



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F24-34

WORKERS' COMPENSATION BOARD

Erika Syrotuck
Adjudicator

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Summary: An applicant made an access request to WorkSafeBC for data about workplace injuries under the *Freedom of Information and Protection of Privacy Act* (FIPPA). WorkSafeBC provided portions of three datasets to the applicant and refused access to the remainder of the information under s. 22(1) (unreasonable invasion of personal privacy). The key issue was whether the information in dispute was “personal information” within the meaning of FIPPA. The adjudicator found that most, but not all, of the information was personal information, and that WorkSafeBC was required to withhold all the information that was personal information under s. 22(1). The adjudicator required WorkSafeBC to give the applicant access to the information that was not personal information.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, [RSBC 1996] c. 165, s. 22(1), 22(2)(a), 22(2)(b), 22(3)(a), 22(3)(d), 22(4)(d), Schedule 1 definitions of “contact information” and “personal information”.

INTRODUCTION

[1] An applicant made an access request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to the Workers' Compensation Board (WorkSafeBC) for accident, work loss and illness data from 2008 to the date of the request (November 2021). From communications between the applicant and WorkSafeBC, it seems that the applicant subsequently narrowed the parameters of the access request to 2015 onwards.¹

[2] In response, WorkSafeBC provided partial copies of three datasets and withheld the remaining information under s. 22(1) (unreasonable invasion of personal privacy) of FIPPA.

¹ Affidavit of WorkSafeBC's FIPP Coordinator, Exhibit B.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review WorkSafeBC's response. Mediation by the OIPC did not resolve the s. 22 issue and the matter proceeded to inquiry.²

ISSUE

[4] At this inquiry, I must decide whether WorkSafeBC must withhold the information in dispute under s. 22(1).

[5] Section 57(2) specifies that the applicant has the burden of proving that disclosure of the information in dispute would not be an unreasonable invasion of a third party's personal privacy. However, the public body has the initial burden of proving that the information in dispute is "personal information" within the meaning of FIPPA.³

DISCUSSION

Information at issue

[6] As I mentioned above, in response to the applicant's request, WorkSafeBC provided partial copies of three datasets, each in the form of a spreadsheet.

[7] The first dataset relates to Notice of Incident Reports (Notice Dataset). This dataset includes many fields, such as the seriousness of the injury(s), the jobsite address and the date WorkSafeBC was notified. It has over 6000 rows of data. WorkSafeBC provided almost all the data in the Notice Dataset to the applicant but withheld the name of the employer where the employer was a sole proprietor. I gather from the context that this means the sole proprietor was the subject of the incident report.

[8] The other two datasets contain data about work-related deaths (Deaths Dataset) and short-term, long-term, and fatal benefits (Benefits Dataset), respectively. The Deaths Dataset has just over 700 rows of data. The Benefits Dataset has over 368,000 rows of data. My understanding based on reviewing the data is that each row of data in each of these datasets is about a specific worker who was injured at work.

[9] With respect to both the Deaths and Benefits Datasets, WorkSafeBC disclosed all of the data in the following columns:

- worker's occupation;

² The Investigator's Fact Report also indicates that the investigator found that s. 25(1)(b) did not apply and therefore was not an issue to be decided in the inquiry.

³ Order 03-41, 2003 CanLII 49220 (BCIPC) at paras 10-11.

- accident type;
- nature of injury;
- worker’s gender;
- industry sector;
- industry subsector; and
- industry classification unit.

[10] In addition, WorkSafeBC disclosed the data in columns titled “Deceased Year” and “Age at Injury” on the Deaths Dataset.

[11] WorkSafeBC withheld the following data from both the Deaths and Benefits Datasets:

- the full date of the injury or death;
- body part injured;
- claim registration date; and
- short-term disability time loss days.

[12] In addition, WorkSafeBC withheld the following information from the Benefits Dataset:

- whether a claim was due to a work-related death; and
- worker age at injury.

Sampling approach

[13] Due to the very large volume of data in the Benefits Dataset, I proposed using a sampling approach to decide the s. 22(1) issue with respect to the information in dispute in this dataset.⁴ The purpose of using a sampling approach is to best use the OIPC’s resources while still fully deciding the issues in dispute.

