



OFFICE OF THE
INFORMATION &
PRIVACY COMMISSIONER
FOR BRITISH COLUMBIA

Order F24-76

THOMPSON RIVERS UNIVERSITY

Alexander R. Lonergan
Adjudicator

August 19, 2024

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Summary: An applicant asked Thompson Rivers University (TRU) for access to all documents sent to or received by a specific TRU employee that mention the applicant. TRU disclosed responsive records to the applicant but withheld some information under ss. 19(1)(a) (disclosure harmful to individual safety) and 22(1) (unreasonable invasion of a third party's personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator determined that TRU is required to withhold almost all of the information in dispute under s. 22(1). The adjudicator determined that TRU was not required or permitted to withhold a small amount of information under any FIPPA exception to disclosure and required TRU to provide this information to the applicant. Section 19(1)(a) was not at issue with respect to any information that the adjudicator required TRU to provide to the applicant.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 19(1)(a), 22(1), 22(2), 22(2)(a), 22(2)(e), 22(2)(f), 22(2)(h), 22(3)(a), 22(3)(d), and 22(5).

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an individual (the applicant) asked Thompson Rivers University (TRU) for access to all documents, including emails, sent and received by a specific TRU employee that mention the applicant”.¹

[2] TRU determined that there are 27 pages of records responsive to the applicant's request. TRU disclosed some information and records to the applicant

¹ Applicant's request for review, at pp. 4-6.

and withheld other information and records under certain FIPPA exceptions to disclosure, namely, ss. 19(1)(a) (disclosure harmful to individual or public safety) and 22(1) (unreasonable invasion of third-party personal privacy).²

[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 released additional information to the applicant, but this also did not resolve the issues in dispute and the inquiry continued.

Preliminary Issues

In Camera Material

[5] Section 56(2) of FIPPA permits the OIPC to conduct an inquiry in private and s. 56(4) of FIPPA gives the OIPC the discretion to decide whether a hearing proceeds orally or in writing and whether a person is entitled "to have access to or comment on representations made to the commissioner by another person". These provisions provide the OIPC with the ability to receive inquiry material *in camera* using a process that it creates.

[6] *In camera* materials are material that the adjudicator can see but the applicant cannot. In this inquiry, another OIPC adjudicator permitted TRU to provide some material on an *in camera* basis.³

[7] The nature of *in camera* material is that it restricts the applicant's ability to fully respond to the public body's submissions. When considering an *in camera* application, an adjudicator must balance a party's ability to fully present their case with the other party's ability to know and respond to the materials being considered by the Commissioner or his delegate.

[8] Further, fairness requires that the OIPC provide clear and intelligible reasons and *in camera* materials constrain the OIPC's ability to do so. Therefore, the OIPC exercises the discretion to accept *in camera* material sparingly and only to the extent necessary to ensure fairness during the inquiry process.⁴

[9] The applicant says that it was procedurally unfair to permit TRU to submit the *in camera* evidence in this inquiry. Specifically, he argues that the *in camera*

² All sectional references in this Order refer to FIPPA unless otherwise noted.

³ OIPC Adjudicator's letter to Counsel for TRU, March 19, 2024.

⁴ Order F23-23, 2023 BCIPC 27 (CanLII), at para. 9.

material was not accepted through the OIPC’s normal processes,⁵ and that it is unfair to deny him the opportunity to challenge all of TRU’s evidence because he was able to do so in his past inquiries at the OIPC.⁶

[10] The BC Supreme Court recently said that receiving *in camera* material in an OIPC inquiry is not procedurally unfair if the Commissioner (or his delegate) assesses the negative impact on the ability of the party who does not receive the information to meet the case against them, and conducts the assessment from a fairness perspective.⁷

[11] I have considered the adjudicator’s letter authorizing TRU to provide *in camera* material and the nature of the material provided *in camera*. Based on what I see, I find that the adjudicator considered, from a fairness perspective, the negative impact of accepting *in camera* material on the applicant’s ability to meet the case against him. Therefore, I am satisfied that the adjudicator adhered to the OIPC’s established process for considering an application to submit *in camera* material. I conclude that it remains procedurally fair for me to consider this material on an *in camera* basis, and I decline to consider the applicant’s arguments on this issue any further.

