



Order F24-49

THOMPSON RIVERS UNIVERSITY

Alexander R. Lonergan
Adjudicator

June 10, 2024

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Summary: An applicant requested Thompson Rivers University (TRU) provide him with access to a specific TRU employee's communications that mention the applicant. TRU disclosed responsive records but withheld some information under one or more *Freedom of Information and Protection of Privacy Act* (FIPPA) exceptions to access. The adjudicator confirmed TRU's decision to refuse access to all of the information that it withheld under s. 14 (solicitor client privilege). The adjudicator confirmed TRU's decision to refuse access to some of the information it withheld under s. 13 (advice or recommendations). The adjudicator further found that s. 22(1) (unreasonable invasion of third-party personal privacy) applied to some of the personal information in dispute. The adjudicator ordered TRU to disclose the information to the applicant that it was not required or authorized to withhold.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 13, 14, 22(1), 22(2)(a), 22(2)(c), 22(2)(e), 22(2)(f), 22(2)(g), 22(2)(h), 22(3)(a), 22(3)(d), 22(5), 44(1)(b).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested Thompson Rivers University (TRU) provide him with copies of records containing communications sent and received by the TRU Provost and Vice President Academic, that refer to the applicant.

[2] TRU provided the applicant with responsive records but withheld some information under certain FIPPA exceptions to disclosure, namely, ss. 12(3)(b) (cabinet and local public body confidences), 13(1) (advice or recommendations), 14 (solicitor-client privilege), 15 (harm to law enforcement), 17 (harm to a public body's financial or economic interests), and 22(1) (unreasonable invasion of

third-party personal privacy).¹

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review TRU's decision to withhold the information that it did. Mediation by the OIPC failed to fully resolve the issues in dispute and the matter proceeded to this inquiry.

[4] At inquiry, TRU withdrew its reliance on ss. 12(3)(b), 15, and 17 and released additional information and records to the applicant.² TRU now relies only on ss. 13(1), 14, and 22(1) to withhold information from the disputed records.

Preliminary Issues

New Issue, s. 6 complaint

[5] The applicant's submission indicates that he believes there are records that TRU failed to identify as responsive to his access request. He describes two such records and says that there are likely more.³ I cannot locate any of these records in the material before me.

[6] TRU explains that one of the records the applicant mentions is a report that is not a record in dispute in this case because it was not a record that responded to his access request. TRU says that it is unaware of the other records that the applicant says are missing.⁴

[7] The applicant's argument, that there are records that respond to his access request that are missing from the records in dispute in this inquiry, is a complaint that TRU has not performed an adequate search for records in accordance with its duties under s. 6(1). Neither the applicant's complaint about the adequacy of TRU's search for records nor s. 6(1) are listed as issues in the Notice of Inquiry and the investigator's Fact Report. I find that the applicant's complaint is a new issue.

[8] Past orders have consistently said that parties may only add new issues in an inquiry if the OIPC permits them to do so.⁵ The OIPC's Notice of Inquiry and its *Instructions for Written Inquiries* clearly explain the process for adding new issues to an inquiry. The applicant did not seek prior approval to add his complaint to this inquiry.

¹ All sectional references in this Order refer to FIPPA unless otherwise noted.

² TRU's initial submission at para. 4; and TRU's email to registrar of inquiries of March 22, 2024.

³ Applicant's submission at p. 12.

⁴ TRU's reply submission at paras. 30 and 31.

⁵ See for example: Order F07-03, 2007 CanLII 30393 (BC IPC) at paras. 6-11; and Order F10-37, 2010 BCIPC 55 (CanLII), at para.10.

[9] I am not persuaded that it is fair to add this new issue now and I do not see any exceptional circumstance that warrants adding s. 6(1). Therefore, I decline to add s. 6(1) to this inquiry and I will not consider it further.

Information and Records That Are Not Being Withheld

[10] TRU has marked some responsive records with the words “To Be Released”, “For Release”, or “No Redactions”. It seems that TRU had not yet disclosed this information to the applicant by the time he made his inquiry submission because he asks that I make determinations about this information unless it is released to the applicant before this order is issued.⁶ TRU’s obligation under FIPPA was to disclose this information to the applicant promptly once it decided not to refuse him access. Therefore, if it still has not done so, TRU must disclose to the applicant all of the information it has labelled as “To Be Released”, “For Release”, or “No Redactions”. As TRU is not refusing access to this information, it is not information in dispute and I will not consider it any further.

ISSUES AND BURDEN OF PROOF

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

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

[12] Section 57(1) places the burden on TRU, which is a public body, to prove that the applicant has no right of access to the information withheld under ss. 13 or 14.

[13] Under s. 57(2), the applicant has the burden of proving that disclosure of personal information in the records would not be an unreasonable invasion of a third party’s personal privacy. However, TRU has the initial burden of proving the information at issue is personal information.⁷

⁶ Applicant’s submission at p. 2.

⁷ Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 9-11.

DISCUSSION

Background⁸

[14] TRU is a post-secondary institution located in Kamloops, B.C. TRU employs approximately 2,000 faculty and staff members while providing educational services to approximately 25,000 students.

[15] The applicant is a former faculty member of TRU. The applicant had an acrimonious relationship with TRU during his employment. The circumstances of the end of the applicant's employment generated labour relations proceedings, some of which are still ongoing at the time of this inquiry.

[16] The applicant requested access to all communications (including emails) sent and received by TRU's Provost and Vice President Academic, that mention the applicant's name. The applicant restricted his request to records created over an approximate six-year period.⁹

Records and Information in Dispute

[17] There are 1582 pages of records in dispute. TRU relies on ss. 13 and 14 to refuse access to 1378 pages in their entirety (the Privileged Records) and ss. 13 and 22 to refuse access to portions of the remaining 204 pages (the Severed Records). For the following reasons, I will not consider some of these records in this inquiry.

1) Records No Longer Sought by the Applicant

[18] The applicant responds to what TRU says about two specific records and says if he is "not the focus" of these records then he is not interested in them.¹⁰ TRU has already disclosed all information about the applicant in these two records; therefore, I will not consider the rest of the severed information in them.

[19] TRU says that the applicant's statement means that the scope of this inquiry is now limited only to records that contain the Applicant's personal information.¹¹ I disagree. In my view, the applicant's willingness to exclude these two records does not change the scope of his access request so I decline to exclude other records and information on this basis.

⁸ The information in this background section is based on information provided in the parties' submissions and evidence. It is not information that is in dispute.

⁹ Applicant's request for review, at pp. 4-6.

¹⁰ The applicant refers to pp. 175-177 and 202 of the Severed Records at pp. 2 and 13 of the applicant's submission.

¹¹ TRU's reply submission at para. 2.