[14] WorkSafeBC said it agreed that a sampling approach would allow me to adequately assess whether s. 22(1) applies to the information in dispute. WorkSafeBC said it leaves it to my discretion to determine how many and which rows of data to use as a sample.

[15] The applicant seems to agree that a sampling approach is appropriate. The applicant suggested a sample size of 10%. The applicant did not provide input on how to select the sample.

[16] In my view, whether s. 22(1) requires WorkSafeBC to withhold the information in dispute in the Benefits Dataset can be fairly decided using a sample. One reason for this is that each column of withheld data follows the

⁴ By letter on March 20, 2024. To be clear, I did not propose using a sampling approach for the Deaths Dataset or the Notice Dataset. I reviewed all the withheld information in those datasets.

same format. For example, the date of the injury and the claim registration date are dates. The short-term disability time loss days and age at injury are numbers. In this way, the nature of the data is consistent all the way through the dataset.⁵

[17] In terms of determining the data for the sample, I have decided to select three different occupations that cover multiple sectors.⁶ My intention in choosing occupations that cover multiple sectors is to account for the differences in the types of injuries that are likely to occur in different kinds of work. I also chose occupations that were a manageable size (some occupations alone have thousands of entries). With all this in mind, I have decided that the sample will be all of the entries relating to the following occupations:

- Accounting and related clerks
- Facility operation and maintenance managers
- Logging machinery operators

[18] The total for these three occupations combined is about 1600 rows of data in the Benefits Dataset.

Section 22 – unreasonable invasion of a third party’s personal privacy

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

[20] WorkSafeBC has withheld all the information in dispute under s. 22(1). Since s. 22(1) only applies to personal information, I will first determine whether the information in dispute is personal information within the meaning of FIPPA.

Is the information “personal information”?

[21] Schedule 1 of FIPPA says that “personal information” means 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 alone or when combined with other sources of information.⁷

[22] FIPPA also says that “contact information” means information to enable an individual at a place of business to be contacted and includes the name, position

⁵ One thing to note is that I am not attempting to select a statistically accurate sample, such as one might for research or scientific purposes. Rather, the purpose of the sample is to decide the issue in dispute.

⁶ The occupation as indicated on the Benefits Dataset, column D and the sector as indicated in the Benefits Dataset column E, disclosed.

⁷ Order F18-11, 2018 BCIPC 14 (CanLII) at para 32.

name or title, business telephone number, business address, business email or business fax number of the individual. Past orders have repeatedly said that whether information is “contact information” depends on the context in which it appears.⁸

[23] WorkSafeBC argues that the information at issue is personal information because it would allow individuals to be identified. I will address each of the datasets in turn, starting with the Notice Dataset.

i. Notice Dataset

[24] WorkSafeBC says that the names of sole proprietors in the Notice Dataset are personal information because an individual’s name is personal information.

[25] I accept that the names of sole proprietors are recorded information about an identifiable individual.

[26] I have also considered whether the names are contact information. I am not persuaded that the purpose of including the information was to enable an individual to be contacted at a place of business. Rather, on its face, it seems to me the purpose was to record information about the workplace incident that was the subject of notice to WorkSafeBC.

[27] I conclude that the information at issue in the Notice Dataset is personal information.

ii. Death and Benefits Datasets

[28] WorkSafeBC says that the withheld information in these two datasets is also personal information.

[29] In support of this submission, WorkSafeBC refers to the “mosaic effect”, that is that seemingly innocuous information can be combined with already available sources of information to render an individual identifiable and may be excepted from disclosure under FIPPA.⁹ WorkSafeBC also references prior orders which have found that disclosure under FIPPA is “disclosure to the world” and says that it kept this principle in mind when determining which information needed to be severed due to the “mosaic effect”.

[30] Specifically, WorkSafeBC says that the withheld information can be combined with information already disclosed in the datasets and information from

⁸ Order F22-62, 2022 BCIPC 70 (CanLII) at para 18; Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

⁹ WorkSafeBC’s initial submissions, para 23 citing Order 01-01, 2001 CanLII 21555 (BCIPC) at paras 40-42.

the following external sources:

- information known to co-workers and neighbours of individuals whose information is contained in the datasets;
- news stories, obituaries, or postings on social media platforms; and
- WorkSafeBC's website.