Credibility of Affidavit Evidence

[12] The applicant says that some of TRU’s affidavit material should be excluded because the affidavit “likely contains false statements”.⁸ The applicant says the “character and past behaviour” of the individual whom he suspects to be the affiant proves that the affidavit evidence should not be considered. The affiant’s name was provided to the OIPC *in camera*, which prevents me from discussing the applicant’s arguments in detail because I cannot confirm or deny whether the applicant’s suspicions are correct.

[13] What the applicant says fails to persuade me that the *in camera* affidavit is so plainly uncredible that I should not consider it at all. I cannot assess the credibility, reliability, or relevance of affidavit evidence without considering it in the first place. Therefore, I will proceed to consider TRU’s evidence, including its *in camera* evidence, while keeping in mind the applicant’s concerns about its credibility.

⁵ Applicant’s response submission at paras. 4-13.

⁶ Applicant’s response submission at paras. 14-21.

⁷ *Cimolai v British Columbia (Information and Privacy Commissioner)*, 2024 BCSC 948 (CanLII), at paras. 32, 34, and 36; *Instructions for Written Inquiries*, at pp. 5-6, available at <https://www.oipc.bc.ca/guidance-documents/3970>.

⁸ Applicant’s response submission at paras. 21-23.

ISSUES AND BURDEN OF PROOF

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

1. Is TRU required under s. 22(1) to refuse to disclose the information in dispute?
2. Is TRU authorized under s. 19(1)(a) to refuse to disclose the information in dispute?

[15] 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 it withheld under s. 19(1)(a).

[16] Section 57(2) places the burden on the applicant to prove that disclosing the personal information at issue would not be an unreasonable invasion of a third party's personal privacy under s. 22(1). However, TRU has the initial burden of showing that the withheld information is personal information.⁹

DISCUSSION

Background¹⁰

[17] 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. The applicant is a former faculty member of TRU.

[18] Conflict and strong disagreement were frequently present in the professional relationships between the applicant, some of his colleagues, and TRU's administration. Such conflict increased in severity, ultimately resulting in TRU taking disciplinary action against the applicant. I understand the applicant's position to be that some of his colleagues, the leadership of his union, and TRU's administration all conspired to suppress his academic freedom and silence his public criticism of their activities. The applicant seeks records of communications sent or received by a certain TRU employee whom he believes was involved in these events, where those communications mention his name.

Records and Information in Dispute

[19] There are 14 pages of records in dispute. TRU is partially withholding two pages of records under s. 22(1) and entirely withholding 12 pages of records under both ss. 22(1) and 19(1)(a). The records are emails and attachments.

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

¹⁰ The information in this background section is based on information provided in the parties' submissions and evidence. It is not in dispute.

Section 22(1) – Unreasonable Invasion of Third-Party Personal Privacy

[20] 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.¹¹ TRU says that s. 22(1) applies to all of the information and records that it withheld because disclosing that information would unreasonably invade third parties' personal privacy.¹²

[21] Past OIPC orders have established a four-step analytical approach for s. 22(1).¹³ I apply each of these steps under the subheadings that follow.

Personal Information

[22] 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.

[23] 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.”¹⁴

[24] 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.¹⁵

[25] In this matter, almost all of the information withheld under s. 22(1) is about identifiable individuals in the context of workplace complaints and investigations following those complaints. The information includes copies of written complaints, names of third party individuals, witnesses' descriptions of events, and the effects of those events on third party individuals.

[26] Some information in the records does not include the names of the third parties it refers to. However, this information is reasonably capable of identifying

¹¹ 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.

¹² TRU's initial submission at paras. 17-18 and 21.

¹³ Order F15-03, 2015 BCIPC 3 (CanLII) at para. 58; and Order F16-38, 2016 BCIPC 42 (CanLII) at para. 108.

¹⁴ Schedule 1 of FIPPA contains the definitions of “personal information” and “contact information”.

¹⁵ See for example, 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.

third parties because it provides sufficient context for the applicant or others to determine who that information is about. I find that nearly all of the disputed information is “personal information” of one or more third parties.

[27] The exception to this finding is one number on a meeting agenda that appears beside the words “Professional fees” (which were not withheld). TRU does not adequately explain how this number constitutes personal information or how it can be used to identify anyone, and I fail to see how it would. Consequently, I find that this number is not personal information and that s. 22(1) does not apply to it.

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

[28] 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.

[29] TRU says that none of the circumstances set out in s. 22(4) apply to the disputed information.¹⁶ 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

[30] Next, I must determine whether any of the circumstances set out in s. 22(3) apply. If so, then disclosure is presumed to be an unreasonable invasion of a third party’s personal privacy.

