Order F24-41

WORKERS' COMPENSATION BOARD

Alexander Corley
Adjudicator

May 14, 2024

CanLII Cite: 2024 BCIPC 49
Quicklaw Cite: [2024] B.C.I.P.C.D. No. 49

Summary: An applicant requested a variety of records from the Workers' Compensation Board (Board), operating as WorkSafeBC. In response, the Board provided the applicant with responsive records but withheld some information from those records pursuant to ss. 13(1) (advice or recommendations) and 22(1) (unreasonable invasion of privacy) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator determined that the Board had properly applied s. 13(1) to withhold most, but not all, of the information in dispute. The adjudicator also found that the Board was required to withhold some of the information in dispute pursuant to s. 22(1). The adjudicator ordered the Board to give the applicant access to the information it was not authorized or required to withhold.

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

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (applicant) asked the British Columbia Workers' Compensation Board (Board) for all records in the Board's custody or control regarding the applicant or their company or referencing a specific acronym related to the applicant's past dealings with the Board.[1]

[2] In response, the Board provided numerous records to the applicant but withheld some information from those records under ss. 13(1) (advice or recommendations) and 22(1) (unreasonable invasion of privacy) of FIPPA.[2]

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[1] Access Requests #1 and #2 dated August 31, 2021, and September 1, 2021, respectively.
[2] Board's Response Letters dated November 12, 2021, and January 6, 2022. From this point forward, references to a section of a statute are references to FIPPA, unless otherwise specified.

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review the Board's decision to withhold information from the records. Mediation by the OIPC did not resolve the matter and the applicant requested that it proceed to an inquiry.

[4] The Board requested, and received, permission from the OIPC to provide some information in its affidavit evidence *in camera* (that is, for only the Commissioner, and not the applicant, to see).[3]

PRELIMINARY ISSUES

Applicant no longer seeking access to some information

[5] In their submission, the applicant says that they are no longer seeking access to the "personal identifiers" of any third parties who made compensation claims to the Board (claimants). Therefore, I find that the names and Board-assigned claim numbers of claimants are no longer in dispute, and I will not consider whether the Board is required to give the applicant access to this information.

Applicant's request for additional records

[6] In their submission, the applicant requests additional records from the Board. An inquiry is not the appropriate stage for an applicant to request additional records from a public body.[4] Therefore, I will not further consider this aspect of the applicant's submission in this inquiry.

ISSUES

[7] In this inquiry I must decide:

1. Whether the Board is authorized to withhold the information in dispute under s. 13(1); and,

2. Whether the Board is required to withhold the information in dispute under s. 22(1).

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[3] Board *in camera* letter dated November 1, 2023, and OIPC *in camera* response letter dated November 2, 2023. The only material provided *in camera* is the information in dispute in this inquiry and a small number of short comments the Board has appended to that information.
[4] I agree with prior orders which clearly say that an applicant should raise issues related to the adequacy of a public body's search for records at the mediation stage or otherwise well before the commencement of an inquiry and, in any event, should first approach the public body with these concerns prior to involving the OIPC: see, for example, Order F20-32, 2020 BCIPC 38 at paras. 5-7 and Decision F08-02, 2008 CanLII 1647 (BC IPC) at paras. 37-38.

[8] Section 57(1) says the Board has the burden of proving that it is authorized to withhold the information it has severed under s. 13(1). Meanwhile, s. 57(2) says the applicant has the burden of proving that release of the information the Board has withheld under s. 22(1) would not be an unreasonable invasion of third-party personal privacy.[5]

DISCUSSION

Background

[9] Under the *Workers' Compensation Act*,[6] the Board's mandate is to rehabilitate injured workers, facilitate their timely return to work, and compensate them for loss of wages while they recover from injuries sustained in the workplace. If someone wishes to appeal a decision of the Board, they may apply to the Workers' Compensation Appeals Tribunal (WCAT).

[10] The applicant is a licensed health professional working in British Columbia who has previously provided reports to the Board and WCAT on matters within the applicant's scope of expertise.

Records in dispute

[11] In response to the access request, the Board identified 41 pages of responsive records and provided them, with redactions, to the applicant (records).[7] The Board says that it is applying s. 13(1) to withhold all the information in dispute in addition to asserting that s. 22(1) also applies to some of that information. The Board withheld information in dispute from 36 pages of the records.[8]

[12] From my review, I can see that the records are internal e-mail discussions between Board medical advisors and other Board employees. The records primarily concern identifiable claimants and specific medical diagnostic procedures relevant to their claims.