2) Records and Information Already Considered in Past OIPC Inquiries

[20] The applicant says that some of the records and severing decisions in this inquiry were likely dealt with in his other OIPC inquiries involving TRU.¹² TRU confirms that many of the records referred-to by the applicant were dealt with in other now-decided inquiries, and it provided a list of the records.¹³ However, TRU says that some records the applicant mentions were not considered in other inquiries.¹⁴

[21] Based on what the parties say, I am satisfied that the applicant no longer seeks the records TRU identified as having been considered in past OIPC inquiries, so, my analysis below will not include them.¹⁵

Solicitor-client privilege – s. 14

[22] TRU withheld most of the disputed information and records under s. 14. Section 14 says that the head of a public body may refuse to disclose information that is subject to solicitor-client privilege.

[23] Section 14 encompasses both legal advice privilege and litigation privilege.¹⁶ TRU claims legal advice privilege applies to nearly all of the information withheld under s. 14, and that litigation privilege applies to some of it.

Evidentiary Basis for Assessing Claims of Solicitor-Client Privilege

[24] TRU did not provide me with copies of the records and information it withheld under s. 14. Section 44(1)(b) empowers me to order production of records to review them at inquiry. However, due to the importance of solicitor-client privilege to the proper functioning of the legal system, and in order to minimally infringe on that privilege, I will only order production if absolutely necessary to fairly decide the issues in dispute.¹⁷

¹² Applicant's submission at pp. 1 and 13.

¹³ TRU's email (with attachment) to the registrar of inquiries, dated May 28, 2024; and Affidavit #1 of MS, Exhibit "C" Table of Privileged Records, item #97.

¹⁴ At p. 13 of the applicant's submission, the applicant refers to F21-87596, however, TRU confirms in its email (with attachment) to the registrar of inquiries, dated May 28, 2024, that various similar records in this matter were not considered in F21-87596.

¹⁵ The disputed information that I decline to consider is in the Severed Records at pp. 128-131 (considered in F21-87726), pp. 155-160 and 167 (considered in F21-87194), and the Privileged Records at pp. 1322-1378 (considered in F21-86619).

¹⁶ *College of Physicians of B.C. v. British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [*College*] at para. 26.

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

[25] Parties that withhold privileged records from the OIPC may provide other information and evidence to support the claim of privilege. The type and amount of required information will vary depending on the record at issue, but the record must be sufficiently described so the claim of privilege can be assessed.¹⁸

[26] TRU provided a table that describes almost all of the records it withheld under s. 14 (the Table of Privileged Records). The Table of Privileged Records contains detailed descriptions of the information in each record. It is appended to an affidavit which was sworn by TRU's internal legal counsel, who also says that she has reviewed those records.¹⁹

[27] When assessing claims of privilege, past OIPC and court decisions have given deferential weight to evidence from a practicing lawyer.²⁰ This is because lawyers have a professional duty to ensure that privilege is properly claimed.²¹

[28] The applicant asks that I treat TRU's internal counsel's affidavit evidence with scepticism because, he says, the affiant's evidence in previous inquiries contained errors and demonstrably false statements.²² TRU objects to these allegations on the basis that no evidence or particulars have been provided to support them.²³ I find that what the applicant says about this issue lacks detail and supporting material, so I give no credence to his allegations about the internal counsel's evidence.

[29] In light of these circumstances, I decline to draw any adverse inferences against the affidavit evidence of TRU's internal legal counsel.

[30] The Table of Privileged Records and the content of TRU's affidavit evidence do not name every external lawyer that participated in the communications. In many cases, they are simply named "External Lawyer". TRU explains that, given the different practice areas of its lawyers, disclosing the name of each lawyer it consulted could reveal the nature and timing of the advice TRU received.²⁴ I accept that this is a reasonable explanation for not naming the lawyer that TRU consulted for every listed record.

¹⁸ *British Columbia (Minister of Finance) v British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 (CanLII), at para. 78; and *Stone v. Ellerman*, 2009 BCCA 294 (CanLII), at para. 23.

¹⁹ Affidavit #1 of MS, at para. 22 and Exhibit C.

²⁰ *British Columbia (Minister of Finance) v British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 (CanLII), at para. 86; and Order F23-99, 2023 BCIPC 115 (CanLII), at para. 23.

²¹ *British Columbia (Minister of Finance) v. British Columbia (Information and Privacy Commissioner)*, 2021 BCSC 266 (CanLII) at para. 86; and *Nelson and District Credit Union v. Fiserv Solutions of Canada, Inc.*, 2017 BCSC 1139 (CanLII), at para. 54.

²² Applicant's submission at p. 2.

²³ TRU's reply submission at para. 5.

²⁴ TRU's reply submission at para. 17.

[31] Having considered these circumstances, I find that the material before me is sufficient to assess TRU's application of s. 14 to the information and records in dispute.

[32] Next, I will consider whether the disputed information may be withheld under legal advice privilege and then, if necessary, I will consider whether it may be withheld under litigation privilege.

Legal Advice Privilege

[33] Not all communications between a client and their lawyer are protected by legal advice privilege, but the privilege will apply if the communication:

1. Is between a solicitor and client;
2. Entails the seeking or giving of legal advice; and
3. Is intended by the parties to be confidential.²⁵

[34] Legal advice privilege, once established, belongs to the client and remains in place indefinitely unless it is waived by the client.²⁶

[35] Legal advice privilege includes communications that are part of the continuum of information exchanged between solicitors and clients, if the purpose of the communication is the seeking or giving of legal advice. This includes information the client gives to the lawyer that relates to the advice sought, including purely factual information, and internal memoranda of the client related to the legal advice received and the implications of it.²⁷ Finally, communications with third parties may fall within the privileged continuum of communications if the third party is essential or integral to the solicitor-client relationship.²⁸

[36] Solicitor-client privilege also extends to communications with in-house counsel provided that the lawyer is acting in the role of a lawyer and not as a business or policy advisor.²⁹ To determine whether the lawyer is acting in a professional legal capacity at the relevant time, one must consider general evidence of the nature of the relationship, the subject matter of the advice and the circumstances in which it was sought or rendered.³⁰

²⁵ *Pritchard v. Ontario (Human Rights Commission)*, 2004 SCC 31 (CanLII), at para. 15, citing *Solosky v. The Queen*, 1979 CanLII 9 (SCC), at p. 837.

²⁶ *Blank v. Canada (Minister of Justice)*, 2006 SCC 39 at para. 37.

²⁷ *Bilfinger Berger (Canada) Inc. v. Greater Vancouver Water District*, 2013 BCSC 1893 (CanLII), at paras. 22-24.

²⁸ *Huang v Silvercorp Metals Inc.*, 2017 BCSC 795 (CanLII), at para. 83.

²⁹ *Keefer Laundry Ltd. v. Pellerin Milnor Corp. et. al.*, 2006 BCSC 1180 (CanLII) at para. 63.

³⁰ *R v. Campbell*, 1999 CanLII 676 (SCC) at para. 50.