[31] With respect to the information available on WorkSafeBC's website, WorkSafeBC provided evidence that its website contains several types of information.¹⁰ It provided three examples.

[32] First, WorkSafeBC provided evidence that it publishes summaries of recent incidents to alert employers and workers to hazards in their industry. It says these incidents can be searched using search terms and filtered using the industry and core activity of the employer involved, topic, location, injury type and year filters. The alerts include the month and year in which the incident occurred, the nature of the work activity taking place at the time of the incident and a brief description of the incident.

[33] Second, WorkSafeBC provided evidence that it publishes summaries of its investigations into serious or fatal workplace incidents. The investigation summaries include the month and year of the incident, the notice of incident number and a description of the core activity in which the employer involved in the incident is engaged. It says the summaries include a "findings" section which could include the occupations of the workers involved and information about the nature and type of incident that occurred.

[34] Third, WorkSafeBC provided evidence that it publishes summaries of penalties imposed on employers for health and safety violations under the *Workers Compensation Act*,¹¹ and the Occupational Health and Safety Regulations, for example. WorkSafeBC's evidence is that these penalty summaries:

- are published as a deterrent and to highlight the importance of making workplaces safe;
- can be searched using keywords and filtered using various criteria, including the year in which the penalty was imposed;
- include the name of the employer subject to the penalty and the employer's classification unit; and
- may include the occupation of the workers involved in an incident and that the penalty was imposed as a result of a fatal incident.

¹⁰ Affidavit of WorkSafeBC's FIPP Coordinator, paras 7-9 and Exhibits E-H.

¹¹ RSBC 2019, c 1.

[35] WorkSafeBC says that, if it disclosed complete datasets, an individual could, for example, take the following steps to link information in the datasets to identifiable individuals:

- Search its online penalty summaries for a penalty of interest, such as one involving a fatal incident or a particular industry;
- Identify the classification unit of the employer to whom the penalty was issued and the industry in which the employer operates;
- Filter the Deaths Dataset or Benefits Dataset using the classification unit and sort the datasets using the date of injury or death to locate all incidents in that classification unit within a specific date range;
- Link the data located through the Deaths Dataset or Benefits Dataset to identify the employer for whom the injured or deceased worker in the Deaths Dataset or Benefits Dataset was working;
- Using information available about the employer online, including on social media sites, or through other individuals who are aware of the incident, identify the worker(s) involved; and
- Review the Deaths Dataset or Benefits Dataset to identify that:
 - the workers involved filed a claim for compensation with WorkSafeBC, the duration of wage loss benefits paid to the injured worker and the specific body part injured (Benefits Dataset); or
 - the next-of-kin of the worker involved filed claim a claim for compensation with WorkSafeBC, identify the age of the deceased worker and the specific body part injured (Deaths Dataset).

[36] WorkSafeBC says that if it discloses unredacted datasets to the applicant, any individual with knowledge about a particular incident, such as an injured or deceased worker's relative, friend, colleague or neighbour, or a person with knowledge through information available on-line, could access the unredacted datasets to uncover personal information about the injured or deceased worker. WorkSafeBC says that this raises the likelihood that such an individual would gain access to personal information about injured or deceased workers that WorkSafeBC does not otherwise make accessible, including the length of time for which the worker received wage loss benefits, the injured body parts affected and the worker's age.

[37] WorkSafeBC made specific arguments with respect to each column of data it withheld. I will address these arguments in my analysis below.

[38] For these reasons, WorkSafeBC submits that the information it withheld from the datasets meets the definition of personal information under FIPPA.

[39] The applicant says that WorkSafeBC's arguments that the information can be used to identify individuals does not make sense. The applicant says that the

data at issue helps to identify trends, not identify individuals whose information is contained in the anonymized data.

Analysis – personal information

[40] I have no reason to doubt that the applicant does not intend to use the data to identify individuals. However, it is well-established that disclosure through FIPPA is disclosure to the world.¹² So, I must approach the question of whether the information is about an identifiable individual, not just in terms of whether the applicant could identify any workers but whether the information is identifiable to a third party.¹³

Deaths Dataset

[41] In my opinion, all of the withheld information on the Deaths Dataset is about identifiable individuals based on the information that WorkSafeBC has already disclosed.