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[5] However, the Board bears the burden of demonstrating that the information withheld under s. 22(1) meets the definition of "personal information" under FIPPA: Order F23-49, 2023 BCIPC 57 at para. 5 and note 1, citing Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 9-11.
[6] RSBC 2019, c. 1.
[7] Much of the information contained in the records is duplicative with the same e-mails appearing multiple times throughout. For clarity, when referring to specific pages of the records I use the page number stamped in the bottom right corner of each page, not the page of the PDF file containing the records.
[8] Only pp. 16, 36-37, and 41 of the records have no redactions and the only information redacted from p. 12 is information that the applicant is no longer seeking.

Section 13 – advice or recommendations

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

[14] Numerous OIPC orders and court cases have considered the scope and application of s. 13(1). These authorities make clear that the purpose of s. 13(1) is to prevent the harm that would occur if a public body's deliberative and decision-making processes were exposed to excessive public scrutiny.[9] In Order F22-39, the adjudicator canvassed the law and distilled the following interpretive principles for applying s. 13(1) [emphasis in original]:[10]

- Section 13(1) applies to information that *would reveal* advice or recommendations and not only to information that *is* advice or recommendations.[11]

- The terms "advice" and "recommendations" are distinct, so they must have distinct meanings.[12]

- "Recommendations" relate to a suggested course of action that will ultimately be accepted or rejected by the person being advised.[13]

- "Advice" has a broader meaning than "recommendations".[14] It includes setting out relevant considerations and options, and providing analysis and opinions, including expert opinions on matters of fact.[15] "Advice" can be an opinion about an existing set of circumstances and does not have to be a communication about future action.[16]

- "Advice" also includes factual information "compiled and selected by an expert, using his or her expertise, judgment and skill for the purpose of providing explanations necessary to the deliberative process of a public body".[17] This is because the compilation of factual information and weighing

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[9] Order F18-19, 2018 BCIPC 22 at para. 12, citing *John Doe v. Ontario (Finance*), 2014 SCC 36 [*John Doe*] at para. 45.
[10] 2022 BCIPC 44 at para. 67. See also Order F23-29, 2023 BCIPC 33 at para. 27.
[11] Citing Order 02-38, 2002 CanLII 42472 (BC IPC) at para. 135.
[12] Citing *John Doe*, *supra* note 9 at para. 24.
[13] Citing *John Doe*, *ibid* at paras. 23-24.
[14] Citing *John Doe*, *ibid* at para. 24.
[15] Citing *John Doe*, *ibid* at paras. 26-27 and 46-47; *College of Physicians and Surgeons of British Columbia v. British Columbia (Information and Privacy Commissioner)*, 2001 BCSC 726 [*College*] at paras. 103 and 113.
[16] Citing *College*, *ibid* at para. 103.
[17] Citing *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 [*PHSA*] at para. 94; *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 [*ICBC*] at paras. 52-53.

> of significance of matters of fact is an integral component of an expert's advice and informs the decision-making process.

[15] I adopt these principles and add that a public body may not rely on s. 13(1) to withhold information that has already been publicly revealed, whether in the records at issue or elsewhere.[18]

[16] The first step in the s. 13 analysis is to determine whether the information in dispute would reveal advice or recommendations developed by or for a public body or a minister. If it would, the next step is to determine whether ss. 13(2) or 13(3) applies. Section 13(2) lists certain classes of records and information that cannot be withheld under s. 13(1). Section 13(3) says that s. 13(1) does not apply to information in a record that has been in existence for 10 or more years.

Positions of the parties

Board's initial submission

[17] The Board submits that the courts have consistently interpreted the s. 13(1) exception to disclosure more broadly than have prior OIPC orders. Specifically, that the courts have interpreted s. 13(1) as applying to all records created in the course of, or as a part of, a public body's deliberative or decision-making processes. Moreover, the Board submits that information touching on a public body's deliberative or decision-making processes is protected by s. 13(1) notwithstanding an adjudicator's determination that releasing the information would not reveal or allow accurate inferences to be drawn regarding advice or recommendations developed by or for the public body.[19]

[18] On this basis, the Board submits that the information in dispute was created as part of the Board's deliberative process, that it is comprised of "analysis and opinions or communications" directly related to that process, and that it represents the Board's "internal dialogue" on specific issues.[20] Therefore, the Board says, I am bound by the authorities it cites and must find that the Board has properly applied s. 13(1) to withhold the information in dispute.