[37] TRU says that disclosing the information withheld under s. 14 would reveal the content of solicitor-client privileged communications by revealing the nature and subject matter of the legal advice it sought.³¹ The Table of Privileged Records indicates that most of the records withheld under s. 14 were communications between TRU's executive employees, TRU's internal legal counsel, and TRU's external legal counsel.

[38] The applicant asserts that TRU wrongly applied s. 14 to records of correspondence with people who were not acting as lawyers. Specifically, the applicant says that there are lawyers who were acting as independent investigators but not as lawyers for TRU.³² In reply, TRU explains that it is not seeking to withhold any communications with these investigators under s. 14 and that none of the "external lawyers" in the Table of Privileged Records refer to the investigators.³³

[39] The only sensible interpretation of the descriptions of records in the Table of Privileged Records is that the lawyers who participated in the correspondence were not acting as independent investigators. These descriptions establish that the records of correspondence relate to the seeking and giving of legal advice by lawyers to TRU, as opposed to seeking and giving of information to an investigator. I find that the lawyers referred-to in the Table of Privileged Records were acting as legal advisors to TRU in the context of the disputed records.

[40] The applicant additionally argues that some records were wrongly withheld under legal advice privilege because the lawyer was simply copied into the communications in some cases, and in others a lawyer did not participate at all. The applicant says that these records fail to engage legal advice privilege.³⁴

[41] While it is true that not every communication becomes privileged if it is sent to a lawyer, privileged communications are not limited to the actual requesting and provision of legal advice. Internal client discussions about the need for legal advice and internal discussions of the implications of advice may fall within the privileged continuum of communications between a solicitor and client if disclosure would reveal the content of confidential solicitor-client communications.³⁵ To determine whether privilege applies to records of TRU's internal communications, I must decide what those records reveal about TRU's confidential communications with its lawyers.

³¹ TRU's initial submission at para. 128.

³² Applicant's submission at p. 7.

³³ TRU's reply submission at para. 19.

³⁴ Applicant's submission at pp. 11-12.

³⁵ Order 04-25, 2004 CanLII 45535 (BC IPC) at para. 104; Order F13-29, 2013 BCIPC 38 (CanLII), at para. 18; and Order F17-23, 2017 BCIPC 24 (CanLII), at para. 49.

[42] The descriptions in the Table of Privileged Records satisfy me that the communications between TRU's executive employees was about the need for, and implications of, confidential legal advice. While some of these records do not contain the actual request for or provision of legal advice, they still fall within the continuum of privileged communications because disclosure would reveal the content of confidential legal advice that TRU sought and received. This conclusion is further supported by the affidavit evidence of TRU's internal legal counsel which explains the circumstances under which TRU sought, received, and considered that advice.³⁶

[43] In conclusion, I find that legal advice privilege applies to all of the records and information set out in the Table of Privileged Records. Consequently, I confirm that TRU may refuse to disclose these records under s. 14 because the information in them is subject to solicitor-client privilege.

Litigation Privilege

[44] I determined that legal advice privilege applies to all of the disputed information that TRU withheld under s. 14.³⁷ Therefore, it is unnecessary for me to consider whether litigation privilege also applies.

Conclusion, s. 14

[45] I confirm that TRU is authorized to refuse to disclose the disputed information that it withheld under s. 14 because that information is subject to solicitor-client privilege.

Section 13 – Policy Advice or Recommendations

[46] TRU applied both ss. 13(1) and 14 to some of the disputed information. I determined that TRU is authorized to withhold this information under s. 14, therefore it is unnecessary for me to additionally consider whether s. 13(1) applies to the same information. The rest of the information withheld under s. 13(1) is contained in email correspondence between senior TRU employees.

[47] Section 13(1) says that the head of a public body may refuse to disclose information that would reveal advice or recommendations developed by or for a public body or minister. The purpose of s. 13 is to prevent the harm that would occur if a public body's deliberative process was exposed to public scrutiny.³⁸

³⁶ Affidavit #1 of MS at paras. 22-24.

³⁷ The only information that TRU withheld under litigation privilege, but not legal advice privilege, is information on pp. 156 and 158 of the Severed Records. As explained at the outset, that information is not in dispute in this inquiry because a decision has already been made about it in another OIPC inquiry.

³⁸ *Insurance Corporation of British Columbia v. Automotive Retailers Association*, 2013 BCSC 2025 (CanLII) at para. 52.

Section 13 protects “a public body’s internal decision-making and policy-making processes, in particular while the public body is considering a given issue, by encouraging the free and frank flow of advice and recommendations”.³⁹

[48] Section 13 applies not only where the information directly reveals advice or recommendations, but also where knowledge of the information would permit an accurate inference about the advice or recommendations.⁴⁰ This extends to factual or background information that is a necessary and integrated part of the advice or recommendation.⁴¹

[49] The analysis under s. 13 entails two steps. First, in accordance with s. 13(1), I must determine whether disclosing the withheld information would reveal advice or recommendations developed by or for TRU. If so, then the second step is to determine whether any of the categories or circumstances listed in s. 13(2) apply to that information and whether the record has been in existence for more than 10 years in accordance with s. 13(3). If ss. 13(2) or 13(3) apply, then the TRU cannot withhold the information under s. 13(1).

Would disclosure reveal advice or recommendations developed by or for a public body?

[50] The term “recommendations” includes material relating to a suggested course of action that will ultimately be accepted or rejected by the one being advised.⁴² “Advice” has a broader meaning than “recommendations”. It includes providing relevant considerations, options, analyses, and opinions, including expert opinions on matters of fact. Advice can be an opinion about an existing set of circumstances and does not have to be a communication about future action.⁴³

[51] TRU faced several related issues when the disputed records were created, all of which engaged TRU’s internal decision-making and policy-making processes. These issues included developing a response to the media attention created by the applicant’s research and public statements, management of the employee-employer relationship with TRU faculty members, and deciding how to investigate certain complaints.

[52] Much of the information withheld under s. 13 contains advice exchanged between TRU’s senior employees. Other information includes observations and opinions that clearly relate to issues that TRU had to decide. Accordingly, I find

³⁹ Order 01-15, 2001 CanLII 21569 (BCIPC) at para. 22; and Order F23-13, 2023 BCIPC 15 (CanLII) at para. 16.

⁴⁰ Order 02-38, 2002 CanLII 42472 (BC IPC) at 135; and Order F17-19, 2017 BCIPC 20 (CanLII) at para. 19.

⁴¹ *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 (CanLII) at para. 94.

⁴² *John Doe v. Ontario (Finance)*, 2014 SCC 36 (CanLII), at para. 23.

⁴³ *Ibid.* at paras. 24-26 and 34; and *College*, *supra* note #16 at paras. 103 and 113.

that most of the information withheld under s. 13(1), if disclosed, would directly reveal advice developed by and for TRU. In some cases, disclosure would also reveal specific recommendations to deal with the issues described above.