[42] As I mentioned above, in relation to each worker who died as a result of a work-related injury, WorkSafeBC has already disclosed:

- the year the worker died;
- the worker's occupation;
- the accident type;
- the nature of the injury;
- information about the worker's industry;
- the worker's gender; and
- the age of the worker at injury.

[43] In my view, in combination with other available sources, this is already enough information to be able to identify each deceased worker. In coming to this conclusion, I have considered the overall number of entries in the Deaths Dataset (about 700) and the fact that many fields would allow a third party to significantly narrow down the data, specifically; the worker's age, the year the worker died, the worker's gender and the worker's occupation. Due to its significance, I also find that a work-related death is likely to be subject of a news story, obituary or social media post. For all of these reasons, I find the likelihood of re-identification to be high. On balance, I am persuaded that all of the information withheld from the Deaths Dataset is personal information.

¹² For example, Order F16-38, 2016 BCIPC 42 (CanLII) at para 131.

¹³ The adjudicator took a similar approach in Order F19-13, 2019 BCIPC 15 (CanLII) at para 21.

Benefits Dataset

[44] WorkSafeBC has already disclosed the worker's occupation, industry sector and subsector, the industry classification unit, accident type, nature of injury and worker's gender. I am not persuaded that the already available information is enough to identify the worker, alone or in combination with other available information, especially because there are over 368,000 workers' data in the dataset.

[45] In addition, in many cases, the disclosed data is the same across multiple rows of workers' data. In this case, I do not see how an individual worker could be re-identified from the available data alone.

[46] In addition, although some already disclosed rows of data have unique combinations, it seems to me that in order to identify the worker, one would need to have detailed knowledge of how WorkSafeBC categorizes occupations, sectors and/or injury types. WorkSafeBC did not provide adequate evidence in its submissions about how it does this.¹⁴ For these reasons, I find that the already disclosed information in the Benefits Dataset is not about an identifiable individual.

[47] The next question is whether any of the withheld information in the Benefits Dataset, if disclosed, is capable of identifying the specific workers. I will evaluate each category in turn.

[48] **Full date of the injury or death** - WorkSafeBC says that the withheld information could identify the individual and particulars of the injury or fatality if combined with the other information already disclosed.

[49] In my view, the full date of the injury or death is key information that could be used, in combination with the already disclosed data, to search online or to allow someone with personal knowledge of the death or injury to identify an individual.

[50] **Claim registration date** – WorkSafeBC says that the claim registration date may be the same or close to the injury or death date. It says that, combined with other available sources of information, the worker could be identified.

[51] After evaluating the data in the sample, I can see that in the vast majority of cases the date of the worker's claim is relatively close to the date of the respective worker's injury. In these cases, I find that the claim registration date, if

¹⁴ I note that in WorkSafeBC's letter to the applicant attached as Exhibit C to the FIPP Coordinator's affidavit, WorkSafeBC refers to a WorkSafeBC webpage about its classification system. However, it did not provide it for my review.

disclosed, is capable of identifying the workers in combination with the already disclosed information.

[52] However, there are some instances where the claim registration date is far from the injury date, in some cases by many years. I find that, where the claim registration date is more than 90 days before or after the injury date, the claim registration date is no longer correlated with the injury date. I do not understand how these claim registration dates are capable of identifying the worker.

[53] **Body part injured** - WorkSafeBC says that the withheld information could identify the individual and particulars of the injury or fatality if combined with the other already disclosed information.

[54] I am not persuaded that the body part injured is capable of identifying an individual, alone or in combination with other available sources. This is mainly because the information is vague. It appears to me that the entries were selected from pre-identified categories rather than uniquely written to describe the specific injury. In addition, in many cases, the body part that is injured is already inferable from the nature of injury and/or accident type, which have been disclosed.

[55] I am not persuaded that the body part injured could lead to re-identification of a worker.

[56] **Whether a claim was related to a death** – WorkSafeBC says that disclosure of this information would reveal information about an identifiable individual, such as the amount of time that passed between a worker's injury date and their death, and the nature of their injury.