Applicant's response submission

[19] The applicant disagrees with the Board that the purpose of s. 13(1) is to protect the deliberative and decision-making processes of public bodies. Instead, they argue that because the title of s. 13 includes the phrase "policy advice or recommendations," the s. 13(1) exemption only applies to advice or

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[18] Order F23-42, 2023 BCIPC 50 at para. 89, citing Order F20-32, *supra* note 4, Order F12-15, 2012 BCIPC 21, and Order F13-24, 2013 BCIPC 31.
[19] Board's Initial submission at para. 18, citing *ICBC*, *supra* note 17 at paras. 19, 52, and 56-57.
[20] Board's Initial submission at paras. 23-24, citing *ICBC*, *ibid* and Order F13-09, 2013 BCIPC 10.

recommendations related to "policy." The applicant further submits that the interpretation of s. 13(1) put forward by the Board would only be tenable if the title of s. 13 were ignored, which the applicant says would be improper.[21]

[20] On this basis, the applicant says they accept that some of the information in dispute is "expert advice or opinion" prepared for the Board, but that it was not developed for policy-related purposes and therefore cannot be withheld under s. 13(1). In the alternative, the applicant raises s. 13(2)(a) and says that some of the information in dispute may not be withheld in any event because it contains "factual details."

Board's reply submission

[21] In reply to the applicant's arguments regarding the scope of s. 13(1), the Board raises two points.

[22] First, the Board says that the applicant's position that the title of s. 13 restricts the scope of s. 13(1) runs contrary to s. 11(1) of the *Interpretation Act*.[22] That section, the Board says, explains that a "head note" to a statutory provision, which is another term for a section's title, is not considered part of the enactment that contains it and "must be considered to have been added editorially for convenience of reference only."

[23] Second, the Board repeats its position that the courts have consistently interpreted s. 13(1) as applying to a public body's "entire deliberative and decision-making process and to all records created in the course of that process." Therefore, the Board says, the applicant's submission regarding the interpretation of s. 13(1) has no basis in law.

Analysis

[24] Turning first to the applicant's submission regarding the scope and application of s. 13(1), I agree with the Board that it is not supported by law. Very recently in Order F24-03 the adjudicator considered, and rejected, a similar argument that s. 13(1) only applies to advice or recommendations related to "policy."[23] Without finding it necessary to reproduce the analysis from that order, I find that the adjudicator's conclusion that "s. 13(1) is not limited to a specific type of advice or recommendation but applies to information that would reveal any advice or recommendations developed by or for a public body or a minister" is

[21] Applicant's Response submission at pp. 2-3, citing *BC Hydro v. Workers' Compensation Board of BC*, 2014 BCCA 353 at para. 45
[22] RSBC 1996, c. 238.
[23] 2024 BCIPC 4 at paras. 43-59.

correct and supported by sound reasoning, and I adopt it in full.[24] On this basis, I do not find that the applicant's submission regarding the scope and application of s. 13(1) assists me in determining whether the information in dispute falls within the ambit of that section.

[25] Turning next to the Board's submission that the OIPC's approach to s. 13(1) is not sufficiently sensitive to prior instruction from the courts, I am not convinced that this is accurate. I accept that the purpose of s. 13(1) is to protect the internal deliberative and decision-making processes of public bodies from excessive scrutiny. However, having reviewed the authorities cited by the Board, I find that it clearly remains open to an adjudicator to determine that releasing specific records or pieces of information created "in the course of" a public body's deliberative or decision-making processes would not reveal advice or recommendations. In such a case, I find that the adjudicator may conclude that s. 13(1) does not apply to the records or information without running afoul of the jurisprudence.[25]

[26] Therefore, I find that it is appropriate to assess whether the information in dispute would reveal advice or recommendations based on the principles I set out above,[26] not the alternative principles proposed by the applicant or the Board.

[27] As noted above, I find that the records are comprised of internal communications between Board employees, primarily the Board's expert medical advisers, regarding how best to approach discrete issues falling within the scope of the Board's expertise. Further, the communications also contain discussions about how the Board should respond to inquiries from WCAT regarding WCAT's approach to certain kinds of evidence and classes of claims. I find that in each case the issues considered by the expert Board employees were related to how the Board could best fulfill its statutory mandate, required the careful deliberation of facts, evidence and opinions, and required Board employees to engage in

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[24] Order F24-03, *ibid* at para. 59. This conclusion is consistent with the analysis in other orders such as F22-07, 2022 BCIPC 7 at para. 22.