[53] For some of the information withheld under s. 13(1), disclosure would not reveal any advice or recommendations. In one record, the severed information reveals an individual's effort to bring certain matters to TRU administration's attention by asking that those matters be discussed at a meeting.⁴⁴ TRU also applies s. 22 to some of this information, therefore, I will also review it in the s. 22 analysis below.

Do either ss. 13(2) or 13(3) apply?

[54] Next, I must consider whether any of the circumstances under ss. 13(2) and 13(3) apply to the information that I found would reveal advice developed by or for TRU. Subsection 13(2) identifies certain types of records and information that may not 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.

[55] TRU submits that none of the circumstances listed under s. 13(2) apply to the information it withheld under s. 13(1), whereas the applicant argues that ss. 13(2)(a), 13(2)(m), and 13(2)(n) apply.⁴⁵

[56] Section 13(2)(a) prevents the head of a public body from refusing to disclose any factual material under s. 13(1). The term "factual material" has a distinct meaning from "factual information." The compilation of factual information and weighing the significance of matters of fact is an integral component of advice and informs the decision-making process. If facts are compiled and selected, using expertise, judgment, and skill for the purpose of providing explanations necessary to the deliberative process of the public body, then the facts are not "factual material" under s. 13(1).⁴⁶

[57] The applicant does not point to any specific severing under s. 13(1) that he believes contains factual material. I understand his submission to be a general request that I confirm whether TRU is incorrectly severing factual material under s. 13(1). There are a few statements of fact that were severed under s. 13(1), however, I can see that this information was compiled and provided to a recipient in order to explain the advice that was being given. Therefore, I find that none of the information that I have found would reveal advice or recommendations is factual material. Therefore, s. 13(2)(a) does not apply.

⁴⁴ Severed Records at pp. 1-2.

⁴⁵ Applicant's request for review at p. 3; and applicant's submission at p. 6.

⁴⁶ *Provincial Health Services Authority v. British Columbia (Information and Privacy Commissioner)*, 2013 BCSC 2322 (CanLII), at para. 94.

[58] Section 13(2)(m) says that the head of a public body cannot refuse to disclose under s. 13(1), information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy. The applicant identifies no TRU decisions or policies where TRU publicly cites the withheld information as the basis for those decisions or policies. It is not apparent from the records and submissions before me that that TRU publicly cited any of the withheld information as the basis for its decisions or policies. Therefore, I find that s. 13(2)(m) does not apply.

[59] Section 13(2)(n) says that the head of a public body cannot refuse to disclose under s. 13(1), a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant. The applicant says TRU is applying s. 13(1) to improperly withhold the reasons underlying TRU's decision to dismiss his whistleblower complaints without further action.⁴⁷

[60] TRU decided to close its whistleblower investigations without further action. TRU's Whistleblower Policy provides TRU's Audit Committee with the discretionary power to directly investigate a complaint or to refer a matter to the appropriate TRU department.⁴⁸ The policy does not require TRU to take either of these actions when it receives a whistleblower complaint. Therefore, I accept that TRU's decision to discontinue the whistleblower investigations was made by TRU exercising a discretionary power under its Whistleblower Policy.

[61] However, the applicant does not explain, nor is it apparent to me, which of his rights are affected by TRU's decision to discontinue its whistleblower investigations. The applicant asserts a right to reasons for that decision but does not explain where that right comes from beyond his argument that s. 13(2)(n) applies.⁴⁹ The Whistleblower Policy does not create a right for a complainant to receive an explanation of any discretionary decisions made under that policy.⁵⁰ Consequently, I find that s. 13(2)(n) does not apply.

[62] The applicant additionally refers to his workplace grievances and "gag orders" in the context of s. 13(2)(n).⁵¹ The information that I am currently considering under s. 13 contains no information about decisions related to the applicant's workplace grievances or what he calls "gag orders". Therefore, I am not persuaded that s. 13(2)(n) applies to any of the information that I determined would reveal advice or recommendations.

⁴⁷ Applicant's request for review at p. 3; and Applicant's submission at p. 6.

⁴⁸ Affidavit #1 of MS at Exhibit "B" at p. 3.

⁴⁹ Applicant's submission at p. 6.

⁵⁰ Affidavit #1 of MS at Exhibit "B".

⁵¹ Applicant's request for review at p. 3.

[63] I have considered the other categories and circumstances set out under ss. 13(2) and conclude that they do not apply. Further, I find that s. 13(3) does not apply because the information is not in records that have been in existence for 10 or more years.

Conclusion, s. 13

[64] In summary, I find that most of the information withheld under s. 13(1) would reveal advice developed by or for TRU. In a few cases, disclosure would reveal specific recommendations. I also find that ss. 13(2) and 13(3) do not apply to this information, so TRU is authorized to refuse to disclose it under s. 13(1). Finally, there is some information that TRU may not withhold under s. 13(1) because disclosure would not reveal any advice or recommendations developed by or for TRU.

Section 22 – Unreasonable Invasion of Third-Party Personal Privacy

[65] Section 22(1) requires a public body to refuse to disclose personal information if its disclosure would be an unreasonable invasion of a third party's personal privacy.⁵²

[66] The information I am considering under s. 22(1) is contained in communications sent and received by TRU employees. This information includes information relating to workplace complaints and investigations, discussions of matters concerning TRU's administration, and a small amount of information about individual employees and community members.⁵³

[67] Additionally, what the applicant says demonstrates that he already has unsevered copies of some of the records I am considering under s. 22(1).⁵⁴ While the applicant describes the severing as "pointless", he does not say that he no longer seeks disclosure of the severed information. Therefore, I have included these records in the s. 22 analysis below.

[68] Past OIPC orders have established the analytical approach for s. 22, which I will also apply in this matter.⁵⁵

⁵² Schedule 1 of FIPPA says: "third party" in relation to a request for access to a record or for correction of personal information, means any person, group of persons, or organization other than the person who made the request or a public body.

⁵³ TRU's initial submission at para. 43.

⁵⁴ At p. 13 of his submission, the applicant says that he already has copies of the records set out at pp. 27-31, 34-36, 38, 39, 41-43, 46-49, 52 and 53 of the Severed Records.

⁵⁵ Order F15-03, 2015 BCIPC 3 (CanLII) at para. 58; and Order F16-38, 2016 BCIPC 42 (CanLII) at para. 108.

Personal Information

[69] Section 22(1) only applies to personal information, so the first step of the analysis is to determine whether the severed information is personal information.

[70] FIPPA defines personal information as “recorded information about an identifiable individual other than contact information.” Contact information is defined as “information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”⁵⁶

[71] Information is about an identifiable individual when it is reasonably capable of identifying an individual, either alone or when combined with other available sources of information.⁵⁷

[72] In this matter, all of the information withheld under s. 22(1) that I am considering is about identifiable individuals. Much of this information is about named individuals in the context of complaints, opinions, first-hand observations, information of a medical nature, and the timing and reasons for workplace absences.