[57] I find that revealing the data in the Benefits Dataset about whether a claim was related to a death would allow a third party to cross-reference this data with the data in the Deaths Dataset. Since I found above that the information on the Deaths Dataset was identifiable information about an individual, it follows that the data in the Benefits Dataset indicating whether the claim was related to a death is also about an identifiable individual.

[58] **Short-term disability time loss days** - WorkSafeBC says that disclosure of this information could lead to the re-identification of specific workers.

[59] I am persuaded that the number of wage loss days paid to an injured worker is capable of identifying that worker. This is because I think it is information that someone with close knowledge of the worker would know or be able to guess with some accuracy. While not strictly unique, I note that there is a very large range in the number of days claimed. In my opinion, the variation in the number of days heightens the possibility of re-identification when combined with the already disclosed data. On balance, I find that the number of short-term

disability time loss days could be used in combination with other available information to re-identify a worker who was injured at work.

[60] **Worker age at injury** - WorkSafeBC says that the worker's age at injury is key identifying data, which would narrow the set of potential individuals to whom a row of information relates. WorkSafeBC also says that one could combine the information in the Benefits Dataset with the information in the Deaths Dataset to identify the age of the worker at the time of injury and the age of the worker at the time of their death.

[61] I accept WorkSafeBC's submission that the worker's age at injury is key information that could allow someone with knowledge of an injury to re-identify a worker in combination with the already disclosed information.

Conclusion – Benefits dataset

[62] On balance, I am persuaded that the injury date, the claim registration date where it is within 90 days of the injury date, worker age at injury, whether a claim was related to a death and the number of short-term disability time loss days is information about identifiable individuals. It is clearly not contact information. As such, I find that it meets the definition of "personal information" in FIPPA.

[63] However, I am not persuaded that the body part injured or the claim registration date where it is 91 days or more before or after the injury date is capable of identifying specific workers. I find that this information is not "personal information".

iii. Summary – personal information

[64] In summary, I find that the following types of information are personal information within the meaning of FIPPA:

- all of the names of sole proprietors withheld from the Notice Dataset;
- all of the information withheld from the Deaths Dataset;
- the injury date, the claim registration date where it is within 90 days of the injury date, worker age at injury, whether a claim was related to a death and the number of short-term disability time loss days on the Benefits Dataset.

Section 22(4) – not an unreasonable invasion

[65] Section 22(4) sets out circumstances where disclosure of personal information is not an unreasonable invasion of a third party's personal privacy. A

public body may not withhold personal information to which one or more of the circumstances in s. 22(4) apply.

[66] WorkSafeBC says that none of the circumstances in s. 22(4) apply. The applicant did not directly comment on this.

[67] I agree that none of the circumstances apply, but one circumstance bears further comment, specifically s. 22(4)(d). This provision says that it is not an unreasonable invasion of a third party's personal privacy if the disclosure is for a research or statistical purpose and is in accordance with s. 33(3)(h). I make note of this because I gather the applicant intends to use the information to research workplace safety. There is no need to determine whether this is a "research or statistical purpose" within the meaning of s. 22(4)(d) because even if it was, I find that disclosure is not in accordance with s. 33(3)(h).

[68] Section 33(3)(h) has many requirements, none of which are met here. For example, s. 33(3)(h)(i) requires that:

the research purpose cannot be accomplished unless the information is disclosed in individually identifiable form, or the research purpose has been approved by the commissioner,

[69] Nothing in the materials persuades me that this the research purpose has been approved by the commissioner or that the research cannot be accomplished unless the personal information is disclosed in individually identifiable form.

[70] I find that none of the circumstances in s. 22(4) apply.

Section 22(3) - presumptions

[71] Section 22(3) sets out circumstances where disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. WorkSafeBC argues that ss. 22(3)(a) and (d) apply, so I will address these circumstances.

Section 22(3)(a) – medical history

[72] Section 22(3)(a) creates a presumption that disclosure is an unreasonable invasion of a third party's personal privacy if the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation.

[73] WorkSafeBC submits that the personal information in dispute is part of the workers' medical histories, conditions, or treatment under s. 22(3)(a).