[25] See, for example, *ICBC*, *supra* note 17 wherein, at paras. 52, 58-63, and 66-69, the court is concerned with whether release of the information in dispute would allow accurate inferences to be drawn about advice or recommendations, examines that information to determine whether this is the case, and overturns the decision on review not on the basis that the adjudicator applied an incorrect test or standard by examining whether the information would reveal advice or recommendations, but that the adjudicator's conclusion that it would not was unreasonable given the specific facts of the case. See also *PHSA*, *supra* note 17, which was decided after and follows *ICBC* and wherein, at paras. 88-89, the court clearly assesses whether release of the records in dispute would reveal or allow accurate inferences to be drawn regarding advice or recommendations.

[26] At paras. 13-16 of this Order.

discussions where they analysed specific evidence and information and came to definite conclusions.

[28] I find the information discussed above clearly has a direct bearing on the Board's internal deliberative and decision-making processes.[27] Therefore, it is clear to me that disclosing much of the information the Board has severed from the records would reveal, either directly or by inference, advice and recommendations developed by or for the Board or WCAT.[28]

[29] However, I find that the Board has not demonstrated that disclosing the rest of the information in dispute would reveal advice or recommendations. This includes:

- The dates that e-mails were sent and received and dates severed from the body content of those e-mails;
- The names and identifying information of third parties in circumstances where revealing this information would clearly not allow an accurate inference to be drawn regarding advice or recommendations;
- Descriptions of claimants' personal and employment circumstances, their injuries, and their interactions with the Board or WCAT which I find are not related to the advice or recommendations severed from the records;[29]
- Descriptions of information the applicant included in expert reports they submitted to the Board or WCAT in relation to specific claims and Board employees' opinions regarding some of those reports;[30]
- Basic, claim-specific, questions or conclusions asked or offered by Board employees which I find are not related to the advice or recommendations severed from the records;[31] and,
- Most of the information contained in a chronological description of the steps taken by a Board employee to obtain a copy of a report relevant to a specific claim and related discussions regarding obtaining the report.[32]

[27] For a similar finding, see Order F22-07, *supra* note 23 at paras. 24-25.
[28] See pp. 1, 2-5 (repeated in part at pp. 18-19, 21-22, and 26-29), and 11 of the records.
[29] See, for example, pp. 1-2 (repeated at pp. 26-27), 7 (repeated at p. 39), 13, 15, 31-33, and 35 of the records.
[30] See pp. 1, 7 (repeated at p. 39), 13, 32, and 35 of the records.
[31] See, for example, pp. 7 (repeated at p. 39), and 9-10 of the records.
[32] See pp. 7-8 and 38-40 of the records.

[30] I also find that the Board has, in places, severed information under s. 13(1) which it has already revealed elsewhere in the records. The Board does not explain this inconsistent severing and I find that the Board may not rely on s. 13(1) to sever any information which has already been revealed to the applicant.[33]

Does s. 13(2) apply?

[31] Section 13(2) sets out certain classes of records and information which a public body may not withhold under s. 13(1). The applicant says that the Board must release some of the information in dispute because s. 13(2)(a) applies to it. The Board does not address s. 13(2) in their submissions but clearly argues that s. 13(1) authorizes it to withhold all the information in dispute.

[32] With the exception of s. 13(2)(a), I do not think that any of the provisions of s. 13(2) could conceivably apply in this case. Therefore, I will only consider whether s. 13(2)(a) applies to the information I found above would reveal advice or recommendations if disclosed.

[33] Section 13(2)(a) says that a public body must not refuse to disclose "any factual material" under s. 13(1). "Factual material" is not defined in FIPPA. However, the courts have interpreted it as meaning, in the context of s. 13(2)(a), source materials or background facts in isolation which exist separately from, and are not intermingled with, advice or recommendations.[34]

[34] Some of the information I found above would reveal advice or recommendations if disclosed contains or refers to background facts. However, I find that in each case these facts were compiled by experts, namely the Board's medical advisers, and either form a part of the advice and recommendations those experts offered to the Board or are otherwise intermingled with the advice and recommendations severed from the records such that they would reveal advice or recommendations if disclosed.[35] Therefore, I find that s. 13(2)(a) does not apply to any of the information I found above would reveal advice or recommendations if disclosed.

Does s. 13(3) apply?