[73] A few of the withheld email addresses contain the name of an individual, so disclosing the email address would identify them as participating in the associated email chain. After considering what these email chains reveal about the individuals’ involvement in the underlying matters, I find that the email addresses in this matter are properly characterized as the personal information of the individuals that own them. That is because there is nothing to indicate the email addresses are being used to conduct business or are provided for the purpose of enabling these people to be contacted at their place of business.

[74] The exception to this finding is the email address for a media intern that was acting on behalf of a national media organization when he emailed TRU. I find that this address is contact information that cannot be withheld under s. 22(1).⁵⁸

[75] The applicant argues that some opinions in the records are not personal information because the individual who shared those opinions held a senior position at TRU at that time. The applicant reasons that the opinions are

⁵⁶ Schedule 1 of FIPPA contains the definitions of “personal information” and “contact information”.

⁵⁷ See for examples, Order F21-17, 2021 BCIPC 22 (CanLII) at para. 12; Order F16-38, 2016 BCIPC 42 at para. 112; and Order F13-04, 2013 BCIPC 4 at para. 23.

⁵⁸ Severed Records at p. 126.

institutional positions rather than the individual's opinions.⁵⁹ In the circumstances of the disputed records here, I disagree with this reasoning. These opinions are about that individual's personal experiences and their concerns about interpersonal issues in which they are directly involved, therefore, I find that it is properly characterized as personal information.

[76] I conclude that all of the information withheld under s. 22(1) is personal information, other than the exceptions that I described above.

Section 22(4) – Disclosure Not an Unreasonable Invasion of Privacy

[77] The second step in the s. 22(1) analysis is to determine whether the personal information falls into any of the circumstances listed in s. 22(4). If so, disclosure would not be an unreasonable invasion of a third party's personal privacy.

[78] TRU argues that none of the circumstances set out in s. 22(4) apply to the disputed information.⁶⁰ The applicant did not raise any of the circumstances listed in s. 22(4) and I understand that he disputes the severing of information on other grounds. I have considered whether any of the s. 22(4) circumstances apply to the disputed personal information, and I find that they do not.

Section 22(3) – Presumptively unreasonable invasion of personal privacy

[79] The third step is to determine whether any of the circumstances set out at s. 22(3) apply. If so, then disclosure is presumed to be an unreasonable invasion of a third party's personal privacy.

[80] TRU submits that ss. 22(3)(a) and 22(3)(d) apply to information it withheld under s. 22(1).⁶¹ The applicant does not directly address the circumstances listed in s. 22(3).

Section 22(3)(a) – Medical History

[81] Section 22(3)(a) says that disclosure of personal information is presumed to be 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.

[82] TRU applied s. 22(3)(a) to some personal information, most of which relates to workplace complaints and investigations. This information plainly includes descriptions of multiple third parties' medical and psychological

⁵⁹ Applicant's submission at p. 4.

⁶⁰ TRU's initial submission at para. 61.

⁶¹ TRU's initial submission at para. 67; and TRU's reply submission at para. 43.

conditions. I am satisfied that this information engages s. 22(3)(a), so disclosure is presumptively an unreasonable invasion of those third parties' personal privacy.

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

[83] 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 the personal information relates to employment, occupational or educational history.

[84] TRU applied s. 22(3)(d) to a large amount of information severed under s. 22(1). The comprehensive background information provided by the parties establishes that this information relates to investigations into alleged wrongdoing in the workplace by TRU employees, including whistleblower complaints, harassment complaints, and alleged academic dishonesty by TRU's faculty.

[85] Past orders have said that the term "employment history" includes descriptive information about a third party's workplace behaviours or actions in the context of a complaint investigation, disciplinary matter, or allegations of wrongdoing in the workplace.⁶² Employment history may also include information that clearly reveals the identity of subjects or witnesses that were interviewed as part of a workplace investigation, such as what the witnesses said to investigators about the role that the third party played in the matter under investigation.⁶³

[86] If disclosed, much of the withheld information would reveal the identities of complainants, witnesses, and subjects of specific workplace complaint investigations. Most importantly for the application of s. 22(3)(d), disclosure would reveal what those witnesses and subjects had to say about their role in the matters being investigated.

[87] I find that this information engages s. 22(3)(d) because it relates to third parties' employment histories. Disclosing this information would therefore be a presumptively unreasonable invasion of multiple third parties' personal privacy.

Section 22(2) – Relevant circumstances

[88] The fourth step in the s. 22(1) analysis is to determine whether disclosing the disputed personal information would be an unreasonable invasion of personal privacy. This is done by considering all relevant circumstances, including those listed in s. 22(2). At this stage, the applicant may rebut any presumptions that disclosure would be an unreasonable invasion of privacy.

⁶² Order 01-53, 2001 CanLII 21607 (BC IPC) at paras. 32-33; and Order F21-08, 2021 BCIPC 12 (CanLII) at para. 132.

⁶³ Order F21-08, 2021 BCIPC 12 (CanLII) at para. 137.

[89] The parties' submissions raise the following s. 22(2) circumstances:

22(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,

...

(c) the personal information is relevant to a fair determination of the applicant's rights,

...

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

...

(h) the disclosure may unfairly damage the reputation of any person referred-to in the record requested by the applicant,⁶⁴

[90] I will consider each of these circumstances in the same order.

Section 22(2)(a) – Public scrutiny of a public body

[91] Section 22(2)(a) asks whether disclosure of the personal information is desirable for subjecting the activities of a public body to public scrutiny. If s. 22(2)(a) applies, this will weigh in favour of disclosure. The purpose of s. 22(2)(a) is to make public bodies more accountable, not to scrutinize individual third parties.⁶⁵

[92] TRU says that all of the information it withholds under s. 22(1) is of an intensely personal nature and that this information is neither necessary nor helpful for public accountability purposes. TRU says that the details of complaints and third-party personal information are unnecessary to demonstrate that it properly carried out its investigations.⁶⁶

[93] The applicant says that disclosure would subject TRU's activities to public scrutiny by revealing that TRU retaliated against him for exposing TRU as condoning its faculty's use of unethical, self-serving academic practices.⁶⁷ The

⁶⁴ TRU's initial submission at paras. 77-91; and Applicant's submission at pp. 13-16.

⁶⁵ Order F18-47, 2018 BCIPC 50 (CanLII) at para. 32; and Order F16-14, 2016 BCIPC 16 (CanLII) at para. 40.

⁶⁶ TRU's initial submission at paras. 89-91.

