withhold the parts that show the applicant, bus driver, transit security personnel, background scenery, vehicles, or unidentifiable pedestrians. If the information the MVTP is required to withhold can reasonably be severed from any of the video recordings, the MVTP is required to disclose the remainder of the recording to the applicant.

[136] In past orders, then Commissioner Loukidelis established the following principles regarding s. 4(2) which are applicable in this case:

While financial, practical, and technical considerations may be relevant to deciding whether excepted information can reasonably be severed from a particular record, [adjudicators] must be careful not to interpret section 4(2) of [FIPPA] in a manner which would undermine [FIPPA's] stated purpose of promoting more open and accountable public bodies.⁷⁸

One is not required to altogether ignore the burden of severing a record when considering whether protected information can “reasonably” be severed. There will be cases where the cost of severing is very great while the part of the record that remains after severing, reasonably viewed, is perhaps not entirely incoherent and meaningless, but nonetheless is without informational value.⁷⁹

[137] Relying on the principles set out above, I find that the video recordings cannot reasonably be severed further.

[138] The information the MVTP is required to withhold under s. 22(1) is interspersed with information the MVTP is not required to withhold under s. 22(1).⁸⁰ Severing video recordings can be more complex and time consuming than records in other formats, and I accept the MVTP's submission that severing moving targets, especially ones like the identifiable pedestrians who move quickly and appear hundreds of times throughout the six recordings poses an added level of difficulty. While the difficulty of severing is certainly not determinative, it is, as discussed by the former Commissioner, a relevant consideration under s. 4(2).

[139] With respect to the informational value of the information that would remain after severing the s. 22(1) information, that information is recordings of

⁷⁸ Order No. 205-1997, [1997] B.C.I.P.C.D. No.67, at p. 7.

⁷⁹ Order 03-16, 2003 BCIPC 49186 (CanLII) at para 59.

⁸⁰ For a detailed review of the content of the video recordings, see paragraph 20, above.

the background scenery, vehicles, unidentifiable pedestrians, the bus driver, and the transit security personnel.

[140] The background scenery, vehicles, ill-defined and partial pedestrians is essentially scenery. I find that this information easily falls into the category of “not entirely incoherent and meaningless,” but nonetheless “without informational value”.⁸¹

[141] While the parts of the video recordings that show the bus driver and transit security personnel has greater informational value because it shows how these individuals performed their duties, its value is limited by the brevity and mundanity of the footage. In addition, the recordings of the bus driver and transit security personnel is found in the Camera 2 footage which also contains recordings of the Passenger, other bus passengers, and identifiable pedestrians, making severance more difficult.

[142] Weighing the value of the information against the difficulty of severing the video recordings, I find that the video recordings cannot reasonably be severed any further.

[143] As for whether the audio recording can reasonably be severed under s. 4(2), I find the OIPC investigator’s decision in the complaint file is determinative of that issue. I found that the MVTP is required to withhold the Passenger’s voice under s. 22(1). As is evident from the transcript, the Passenger’s voice makes up about half of the audio recording. In the circumstances, the OIPC investigator’s determination that the Passenger’s voice information could not reasonably be severed from the other voice information in the audio recording, is determinative of the s. 4(2) issue with respect to the voice information. Accordingly, I confirm that the MVTP is not required to sever the Passenger’s voice from the audio recording.

Summary – Severance

[144] In summary, I find that the MVTP is not required to sever any more information in the audio or video recordings than it has already severed.

CONCLUSION

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

1. The MVTP is required to refuse access to the names of the Passenger and bus driver, the biographical information of the Passenger, the voices of the Passenger, and the parts of the video recordings that show the Passenger, bus passengers, and identifiable pedestrians.

⁸¹ *Ibid.*

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2. While the MVTP is not required to refuse access to the voices of the applicant, bus driver, and transit security officer or the parts of the video recordings that show the bus driver, transit security officer, background scenery, vehicles, and unidentifiable pedestrians under s. 22(1), in light of my finding in respect of s. 4(2), the MVTP not required to give the applicant access to this information.
 3. The MVTP is required to give the applicant access to his name which is found in paragraph 151 on page 7 of the transcript.
 4. The MVTP is required to provide the OIPC registrar of inquiries with a copy of its cover letter and the record sent to the applicant in compliance with item 3 above.

[145] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **March 26, 2024**.

February 12, 2024

ORIGINAL SIGNED BY

Allison Shamas, Adjudicator

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