[35] Section 13(3) says that s. 13(1) does not apply to information in a record that has been in existence for 10 or more years. I find that a small amount of the advice the Board has withheld under s. 13(1) is contained in an e-mail which was

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[33] See Order F23-42, *supra* note 18 at para. 89, citing Order F20-32, *supra* note 4, Order F12-15, *supra* note 18, and Order F13-24, *supra* note 18.
[34] *PHSA*, *supra* note 17 at paras. 93-94.
[35] See *ICBC*, *supra* note 17 at paras. 52-53, Order F18-41, 2018 BCIPC 44 at para. 34, and *PHSA*, *supra* note 17 at para. 94.

sent and received at least 10 years ago. Therefore, s. 13(3) applies to that information and the Board is not authorized to withhold it under s. 13(1).[36]

Conclusion – s. 13(1)

[36] I found above that disclosing most of the information the Board withheld under s. 13(1) would reveal advice or recommendations developed by or for the Board or WCAT and that ss. 13(2) and (3) do not apply to that information. Therefore, the Board is authorized to refuse to disclose that information under s. 13(1).[37]

[37] However, I also found that the Board cannot withhold the remainder of the information in dispute under s. 13(1), either because disclosing it would not reveal advice or recommendations beyond what the Board has already revealed or because it falls under s. 13(3) and so cannot be withheld under s. 13(1).[38]

Section 22(1) – unreasonable invasion of privacy

[38] Section 22(1) requires a public body to refuse to disclose information if disclosure would be an unreasonable invasion of a third party's personal privacy. In addition to withholding all the information in dispute under s. 13(1), the Board also withheld some information from the records under s. 22(1).[39] I will not consider whether s. 22(1) also applies to any information which I found the Board is authorized to withhold under s. 13(1). Given my findings above, I only need to consider a small amount of specific information under s. 22(1).

[39] There is also some information that I found above cannot be withheld under s. 13(1), but the Board does not submit is subject to s. 22(1). However, because I can see that this information is personal information (as I will explain below), and s. 22(1) is a mandatory disclosure exception, I will consider whether that section applies to this information as well.[40]

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[36] The dates the e-mails in the records were sent and received is information in dispute so I will not explain where in the records this information appears.
[37] Based on the evidence at para. 7 of the Affidavit of the Board's Manager of Freedom of Information and Privacy (Manager), I find that the Board appropriately considered whether to exercise its discretion to release any of this information to the applicant.
[38] I consider below whether s. 22(1) applies to any of this information given that s. 22(1) is a mandatory disclosure exception.
[39] See pp. 1-16, 17-35, and 38-40 of the records.
[40] Pages 7-8 (repeated at pp. 39-40), 9-10, and 13 of the records.

Personal information

[40] Since s. 22(1) only applies to personal information, the first step in the analysis is to determine whether the information in dispute is personal information.

[41] Under schedule 1 of FIPPA,

> "personal information" means recorded information about an identifiable individual other than contact information; [and]
>
> "contact information" means 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[.]

[42] Therefore, "contact information" is not "personal information" under FIPPA. Whether information is contact information is context dependent.[41]

[43] The Board says that much of the information in dispute under s. 22(1) relates to specific claimants, their medical conditions and histories, and diagnostic procedures relevant to their claims and submits that all of this is personal information. The Board also says that the dates that e-mails in the records were sent and received by Board employees (date information) is the personal information of claimants on the basis that, the Board says, the applicant could identify the claimants discussed in those e-mails if this information is released. The Board does not clearly address whether any of the other information in dispute under s. 22(1) is personal information.

[44] The applicant submits that while some of the information in dispute is personal information, the Board has "redacted much more than is necessary to protect individual privacy." The applicant also says that the date information is not personal information and must be disclosed.

[45] For the reasons that follow, I find that much, but not all, of the information I am considering under s. 22(1) is personal information.

[46] Some of the information is the names and job titles of Board employees or other third parties.[42] Individuals' names and job titles may be contact information or personal information, depending on the context in which they appear.[43] Here, I find that this information is not contact information because it appears in the context of discussions where the professional opinions of the third parties are either provided or referenced and attributed to them, not in order to allow those

[41] Order F20-13, 2020 BCIPC 15 at para. 42.
[42] See pp. 1, 8 (repeated at p. 40), 9, and 38-39 of the records.
[43] Order F20-13, *supra* note 41 at para. 42.

third parties to be contacted at their place of business. Therefore, I find that the third-party names and job titles are personal information.[44]

[47] Further, some of the information is third-party opinions about the applicant and their work.[45] A person's opinion is their personal information.[46] Further, A's opinion about B can also be B's personal information in some cases.[47] In this case, I find that the opinion information in the records is the personal information of both the applicant and the third-party opinion holders.