⁶⁷ The applicant explains at p. 3 of his submission that the unethical practices he is concerned with include publishing research in illegitimate or unreliable academic journals and attending academic conferences that operate to justify vacations as an employment expense.

applicant views such retaliation as violating his academic freedom. The applicant further explains disclosure is in the public interest because TRU's behaviour fits within a broader trend of behaviour at Canadian universities. Finally, the applicant says that there is a public interest in knowing what information TRU did not provide to the Canadian Association of University Teachers (CAUT) when CAUT investigated the applicant's allegations.⁶⁸ TRU did not participate in CAUT's investigation and says that CAUT's findings differ from its version of certain events.⁶⁹

[94] TRU responds to the applicant's submissions by arguing that its activities have already been subjected to public scrutiny and that further disclosure would not make any meaningful contribution to the public's understanding or debate on the issues. Instead, TRU says, disclosure would only subject individuals to scrutiny.⁷⁰

[95] I accept the applicant's argument that there is a public interest in how TRU addresses predatory journals and the academic freedom of its faculty. However, the personal information at issue in this matter does not, in my view, have any bearing on the public's scrutiny of these activities. The disputed personal information is not relevant to TRU's positions on predatory journals or predatory conferences, nor does it reveal anything about TRU's alleged retaliation against the applicant. On the other hand, the severed information contains many details about identifiable individuals' personal circumstances and their versions of the events that led to the complaints and investigations.

[96] I find that disclosing the disputed personal information is not desirable for subjecting the activities of TRU to public scrutiny. Therefore, s. 22(2)(a) does not apply.

Section 22(2)(c) - Fair determination of an applicant's rights

[97] Section 22(2)(c) requires a public body to consider whether the personal information is relevant to a fair determination of an applicant's rights. Past orders have found that s. 22(2)(c) applies where all of the following circumstances exist:

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

⁶⁸ Applicant's submission at pp. 13-15.

⁶⁹ TRU's initial submission at para. 16.

⁷⁰ TRU's reply submission at paras. 34-36.

significance for, determination of the right in question; and

4. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.⁷¹

[98] I will apply the same analytical framework in this matter.

[99] The applicant provided copies of three grievances that allege TRU violated a collective agreement that applies to TRU and the applicant. The applicant further notes that he is prepared to exercise his right to file an unfair representation complaint if his union withdraws any of the grievances.⁷²

[100] I understand the applicant to be raising his right to grieve TRU's actions, his right to enforcement of the collective agreement's provisions on discipline, suspension, discrimination, harassment and academic freedom, and his right to file an unfair representation complaint. I accept that these are rights drawn from the common law of contracts and from statute, specifically, the *Labour Relations Code* which gives legal effect to the applicant's collective agreement and provides him with the right to file an unfair representation complaint.⁷³ Consequently, the first part of the s. 22(2)(c) test is met.

[101] By providing me with the grievance filing documents, the applicant has established that he is asserting these rights through his union in grievance proceedings that are already underway. The applicant's submission further satisfies me that he is seriously contemplating an unfair representation complaint proceeding if the union withdraws any of these grievances.

[102] I disagree with TRU's assertion that the prospect of the applicant pursuing further proceedings is speculative.⁷⁴ The applicant has explained in persuasive detail why and how he would commence further proceedings to assert his rights. Therefore, I find that the second part of the s. 22(2)(c) analysis is met.

[103] The third requirement of s. 22(2)(c) is that the disputed information must have some bearing on, or significance for, determination of the applicant's rights in question. The applicant's grievance of TRU's actions respecting the collective agreement's provisions on harassment, discipline and dismissal is directly related to the written complaints made about the applicant. TRU has severed almost all of the information from these written complaints under s. 22(1). Thus, I find that the information severed from the written complaints have direct significance for a fair determination of the applicant's rights, satisfying the third requirement under s. 22(2)(c).

⁷¹ Order 01-07, 2001 CanLII 21561 (BCIPC) at para. 31; Order F15-11, 2015 BCIPC 11 (CanLII) at para. 24.

⁷² Applicant's submission at pp. 15 and 222-224.

⁷³ *Labour Relations Code*, RSBC 1996, c 244, at ss. 13 and 84.

⁷⁴ TRU's reply submission at para. 42.

[104] I do not think that the other personal information I am considering under s. 22(1) has any significance on a determination of the applicant's rights. This other information is mostly limited to unrelated third-party personal information that was recorded incidentally, such as employee absence and scheduling information. In some cases, the withheld personal information has some significance for the determination of a third party's rights, but not the applicant's rights. This information does not satisfy the third step of the s. 22(2)(c) analysis, so s. 22(2)(c) does not apply to it.

[105] Finally, the applicant must establish that the personal information is necessary in order to prepare for the proceeding or to ensure a fair hearing. To meet this burden, the applicant must show that the records containing the written complaints are necessary for a fair determination of his rights at the hearing of his existing grievances or the possible future fair representation complaint.

[106] TRU points to alternative mechanisms that are available under the grievance hearing and representation complaint processes to obtain the records sought by the applicant. TRU says that "Disclosure of third-party personal information under Part 2 of FIPPA is therefore not necessary to ensure a fair determination of his rights."⁷⁵ The applicant disagrees that these records are available to him through those processes, and doubts that his union will seek their production at all.⁷⁶

[107] Some past OIPC orders have found that the existence of another method to obtain the disputed information means that s. 22(2)(c) does not apply.⁷⁷ However, other orders have rejected this approach because applying such a rule would restrict s. 22(2)(c) to operating as a discovery mechanism of last resort. I agree with and adopt the latter approach because, in my view, the former approach is inconsistent with the plain and ordinary language of s. 22(2)(c).⁷⁸ The fourth step of the s. 22(2)(c) analysis asks whether the disputed personal information is necessary to prepare for a hearing. It does not ask whether an OIPC order for disclosure is necessary to obtain a copy of the disputed records.

[108] The applicant asserts that this information will be "helpful" and "useful" in preparing for the arbitration hearings and any related appeals, specifically because it allow him to prepare to testify.⁷⁹ These grievances challenge TRU's ability to discipline the applicant for his actions under the collective agreement.

⁷⁵ TRU's reply submission at para. 40.

⁷⁶ Applicant's submission at p. 16.

⁷⁷ For example, Order F21-19, 2021 BCIPC 24 (CanLII) at para. 33; and Order F15-50, 2015 BCIPC 53 (CanLII) at para. 28.

⁷⁸ For examples of similar reasoning, see Order F23-13, 2023 BCIPC 15 (CanLII), at paras. 151-154; and Order F16-36, 2016 BCIPC 40 (CanLII), at para. 59.

⁷⁹ Applicant's submission at p. 16.

[109] The applicant's primary argument in his grievance proceedings is jurisdictional in nature. He does not dispute the fact that he took certain actions but instead argues that his actions fell within the realm of academic freedom which is outside of TRU's disciplinary authority. I do not see how the severed personal information, which largely describes the complainants' personal experiences in the underlying events, would be at all useful to the applicant in advancing this position in his grievance and unfair representation claims.

[110] Moreover, to engage s. 22(2)(c), the personal information must be necessary to ensure a fair hearing or to prepare for the proceedings, not merely useful or helpful. Neither of the parties said anything that clearly explained how the severed personal information is necessary (or not) for these purposes.