[74] All of the information in the Deaths and Benefits datasets relates to injuries that workers sustained at work. On this basis, I am persuaded that all of the personal information in the Deaths and Benefits datasets are a third party's medical history under s. 22(3)(a).

[75] In most cases, I am persuaded that the names of the sole proprietors on the Notice Dataset are those third parties' medical histories under s. 22(3)(a). This is because, according to the disclosed information in the Notice Dataset, most of the notices are related to a workplace injury or fatality.¹⁵ In these cases, I find that s. 22(3)(a) applies.

[76] However, some entries in the Notice Dataset are notices related to a "non-injury" or "potential serious injury".¹⁶ In these cases, I am not persuaded that the information relates to a third party's medical history, diagnosis, condition, treatment or evaluation because, as I understand it, no injury occurred.

[77] In conclusion, most, but not all of the personal information in dispute is a third party's medical history under s. 22(3)(a).

Section 22(3)(d) – employment history

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

[79] WorkSafeBC says that the fact that a worker has a claim for compensation as a result of a work-related injury is part of the worker's employment history. It relies on Order F15-38 for that proposition.¹⁷

[80] In Order F15-38, the adjudicator found that s. 22(1) applied to the information in dispute but did not make a specific finding respecting s. 22(3)(d). In any case, I am persuaded that the fact that a worker was injured at work and claimed compensation for that injury is that worker's employment history. For this reason, I find that all of the personal information in dispute on the Deaths Dataset and the Benefits Dataset is the respective worker's employment history.

[81] Similarly, I find that the personal information on the Notice Dataset in cases where an injury resulted from the incident is the sole proprietors' occupational history.

[82] Further, on the Notice Dataset, where the incident resulted in a "non-injury" or "potential serious injury," I find that this also falls under s. 22(3)(d). In

¹⁵ As indicated in columns C, D, E, F and/or G on the Notice Dataset, disclosed.

¹⁶ For example, the entry at line 173.

¹⁷ Order F15-38, 2015 BCIPC 41 (CanLII).

my view, that a sole proprietor experienced an incident serious enough to be reported to WorkSafeBC, even if it did not result in an injury, is that sole proprietor's occupational history.

[83] I find that s. 22(3)(d) applies to all of the personal information in dispute.

Section 22(3) – summary

[84] In summary, I am persuaded that at least one of s. 22(3)(d) applies to all the personal information in dispute and that s. 22(3)(a) applies to most of it. As a result, disclosure of any of the personal information is presumed to be an unreasonable invasion of a third party's personal privacy.

Section 22(2) – relevant circumstances

[85] The next step in the s. 22(2) analysis is to consider all the relevant circumstances, including those listed in s. 22(2)(a) through (i).

[86] WorkSafeBC says that it has considered whether ss. 22(2)(a) and (b) apply. The applicant makes an argument about past practices that I have also considered as a relevant circumstance.

Section 22(2)(a) – public scrutiny

[87] Section 22(2)(a) lists as a relevant circumstance whether the disclosure is desirable for the purpose of subjecting the activities of the public body to public scrutiny. If it applies, this circumstance weighs in favour of disclosure.

[88] WorkSafeBC says that the disclosure of the information in dispute does not assist with scrutinizing WorkSafeBC as it does not include information about WorkSafeBC's activities, decisions made by WorkSafeBC with respect to injured workers or actions taken by WorkSafeBC in relation to workplace incidents. Rather, it says that information strictly relates to individuals who were injured at work.

[89] The applicant says that disclosing the information is clearly in the public interest but does not elaborate.

[90] I am not persuaded that disclosure of the information in dispute is desirable for the purpose of subjecting a public body to public scrutiny. The information in dispute is about individual workers or sole proprietors. I do not see how it would contribute to scrutinizing the activities of WorkSafeBC or any other public body. I find that s. 22(2)(a) does not apply.

Section 22(2)(b)

[91] Under s. 22(2)(b), whether the disclosure is likely to promote public health and safety or to promote the protection of the environment is a relevant circumstance. If it applies, this circumstance weighs in favour of disclosure.