[48] Finally, some of the information refers to the medical conditions of claimants, the medical care and expert medical opinions sought by those claimants, and related information such as when those claimants made their claims or provided materials related to their claims to the Board or to WCAT.[48] Given that the applicant is not seeking the release of claimant names or claim numbers, not all of this information is, on its face, about identifiable individuals. However, based on the information in the records and the parties' submissions, it is reasonable to conclude that the applicant could identify the individuals to whom this information relates by cross-referencing the information with information the applicant already possesses.[49] Therefore, I find that all this information about claimants is personal information.

[49] However, I am not convinced that the applicant's ability to reasonably identify claimants based on information in the records extends to the date information, as the Board submits. The Board, who bears the burden of proof on this point, does not clearly explain how the applicant could identify individual claimants based on the date information. Furthermore, having reviewed the records in detail I find that some of the e-mails from which the Board has severed the date information do not relate to or discuss individual claimants at all. Some of the relevant e-mails which do discuss claimants also seem to have been sent and received some time after those claimants' dealings with the Board, WCAT, or the applicant had concluded.

[50] Given all of this, I find that the Board has not provided sufficient evidence or persuasive argument to establish, on a balance of probabilities, that the applicant could identify claimants based on the date information. Therefore, I find that the date information is not personal information and s. 22(1) does not require the Board to withhold it.[50]

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[44] Some of these third parties were involved in the claims process for the purpose of assisting claimants, so I find their identities to also be the personal information of those claimants.
[45] See pp. 1, 13, and 35 of the records.
[46] See, for example, Order F14-47, 2014 BCIPC 51 at para. 14.
[47] See, for example, Order F17-01, 2017 BCIPC 1 at para. 48.
[48] See pp. 1-2, 7, 9-10, 13, 15, 26, 31-33, 35, and 38-40 of the records.
[49] See, for example, Manager's affidavit at para. 6.
[50] See pp. 1-11, 13-15, 17-31, 34-35, and 38-40 of the records.

Section 22(4)

[51] Section 22(4) sets out circumstances where disclosure of personal information is not an unreasonable invasion of third-party personal privacy. If s. 22(4) applies to any information, the public body must provide it to an applicant.

[52] Neither party addressed s. 22(4). However, based on my review of the personal information in dispute I find s. 22(4)(e) applies to some of it.

[53] Section 22(4)(e) says 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 officer, employee, or member of a public body or as a member of a minister's staff.

[54] Numerous prior OIPC orders have considered the meaning and scope of s. 22(4)(e). Key principles are that s. 22(4)(e) applies to information that reveals a public body employee's name, signature, job title, duties, functions, remuneration (including salary and benefits) or position and to objective, factual information about what the public body employee did or said in the normal course of discharging their job duties.[51]

[55] On page 1 of the records, a Board medical adviser says they were told something by a named co-worker, on pages 9 and 10, a Board medical adviser requests and receives basic information from a co-worker regarding a claim file, on page 39 a Board medical adviser explains their approach to writing an "opinion" for a claim file to a co-worker, and on page 40 a Board Manager gives instructions to a subordinate and discusses next steps. I find that releasing this information would only reveal factual information about the back-and-forth between Board employees regarding their regular employment duties and that s. 22(4)(e) applies on that basis.[52]

[56] Further, on pages 38 and 39 of the records, the Board has withheld a description of the steps taken by a Board employee to obtain a report from a third-party medical professional. While I accept that some of the information withheld from the description could identify the claimant whose injuries were the subject of the report if disclosed, I find that the other information withheld from the description only reveals what the Board employee did and said while discharging their regular job duties. Therefore, I find that s. 22(4)(e) applies to

[51] See Order F20-54, 2020 BCIPC 63 at para. 56 and note 45; Order F18-38, 2018 BCIPC 41 at para. 70; Order F22-62, 2022 BCIPC 70 at para. 27.

[52] Some of this information is the names of individuals who are not otherwise identified in the records or the parties' submissions. However, given the context, I find that these individuals are also Board employees and that s. 22(4)(e) applies to their names as they appear in the records.

some information in the description and the Board may not withhold that information.

[57] Finally, on pages 39 and 40 of the records, the Board has withheld the full name and first initial of one of the Board's medical advisers from an e-mail. Based on the body content of the e-mail, I find that it was sent and received in the course of that medical adviser discharging their regular job duties. Therefore, I find that s. 22(4)(e) applies to the medical adviser's name and initial.