[111] Having reviewed the withheld personal information, I can see that the applicant already knows the reasons why TRU took disciplinary action against him. On the other hand, the third-party personal information in the complaints does not explain or reveal why TRU took the actions that it did. I am not satisfied that any of the severed personal information would be necessary, let alone useful, to prepare for the applicant's hearings or to ensure that they proceed fairly.

[112] Taking these circumstances into account, I conclude that none of the disputed personal information satisfies the fourth step of the s. 22(2)(c) analysis. As the applicant has not established that any of the disputed personal information is relevant to a fair determination of his rights, I find that s. 22(2)(c) does not apply.

Section 22(2)(e) - Unfair exposure to harm

[113] Section 22(2)(e) weighs against disclosure if doing so would unfairly expose a third party to financial or other harm. To engage s. 22(2)(e), it is the exposure to harm, not the likelihood of harm that matters. "Harm" under s. 22(2)(e) includes "serious mental distress or anguish or harassment".⁸⁰ Embarrassment, upset, or negative reactions do not rise to the required level of mental harm.⁸¹

[114] TRU says that s. 22(2)(e) applies to the personal information relating to third-party complaints about the applicant and third-party submissions responding to the applicant's whistleblower complaints.⁸² The applicant did not discuss s. 22(2)(e).

⁸⁰ Order 01-37, 2001 CanLII 21591 (BC IPC), at para. 42.

⁸¹ Order 01-15, 2001 CanLII 21569 (BC IPC), at paras. 49-50; and Order F20-37, 2020 BCIPC 43 (CanLII), at para. 120.

⁸² TRU's initial submission at paras. 83-84 and TRU's reply submission at para. 43(b).

[115] TRU explains that the applicant's former colleagues will be exposed to mental harm and harassment by the applicant if the disputed information is disclosed. TRU says that the applicant has engaged in a pattern of making public statements about specific third parties that are derogatory and damaging to their personal and professional reputations, causing those third parties heightened stress, anxiety, and fears for personal safety.⁸³ The essence of TRU's argument is that disclosing the records relating to these third parties' complaints will expose them to more of the same harms that have already occurred.

[116] After reviewing the disputed records and the background information provided by the parties, I accept that there is some evidence before me that the applicant harassed individuals in the past by publicly demeaning their mental health.

[117] Turning to the personal information that TRU says engages s. 22(2)(e), I can see that the severed personal information at issue is very similar to the information that the applicant previously used to make disparaging statements. I therefore find that disclosure would expose these third parties to further heightened stress, anxiety, and fears for personal safety, all of which amounts to serious mental distress.

[118] As disclosure would unfairly expose certain third parties to harm, I find that s. 22(2)(e) applies to some of the personal information in dispute, which weighs against its disclosure.

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

[119] Section 22(2)(f) asks whether the personal information has been supplied in confidence. If it was, this weighs in favour of withholding the information. In order for s. 22(2)(f) to apply, there must be evidence that an individual supplied the information and did so under an objectively reasonable expectation of confidentiality.⁸⁴

[120] TRU says that s. 22(2)(f) applies to the disputed personal information because the collective agreement and TRU's whistleblower policy both require TRU to keep certain personal information confidential if it was collected as part of an investigation.⁸⁵ I understand TRU's submissions to mean that s. 22(2)(f) applies to the personal information severed from written complaints about the applicant and from records relating to the applicant's whistleblower complaint. The applicant does not comment on the applicability of s. 22(2)(f).

⁸³ TRU's initial submission at paras. 79-80, and 83-84; Affidavit #1 of MS at paras. 5(b) and 27; and TRU's reply submission at para. 43.

⁸⁴ Order F11-05, 2011 BCIPC 5 (CanLII) at para. 41, citing Order 01-36, 2001 CanLII 21590 (BC IPC) at paras. 23-26; See also Order F23-02, 2023 BCIPC 3 (CanLII) at para. 45.

⁸⁵ TRU's initial submission at paras. 85-88.

[121] I can see that individuals provided TRU with the written complaints about the applicant and the whistleblower subject's submissions. There is some express evidence of a shared understanding that this information was being supplied in confidence. For instance, most of these complaints and TRU's responses to them contain the word "confidential" at the top or bottom of the record. One record does not contain an express indicator of confidentiality; however, I am satisfied by the tone and specificity of its contents that the author implicitly expected TRU to treat the personal information in it confidentially.

[122] Additionally, the personal information provided in the written complaints and whistleblower subject's submissions is about events that affected the authors' mental wellbeing and their professional relationships. In my view, this is not information that one would ordinarily expect an employer to disclose, especially given that the relevant collective agreement requires confidentiality during complaint investigations.

[123] In light of these circumstances, I find that the authors of these records held an objectively reasonable expectation of confidentiality when they supplied this information to TRU. Therefore, I find that the personal information contained in the written complaints and whistleblower subject's submissions was supplied in confidence. Consequently, s. 22(2)(f) weighs against disclosing this information.

[124] TRU did not argue that s. 22(2)(f) applies to other personal information in the records, which includes reasons for workplace absences and other miscellaneous personal information. Given the lack of evidence and circumstances supporting expectations of confidentiality over the other personal information, I am not satisfied it was supplied in confidence so s. 22(2)(f) does not apply to it.

Section 22(2)(h) - Unfair damage to reputation

[125] Section 22(2)(h) requires a public body to consider whether disclosure of personal information may unfairly damage the reputation of any person referred-to in the records. The analysis under s. 22(2)(h) has two requirements: First, the public body must establish that disclosing the disputed information may damage the reputation of a person referred-to in the records. Secondly, the reputational damage must be unfair.⁸⁶

[126] TRU says that s. 22(2)(h) applies to the same information that it says engages s. 22(2)(e), being personal information of third parties relating to several complaints made about the applicant as well as the applicant's own whistleblower complaints. TRU argues that, if the applicant uses this information

⁸⁶ Order F21-69, 2021 BCIPC 80 (CanLII), at para. 80.

to make disparaging public remarks about specific third-party individuals, then those individuals will suffer reputational harm.⁸⁷

[127] As discussed in the s. 22(2)(e) analysis, the applicant has made disparaging public statements about third parties in the past. Those statements included demeaning language that questioned whether certain third parties truly suffered mental harm from their interactions with him. After considering the type of personal information at issue here, I find that the applicant could use this information to make similar public statements that cause reputational harm to multiple third parties. Therefore, I find that disclosure may damage the reputation of several persons referred-to in the records.

[128] I also find that such reputational harm would be unfair. The third parties could only effectively respond to demeaning public criticism of their health by publicly disclosing more of their healthcare information. This would force the third parties to choose between publicly disclosing their personal information or allowing the applicant's public statements to stand unchallenged. I do not consider this a fair opportunity to respond to the applicant's public statements. Moreover, I think that reputational damage is generally unfair when it is caused by demeaning public remarks about a third party's mental health.

[129] In summary, I find that s. 22(2)(h) weighs against disclosing some of the personal information in dispute wherever that information relates to a third party's health, because disclosure would expose such third parties to unfair reputational harm.