[92] WorkSafeBC says that the information in dispute is not likely to promote public health and safety. More specifically, it says that the unredacted datasets do not contain any information that would assist the public in determining what steps to take to mitigate the risk of a workplace injury or to generally promote occupational health or safety at their workplace.

[93] The applicant refers to researching workplace safety but does not elaborate.

[94] I am not persuaded that disclosure of the information in dispute is likely to promote health and safety. For example, I do not see how disclosure of the injury date, the number of short-term disability time loss days, the worker's age or the names of sole proprietors promotes health and safety. I find that s. 22(2)(b) does not apply.

Past practice

[95] Past disclosure practice of the public body is not an enumerated circumstance under s. 22(2), however, past orders have considered it as a relevant circumstance. For example, in Order F09-15, the adjudicator said that the public body's past practice, in combination with other particulars, can be a relevant circumstance.¹⁸

[96] The applicant says that WorkSafeBC provided the types of information at issue more than 10 years ago and does not understand why WorkSafeBC's position has changed.¹⁹ The applicant says that disclosure of this information is clearly in the public interest.²⁰

[97] In response, WorkSafeBC says that the obligation to withhold personal information must be judged in relation to the requirements of s. 22(1). It says that its past practice is not determinative of the issue in this inquiry.

[98] I can appreciate the applicant's point that WorkSafeBC's position has changed. The applicant expected to be given the complete datasets, but WorkSafeBC refused access to some of the information. However, I agree with

¹⁸ Order F09-15, 2009 CanLII 58553 (BC IPC) at para 35.

¹⁹ To be clear, nothing indicates to me that the exact same data is at issue because the previous request covered a time period ending in 2007.

²⁰ I interpret this to be a general statement, rather than an attempt to revisit s. 25(1)(b).

WorkSafeBC that past practice is not determinative of the issue in this inquiry. Circumstances may shift over time. And, if information disclosed in the past did result in unreasonably invading a third party's personal privacy, a public body should not continue to disclose that type of information just because it did so previously.²¹ This is not like in Order F09-15, where there was a gap in the ability to access certain types of information due to legislative oversight.

[99] In my view, WorkSafeBC's past practice is not a factor that weighs in favour of disclosure in this case.

Conclusion – s. 22(1)

[100] Most of the information in dispute is personal information within the meaning of FIPPA because it is capable of identifying an individual, either alone or in combination with the other information that WorkSafeBC disclosed. However, I found that the body part injured and the date of the claim registration where it is 91 days or more from the date of the injury were not personal information.

[101] I find that s. 22(1) applies to all of the personal information in dispute. This is because none of the circumstances in s. 22(4) apply and disclosing all of the information is presumed to be an unreasonable invasion of a third party's personal privacy under s. 22(3)(a) or (d). In addition, there are no circumstances that weigh in favour of disclosure under s. 22(2).

[102] In conclusion, WorkSafeBC is required to withhold all of the personal information under s. 22(1) because disclosure would be an unreasonable invasion of a third party's personal privacy.

CONCLUSION

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

1. I require WorkSafeBC to refuse to disclose the following information in dispute because disclosure would be an unreasonable invasion of a third party's personal privacy under s. 22(1):
 - a. all of the names of sole proprietors withheld from the Notice Dataset;
 - b. all of the information withheld from the Deaths Dataset;
 - c. all of the information in the following columns of the Benefits Dataset: injury date, worker age at injury, whether a claim was

²¹ To be clear, I make no judgment on whether WorkSafeBC's past disclosure was or was not an unreasonable invasion of third parties' personal privacy.

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- related to a death and the number of short-term disability time loss days; and
- d. the claim registration dates on the Benefits Dataset that are within 90 days of the respective injury date.
2. I require WorkSafeBC to give the applicant access to the following information in the Benefits Dataset:
 - a. all of the information in the body part injured column;
 - b. the claim registration dates that are 91 days or more before the respective injury date; and
 - c. the claim registration dates that are 91 days or more after the respective injury date.
 3. WorkSafeBC must concurrently copy the OIPC registrar of inquiries on its cover letter to the applicant, together with a copy of the information described at item 2 above.

[104] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by 13 June, 2024.

May 1, 2024

ORIGINAL SIGNED BY

Erika Syrotuck, Adjudicator

OIPC File No.: F22-88717