Section 22(3)

[58] Section 22(3) lists circumstances where disclosure of personal information is presumed to be an unreasonable invasion of third-party personal privacy. Neither party made submissions regarding the application of s. 22(3). Based on my review of the personal information in dispute, for the reasons that follow, I find that ss. 22(3)(a) and (d) each apply to some of it.

[59] Under s. 22(3)(a), disclosure of information related to a third party's medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation is presumed to be an unreasonable invasion of that third party's personal privacy. Much of the personal information in dispute is about the medical conditions, diagnoses, treatments, and evaluations of claimants. Therefore, I find that s. 22(3)(a) applies to all this information and releasing it to the applicant is presumed to be an unreasonable invasion of third-party personal privacy on that basis.

[60] Under s. 22(3)(d), disclosure of a third party's employment, occupational, or educational history is presumed to be an unreasonable invasion of that third party's personal privacy. Given the purpose and scope of the Board's claims process, claimants necessarily assert that the injuries for which they are seeking compensation are job-related. As such, I find that any information which identifies a third party as a claimant constitutes the employment history of that third party. Therefore, I find that s. 22(3)(d) applies to this information and disclosing it is presumed to be an unreasonable invasion of third-party personal privacy.[53]

[61] Based on the above, I find that releasing most of the personal information in dispute is presumed to be an unreasonable invasion of third-party personal privacy pursuant to s. 22(3).[54]

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[53] See Order F15-38, 2015 BCIPC 41 at paras. 19-20 and 23 where the adjudicator implicitly accepted that information which could lead to an individual being identified as a claimant fell within the scope of ss. 22(3)(a) and (d). See also, Order F24-34, 2024 BCIPC 41 at para. 80 where the adjudicator reached a similar conclusion regarding s. 22(3)(d).
[54] See pp. 1-2, 7, 9-10, 13, 15, 26, 31-33, 35, and 38-39 of the records.

Section 22(2)

[62] Section 22(2) says that when a public body decides if disclosure of personal information constitutes an unreasonable invasion of third-party personal privacy, it must consider all relevant circumstances, including those listed in s. 22(2). Some circumstances weigh in favour of disclosure and some weigh against. Circumstances favouring disclosure may rebut the applicable s. 22(3) presumptions.

[63] The Board does not address the application of s. 22(2) to the personal information. The applicant says that some of the personal information should be released to them on the basis that it is their own personal information.

[64] In addition to considering the circumstance raised by the applicant, I also find that the applicant's potential prior knowledge of some of the personal information and the sensitivity of some of the personal information are relevant. Therefore, I consider all those circumstances below.

Applicant's personal information

[65] Where an applicant is seeking release of their own personal information, this can weigh heavily in favour of disclosing that information to them. However, where the applicant's personal information is interwoven with the personal information of third parties this factor carries less weight.[55]

[66] The applicant submits that much of the personal information in dispute must be released based on their belief that it is their own personal information.

[67] Examining the personal information which remains in dispute at this stage, I find that only a small amount of it is solely the applicant's personal information. I find that in most cases the applicant's personal information is interwoven with the personal information of either claimants or Board employees who gave their opinions about the applicant. Therefore, the fact that some of the personal information in dispute is solely the applicant's personal information weighs strongly in favour of disclosing that information. But, in the instances where the applicant's personal information is interwoven with third-party personal information, I give this factor minimal weight.

[55] Order F14-47, *supra* note 46 at para. 36.

Information already known by or available to the applicant

[68] An applicant's pre-existing knowledge of withheld personal information can be a factor weighing in favour of disclosing that information.[56]

[69] While both parties refer to the applicant's potential prior knowledge of some of the personal information in dispute, it is not clear from the parties' submissions or my review of the revealed portions of the records what, if any, of that specific information the applicant already knows. Therefore, I do not find that this is a factor weighing in favour of disclosure.

[70] The only exception to this is some personal information which I find the Board has inconsistently severed from the records provided to the applicant, and which I discuss just below.

Inconsistent severing

[71] I find that the Board has been inconsistent in its severing and it is withholding certain personal information that it has already disclosed elsewhere in the records. I find that the Board should not have disclosed some of that personal information to the applicant because ss. 22(3)(a) and (d) apply to it. The fact that the Board disclosed personal information that it should not have disclosed is not a factor that weighs in favour of disclosure a second time. However, I find that for personal information which is not subject to ss. 22(3)(a) or (d), the fact that the Board has already disclosed that information to the applicant weighs strongly in favour of disclosing the same information to the applicant where it is reproduced elsewhere in the records.