[31] The parties raised s. 22(3)(a) and (d) and so I will address their arguments.¹⁷ In my view, no other circumstances under s. 22(3) may be relevant.

Section 22(3)(a) – Medical History

[32] 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.

[33] TRU says that some of the disputed information is about the “medical, emotional and mental health and wellness of third parties” and, therefore, disclosure would be a presumptively unreasonable invasion of those third parties’

¹⁶ TRU’s initial submission at paras. 35-36.

¹⁷ TRU’s initial submission at paras. 37-45; Applicant’s response submission at paras. 45-48.

personal privacy under s. 22(3)(a).¹⁸ The applicant does not discuss the application of s. 22(3)(a).

[34] I find that a small amount of personal information falls under s. 22(3)(a). Taking into account the nature of this information and TRU's *in camera* affidavit evidence, I find that disclosing this information would presumptively be an unreasonable invasion of one or more third parties' personal privacy because it relates to a medical, psychiatric, or psychological condition.

[35] On the other hand, some of the disputed personal information includes expressions of emotional discomfort. While this is clearly psychological in nature, in the particular circumstances of this case, I am not persuaded that this personal information rises to the level of a "history, diagnosis, condition, treatment or evaluation." Therefore, I decline to find that s. 22(3)(a) applies to all of the information that TRU says it does.

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

[36] 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.

[37] The term "employment history" may include 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. Not everything that a third party witness says will constitute that third party's own employment history, however, this may be true if the third party's own actions or allegations are the subject of the workplace complaint, investigation, or disciplinary matter.¹⁹

[38] TRU says that s. 22(3)(d) applies to much of the disputed information because that information contains statements made by third parties in the context of a workplace complaint and related investigation.²⁰

[39] The applicant says that s. 22(3)(d) does not relate to a third party's employment history. He says that the individual whom he suspects wrote a complaint about him was not a TRU employee because, at the time of the complaint, that individual worked solely for a union and had no TRU duties. Additionally, the applicant says that there was no formal investigation arising from the relevant complaints as required by the relevant collective agreement.²¹

¹⁸ TRU's initial submission at para. 45.

¹⁹ Order 01-53, 2001 CanLII 21607 (BC IPC) at paras. 32-38; and Order F21-08, 2021 BCIPC 12 (CanLII) at para. 137.

²⁰ TRU's initial submission at para. 41.

²¹ Applicant's response submission at paras. 46-47.

[40] In reply, TRU says that whether an employee is away from work on an authorized leave is immaterial to whether their complaint is their employment history information. TRU also argues that the outcome of a complaint, including the existence and formality of any resulting investigation, does not change the nature or sensitivity of the records at issue.²²

[41] For the reasons that follow, I find that all of the personal information I am considering is the employment history of one or more third parties.

[42] At the outset, I consider a few of the applicant's arguments irrelevant. Whether an investigative process was formal or informal does not, in all cases, change the nature of the personal information in dispute.²³ Additionally, information can continue to relate to a third party's employment history regardless of whether they were on an approved absence from some of their employment duties when the information is recorded. What matters is whether that information relates to the third party or parties' employment history.

[43] In this matter, almost all of the personal information at issue plainly relates to allegations of wrongdoing in the workplace and disciplinary matters. This personal information is not limited to descriptions of the applicant's behaviour. The disputed personal information includes many details about the role that one or more third parties played in the events that led to these allegations.

[44] For some of the disputed personal information, it is unclear whether the information at issue is related to allegations of wrongdoing in the workplace. However, the surrounding context in the records establishes that this information relates to distinct employee matters that required the attention and participation of TRU's senior human resources team. These circumstances satisfy me that this information reveals the existence of workplace issues that required human resources attention, pertaining to identifiable individual employees. Having considered this context, I find that this personal information is the employment history of those employees.

[45] I conclude that all of the personal information I am considering relates to the employment history of one or more third parties. Therefore, disclosure would presumptively be an unreasonable invasion of one or more third parties' personal privacy under s. 22(3)(d).

Section 22(2) – Relevant circumstances

[46] 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

²² TRU's reply submission at paras. 35-36.

²³ For example, see Order F22-07, 2022 BCIPC 7 (CanLII), at paras. 42-43.

privacy. This is done by considering all relevant circumstances, including those listed in s. 22(2). At this stage, the applicant may rebut the presumption that disclosure would be an unreasonable invasion of one or more third parties' personal privacy under s. 22(3)(d).