Applicant's personal information

[130] If the severed personal information is an applicant's own personal information, this will weigh in favour of disclosure.⁸⁸

[131] In this matter, none of the severed personal information is only about the applicant. Most of the disputed personal information is about both the applicant and third parties because it describes their interactions and the outcome of those interactions. In these cases, the fact that it is the applicant's personal information weighs in favour of disclosing it.

Sensitivity

[132] The sensitivity of the disputed information is not a factor listed under s. 22(2) but many past orders have considered it relevant. If the disputed

⁸⁷ TRU's initial submission at para. 83.

⁸⁸ Order F10-10, 2010 BCIPC 17 (CanLII) at para. 37; and Order F20-13, 2020 BCIPC 15 (CanLII) at para. 73.

information is sensitive, this weighs in favour of withholding it. If the disputed information is not sensitive, this weighs in favour of disclosure.⁸⁹

[133] Some of the disputed personal information in this matter is generally considered sensitive, such as information about third parties' medical or psychological histories.⁹⁰ The sensitivity of this information weighs against its disclosure.

[134] Elsewhere, the disputed information includes opinions about what should be discussed at an upcoming meeting of senior TRU staff.⁹¹ In my view, these opinions are academic in nature and are not particularly sensitive. In another record, a third party discusses their academic disagreement with the applicant's research.⁹² I disagree with TRU's characterization of this information as being about a workplace dispute between two employees.⁹³ The opinions in this record are limited to a discussion of research methods but it is not, in my view, a complaint about the applicant's workplace behaviour. The lack of sensitivity of the information in these records weighs in favour of their disclosure.

Applicant's existing knowledge

[135] Past orders have found that an applicant's existing knowledge of the severed personal information is a relevant circumstance in the s. 22 analysis. An access applicant's accurate knowledge of the severed information weighs in favour of disclosing it.⁹⁴

[136] The level of detail in the applicant's submission satisfies me that he has a thorough understanding of the complaints made against him and the ultimate outcome of his whistleblower complaints. However, the pattern of arguments in the applicant's submission indicates that he suspects the severed information contains material that it does not.

[137] After taking the above circumstances into consideration, I find that the applicant's existing knowledge is not sufficiently accurate to weigh in favour of disclosing most of the personal information in dispute. On the other hand, I am satisfied that the applicant has accurate knowledge of the withheld information in

⁸⁹ See for examples: Order F10-09, 2010 BCIPC 14 (CanLII), at para. 123; and Order F16-38, 2016 BCIPC 42 (CanLII), at para. 143.

⁹⁰ Order F16-38, 2016 BCIPC 42 (CanLII) at para. 138; and Order F16-52, 2016 BCIPC 58 (CanLII) at para. 87.

⁹¹ Severed Records at p. 2. For clarity, this is the same information that I determined could not be withheld under s. 13(1).

⁹² Severed Records at p. 178.

⁹³ Exhibit "D" of Affidavit #1 of MS, "Redactions Explained" column, at p. 8.

⁹⁴ See for examples: Order F17-02, 2017 BCIPC 2 (CanLII) at paras. 28-30; Order F15-14, 2015 BCIPC 14 (CanLII) at paras. 72-74; and Order F05-13, 2005 CanLII 11964 (BC IPC), at para. 28.

the records that he says he has copies of, which weighs in favour of their disclosure.⁹⁵

Conclusions – s. 22(1)

[138] All of the information that TRU withheld from the records is personal information because it is about identifiable individuals. None of the circumstances under s. 22(4) apply to the information in dispute.

[139] Some of the withheld personal information was recorded as part of multiple TRU investigations into employee wrongdoing. Other information is about the medical history of third parties. Under s. 22(3)(a) and(d), disclosing this information is presumptively an unreasonable invasion of these third parties' personal privacy.

[140] The fact that much of the withheld personal information is about the applicant weighs in favour of disclosure. In many cases, however, the personal information consists of sensitive third-party personal information that was received by TRU under a reasonable expectation of confidentiality, and whose disclosure would expose those third parties to reputational harm and harassment, which are factors that weigh strongly against disclosure.

[141] After weighing these considerations, I find that the applicant has not rebutted any presumptions created by s. 22(3), nor has he persuaded me that disclosure in most cases would not be an unreasonable invasion of a third party's personal privacy. Therefore, I find that disclosing most of the disputed personal information would be an unreasonable invasion of a third party's personal privacy. TRU must refuse to disclose this information under s. 22(1).

[142] Regarding the personal information that comprises non-sensitive academic opinions and requests for matters to be discussed at a meeting, I find that disclosure would not be an unreasonable invasion of anyone's personal privacy.⁹⁶ TRU cannot refuse to disclose this information under s. 22(1).

[143] Finally, TRU severed the names of two third-party community members who provided written comments to the Northwest Commission of Colleges and Universities about the reaffirmation of TRU's accreditation.⁹⁷ TRU says that the fact that these individuals provided commentary is their personal information and must be severed under s. 22(1).⁹⁸ This information is the third parties' personal information because of what it reveals about their commentary and relationships to TRU. However, TRU has not explained, nor do I understand, why disclosing

⁹⁵ The Severed Records at pp. 27-31, 34-36, 38, 39, 41-43, 46-49, 52 and 53.

⁹⁶ Severed Records at pp. 1, 2 and 178.

⁹⁷ Severed Records, at pp. 9, and 16-18.

⁹⁸ TRU's initial submission at paras. 51-54.

this information would constitute an unreasonable invasion of the third parties' personal privacy. In my view, the information at issue is neither particularly controversial or sensitive, and there is nothing to indicate that it was supplied in confidence. I find that disclosure would not be an unreasonable invasion of anyone's personal privacy so TRU cannot refuse to disclose it under s. 22(1).

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

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

[145] There is only a minimal amount of information about the applicant that was supplied in confidence to TRU. I consider this information is inextricably tied to the personal information of the third parties that supplied it. Therefore, I find TRU is not required under s. 22(5) to provide the applicant with a summary of the applicant's personal information.

CONCLUSION

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

1. I confirm TRU's decision to refuse access the information it withheld under s. 14.
2. Subject to item #4 below, I confirm, in part, TRU's decision to refuse access to the information it withheld under s. 13(1).
3. Subject to item #4 below, I require, in part, TRU to refuse access to the information it withheld under s. 22(1).
4. TRU is not authorized or required to refuse to disclose the information that I have highlighted in green in a copy of the records that will be provided to TRU along with this order.
5. I require TRU to give the applicant access to the information described at item #4 above.
6. TRU must concurrently copy the OIPC registrar of inquiries when it provides the applicant with a copy of the records/pages described at item #4 above and any accompanying cover letters.

Pursuant to s. 59(1) of FIPPA, TRU is required to comply with this order by July 23, 2024.

June 10, 2024

ORIGINAL SIGNED BY

Alexander R. Lonergan, Adjudicator

OIPC File No.: F21-88474