Sensitivity

[72] Sensitivity of information is not an enumerated factor under s. 22(2). However, many past OIPC orders have considered it as a relevant circumstance. Where information is sensitive, this is a circumstance weighing in favour of withholding the information.[57] Conversely, where information is not sensitive, past orders have found that this weighs in favour of disclosure.[58]

[73] Much of the personal information in dispute relates to specific injuries suffered by claimants and the effects of those injuries on the claimants' abilities to perform their job duties and their overall life satisfaction. I find that this kind of information is clearly sensitive and that this weighs in favour of withholding it.[59]

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[56] Order F15-12, 2015 BCIPC 12 at para. 28, citing Order F14-47, *ibid* at paras. 37-39.
[57] Order F19-15, 2019 BCIPC 17 at para. 99.
[58] Order F16-52, 2016 BCIPC 58 at para. 91.
[59] Pages 1-2, 7, 9-10, 15, 26, 32, and 39 of the records.

Conclusion – s. 22(1)

[74] I have found that most of the information in dispute under s. 22(1) is the personal information of third parties. However, I have also found that some of this information, including the date information, is not personal information because the Board has not established that it relates to identifiable individuals.

[75] Considering s. 22(4), I have found that s. 22(4)(e) applies to a small amount of the personal information in dispute and, as a result, the Board cannot withhold that information under s. 22(1).[60]

[76] I have found that disclosing most of the remaining personal information in dispute is presumed to be an unreasonable invasion of third-party personal privacy pursuant to ss. 22(3)(a) and (d).[61]

[77] Examining s. 22(2) and all the relevant circumstances, I have found that a small amount of the personal information in dispute is the applicant's own personal information and is not interwoven with the personal information of third parties.[62] This factor weighs in favour of disclosing that information to the applicant. However, I have found that much of the other personal information in dispute is sensitive which weighs in favour of withholding that information.[63] Further, except for a few instances where I found the Board has inconsistently severed the records, I have found nothing to establish that the applicant already knows any of the specific personal information in dispute.

[78] Taking all of this together, I find that the applicant has not established that the presumptions under ss. 22(3)(a) and (d) are rebutted in this case. Therefore, I find that the Board is required to withhold most of the information in dispute under s. 22(1). However, I find that the Board is not authorized or required to withhold certain information, which is: not personal information; subject to s. 22(4)(e); the applicant's own personal information and is not interwoven with the personal information of third parties; or, already revealed in the records provided to the applicant and not subject to ss. 22(3)(a) or (d).[64]

[79] Finally, I find that there is identifying information about claimants in several e-mails that must be withheld under s. 22(1). However, s. 22(1) does not apply to some of the information in those e-mails because once the identifying information

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[60] Pages 1, 9-10, and 38-40 of the records.
[61] Pages 1-2, 7, 9-10, 13, 15, 26, 31-33, 35, and 38-40 of the records.
[62] Page 32 of the records.
[63] Pages 1-2, 7, 9-10, 15, 26, 32, and 39 of the records.
[64] Pages 1-11, 13-15, 17-32, 34-35, and 38-40 of the records. I have highlighted the information which I find the Board is not authorized or required to withhold in a copy of the records delivered to the Board alongside this order.

is severed (see paragraph 80, item 3, below), what is left is not personal information.[65]

CONCLUSION

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

1. Subject to item 3, below, I confirm that the Board is authorized, in part, to withhold the information in dispute under s. 13(1).

2. Subject to item 3, below, I confirm that the Board is required, in part, to withhold the information in dispute under s. 22(1).

3. The Board is not authorized under s. 13(1) or required under s. 22(1) to refuse access to the information I have highlighted in yellow on pages 1-11, 13-15, 17-35, and 38-40 of the copy of the records provided to the Board alongside this order. The Board is required to provide the applicant with the highlighted information on those pages.

4. The Board must concurrently provide the OIPC registrar of inquiries with a copy of its cover letter and the records it provides to the applicant in compliance with item 3, above.

[81] Pursuant to s. 59(1) of FIPPA, the Board is required to comply with this order by June 26, 2024.

May 14, 2024

ORIGINAL SIGNED BY

Alexander Corley, Adjudicator

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[65] Records at pp. 13, 31-33, and 35. I have highlighted the information which I find the Board is not authorized or required to withhold in a copy of the records delivered to the Board alongside this order.