[47] The parties' submissions raise the following parts of s. 22(2):

- (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,
 - [...]
 - (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,²⁴
 - [...]

[48] Below, I will consider all of the relevant circumstances below, including each of the circumstances raised by the parties.

Section 22(2)(a) – Scrutiny of a public body's activities

[49] 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.²⁵

[50] The applicant argues that s. 22(2)(a) weighs in favour of disclosure because the third party whom he suspects wrote some of the withheld information was acting in a senior union role. The applicant says that this third party was "currying favour" with TRU, and that the issue of "collusion between TRU and its faculty union" deserves public scrutiny.²⁶ I understand the applicant's

²⁴ TRU's initial submission at paras. 47, 53, and 56; Applicant's response submission at paras. 37 and 43.

²⁵ Order F18-47, 2018 BCIPC 50 (CanLII) at para. 32; Order F16-14, 2016 BCIPC 16 (CanLII) at para. 40.

²⁶ Applicant's response submission at paras. 38-42.

argument to be that TRU was colluding with a related union to suppress debate about the applicant's academic freedom, and that disclosing the withheld information would further public scrutiny of that collusion.

[51] TRU argues that s. 22(2)(a) is “not directed to exposing alleged wrongdoing by individuals or by the [applicant's] union.” Additionally, TRU says that the disputed records do not reveal any wrongful collusion by the relevant union, nor does disclosing the personal information at issue advance any public interest at all. TRU's position is that the withheld personal information is only about matters of an intensely personal nature.²⁷

[52] After considering the nature of the withheld personal information, I find that disclosure would not enhance public scrutiny of TRU's activities. The withheld personal information at issue here is not about the kinds of wrongful activities the applicant alleges. Instead, the information is about discrete interactions between third parties and the applicant. I am not persuaded that these interactions are related to TRU's activities as a public body.

[53] I conclude that none of the withheld personal information would enhance public scrutiny of TRU's activities, if disclosed. Therefore, I find that s. 22(2)(a) does not weigh in favour of disclosure.

Sections 22(2)(e) and (h) - Unfair exposure to reputational and other harm

[54] TRU provides the same arguments to support its position that both ss. 22(2)(e) and 22(2)(h) apply to the personal information in dispute. Therefore, I will consider these subsections simultaneously.

[55] Section 22(2)(e) requires a public body to consider whether disclosure may unfairly expose a third party to financial or other harm. The analysis under s. 22(2)(e) does not require a public body to consider the likelihood that harm will actually occur. Instead, the public body must only consider whether a third party could be exposed to financial or other harm. “Harm” under s. 22(2)(e) includes “serious mental distress or anguish or harassment.”²⁸ Embarrassment, upset, or negative reactions do not rise to the required level of mental harm.²⁹

[56] Similarly, s. 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

²⁷ TRU's reply submission at paras. 24 and 27-28.

²⁸ Order 01-37, 2001 CanLII 21591 (BC IPC), at para. 42.

²⁹ Order 01-15, 2001 CanLII 21569 (BC IPC), at paras. 49-50; Order F20-37, 2020 BCIPC 43 (CanLII), at para. 120.

damage the reputation of a person referred to in the records. Second, the reputational damage must be unfair.³⁰

[57] TRU says that the applicant has engaged in a pattern of making public statements about former workplace colleagues that are derogatory, one of which was made in direct retaliation against a third party for making a complaint about him. This, TRU says, shows that disclosing the disputed information will expose certain third parties to heightened stress and anxiety in anticipation of retaliation by the applicant, concern for their safety, and reputational harm.³¹

[58] Although the applicant does not directly discuss the applicability of ss. 22(2)(e) or 22(2)(h), I consider some of his arguments relevant. First, the applicant says that the statements being raised as an example of his harassment of others were made in media interviews with major reputable media outlets. These outlets, he says, would not carry his comments if they were derogatory.³² Secondly, the applicant says that neither the author of TRU's investigation report nor TRU have ever denied the truth of his comments.³³ Finally, I also understand the applicant to be arguing that his comments were a fair criticism of a third party's performance as a union official. He says that the position held by that third party inherently involves criticism, and questions whether that third party was suited for the role they held.³⁴

[59] In response, TRU says that the applicant's submission in this inquiry "clearly demonstrate[s] that he has no remorse for [his] actions or the impact on [the] affected individual".³⁵ TRU points to its affidavit evidence to argue that there is an established pattern of the applicant making public statements "impugning the honesty, integrity, and professionalism of his co-workers."³⁶

[60] As a starting point, there is sufficient material before me to establish that the applicant has a history of engaging in harassment of third parties by persistently making derogatory public statements about their character. For clarity, this finding is not based solely on the applicant's statements to media outlets but also statements that he made in other contexts. These other statements are before me in the disputed records and the affidavit evidence provided by TRU.³⁷ These statements and the context in which the applicant made them satisfy me that their primary purpose was to inflict discomfort and denigrate the reputation of individuals employed by TRU.

³⁰ Order F21-69, 2021 BCIPC 80 (CanLII), at para. 80.

³¹ TRU's initial submission at paras. 51-52.

³² Applicant's response submission at para. 55.

³³ Applicant's response submission at para. 54.

³⁴ Applicant's response submission at paras. 49-51.

³⁵ TRU's reply submission at para. 39.

³⁶ TRU's reply submission at para. 38 and 40; Affidavit #1 of MS, at para. 3.

³⁷ Affidavit #1 of MS at paras. 3 and 18; *In Camera* Affidavit #1.

[61] For most of the withheld personal information, I find that disclosure would expose one or more third parties to serious mental distress and harassment because disclosure would provide the applicant with information that is similar to what he used to harass individuals in the past. Therefore, I find that s. 22(2)(e) weighs against disclosing most of the withheld personal information.

[62] Additionally, the applicant's history of denigrative public statements and the similarity of information at issue here satisfy me that disclosing any of the information that relates to one or more third parties' health may be weaponized by the applicant to damage their reputation with similar statements. In my view, such reputational damage would be unfair because any public criticism using this information would entail criticism of those persons' health conditions. Consequently, I find that s. 22(2)(h) weighs against disclosing a small amount of the withheld personal information. For clarity, this is the same information to which I found s. 22(3)(a) applies.

[63] A small amount of personal information, which I determined is third party employment history under s. 22(3)(d), consists of individual names and initials on an agenda without apparent connection to any issues involving the applicant. TRU does not explain, nor do I understand, how disclosing this information would expose these individuals to unfair reputational, financial, or other harm. Therefore, I find that ss. 22(2)(e) and (h) are not relevant to this information.

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

[64] 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 to the disputed personal information, there must be evidence that an individual supplied the information and did so under an objectively reasonable expectation of confidentiality.³⁸

[65] TRU argues that one or more third parties supplied the disputed personal information to it in confidence. To support this submission, TRU points to the language of a relevant collective agreement, the affidavit evidence TRU supplied in open evidence, the material TRU submitted *in camera*, and the general circumstances under which the information was supplied.³⁹

[66] The applicant says that there is no indication that certain third parties who wrote the withheld emails wanted those emails to be kept confidential. Additionally, the applicant argues that the collective agreement raised by TRU is

³⁸ Order F11-05, 2011 BCIPC 5 (CanLII) at para. 41, citing Order 01-36, 2001 CanLII 21590 (BC IPC) at paras. 23-26; Order F23-02, 2023 BCIPC 3 (CanLII) at para. 45.

³⁹ TRU's initial submission at paras. 53-55; TRU's reply submission at paras. 29-33; Affidavit #1 of MS at paras. 15 and 18.

not relevant because TRU did not undertake an external investigation of the complaints set out in the withheld records.⁴⁰

[67] The content of the withheld records indicates that one or more third party individuals supplied much of the disputed personal information to TRU. The withheld records contain no explicit request that their contents be kept confidential by TRU. However, the nature of the supplied information and the circumstances under which it was supplied to TRU strongly indicates that there was a mutual expectation of confidentiality by the supplier and TRU when the information was supplied.

[68] Additionally, TRU provided an excerpt from the relevant collective agreement to support its argument that the collective agreement imposes confidentiality obligations on participants to investigations into harassment complaints, whether or not the investigation was conducted by an external professional or by TRU's administration.⁴¹ The confidentiality obligations created by the collective agreement are, in my view, clearly relevant to the supply of information that I am considering now.

[69] These circumstances, when considered alongside the *in camera* and affidavit evidence submitted by TRU, satisfy me that the individual (or individuals) who supplied the disputed personal information did so under an objectively reasonable expectation that TRU would keep that information confidential, insofar as possible.

[70] I find that s. 22(2)(f) weighs against disclosure for most of the personal information in dispute because that information was supplied in confidence.

Applicant's personal information

[71] Past orders have found that the fact personal information is an applicant's own personal information will weigh in favour of disclosure.⁴²

[72] In this matter, nearly all of the disputed personal information is about one or more third parties' interactions with the applicant. Most of the disputed information, therefore, is the personal information of the applicant and the third parties at the same time. The fact that much of the disputed personal information is about the applicant weighs in favour of its disclosure. For clarity, this finding does not apply to some of the disputed personal information that, despite being third party employment history information, has no apparent connection to the applicant.

⁴⁰ Applicant's response submission at paras. 43-44.

⁴¹ TRU's reply submission, attachment, "Collective Agreement Provisions".

⁴² Order F10-10, 2010 BCIPC 17 (CanLII) at para. 37; Order F20-13, 2020 BCIPC 15 (CanLII) at para. 73.

Conclusions – s. 22(1)

[73] With one exception, all of the information in dispute is simultaneously the personal information of one or more third parties and the applicant.

[74] For most of the personal information in dispute, I have found that disclosure is presumed to be an unreasonable invasion of one or more third parties' personal privacy because it relates to their employment history under s. 22(3)(d). Similarly, a small amount of information relates to one or more third parties' medical conditions under s. 22(3)(a). Nothing that the applicant says persuades me that he has rebutted these presumptions.

[75] For all of the disputed personal information (whether or not a presumption applies), there are several factors that weigh against disclosing it. Wherever the disputed personal information was supplied by a third party individual to TRU, I am satisfied that it was supplied in confidence. In many cases, disclosure would expose one or more third parties to serious mental harm and unfair reputational harm.

[76] I determined that disclosure would not, for any of the disputed personal information, enhance public scrutiny of TRU's activities. While much of this information is the applicant's own personal information, a factor which weighs in favour of disclosure, that does not outweigh these other circumstances.

[77] I conclude that disclosing the disputed personal information, in nearly every instance, would constitute an unreasonable invasion of one or more third party's personal privacy. Therefore, TRU is required to withhold this personal information under s. 22(1).

[78] There is one exception to this finding. One third party's surname was severed from an email under s. 22(1). The presence of this surname indicates that the third party received a copy of an investigator's report, but does not indicate their relationship to that report or why that third party received it. I find that disclosing this surname would not unreasonably invade that third party's personal privacy. Therefore, TRU may not withhold that name under s. 22(1).

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

[79] Section 22(5) of FIPPA states:

- (5) On refusing, under this section, to disclose personal information supplied in confidence about an applicant, the head of the public body must give the applicant a summary of the information unless
 - (a) the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information, or

- (b) with respect to subsection (3) (h), either paragraph (a) of this subsection applies or the applicant could reasonably be expected to know the identity of the third party who supplied the personal recommendation or evaluation, character reference or personnel evaluation.

[80] Neither party addressed whether s. 22(5) applies in this matter. I have considered what the withheld personal information reveals about the interactions between the applicant and the third parties who supplied that information. If a summary of this information is disclosed to the applicant, I have no doubt that he could use such a summary to immediately identify those third parties. Consequently, I find that TRU is not required to give the applicant a summary of the personal information about the applicant that was supplied in confidence.

Section 19(1)(a) – *Disclosure harmful to individual safety or safety*

[81] Section 19(1)(a) says that the head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to threaten the safety or mental or physical health of anyone other than the applicant.

[82] I determined that TRU must, under s. 22(1), refuse to disclose almost all of the information that it withheld. TRU did not apply s. 19(1)(a) to the small amount of information that I determined it was not required to withhold under s. 22(1). Therefore, it is unnecessary for me to consider whether s. 19(1)(a) applies to any of the information in dispute.

CONCLUSION

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

1. Subject to item #2 below, TRU is required to refuse access to the information it withheld under s. 22(1).
2. TRU is not authorized or required to refuse to disclose the information that I have highlighted in green at pages 5 and 14 in a copy of the severed records that will be provided to TRU along with this order. TRU is required to give the applicant access to this information.
3. TRU must concurrently copy the OIPC registrar of inquires on its cover letter and the records it sends to the applicant in compliance with item #2 above.

[84] Pursuant to s. 59(1) of FIPPA, TRU is required to comply with this order by **October 2, 2024**.

August 19, 2024

ORIGINAL SIGNED BY

Alexander R. Lonergan, Adjudicator

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