



Order F24-81

THOMPSON RIVERS UNIVERSITY

Allison J. Shamas
Adjudicator

September 18, 2024

CanLII Cite: 2024 BCIPC 93
Quicklaw Cite: [2024] B.C.I.P.C.D. No. 93

Summary: An applicant requested access to records exchanged between Thompson Rivers University (TRU) and its legal counsel regarding an investigation into a workplace complaint a TRU faculty member made about the applicant. TRU disclosed the responsive records but withheld some information and records under ss. 14 (solicitor-client privilege), 19 (disclosure harmful to individual health and safety), and 22(1) (unreasonable invasion of personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA). The adjudicator determined that TRU was authorized to withhold all the information it withheld under s. 14 and required to withhold all the information it withheld under s. 22. As TRU's withheld the same information under s. 19 and s. 22, the adjudicator did not consider s. 19.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165, ss. 14, 22(1), 22(2), 22(3)(a), 22(3)(d), and 22(4)(e).

INTRODUCTION

[1] The applicant requested access to records exchanged between Thompson Rivers University (TRU) and its legal counsel regarding an investigation into a workplace complaint a TRU faculty member made about the applicant. TRU disclosed the responsive records but withheld some information and records under ss. 14 (solicitor-client privilege), 19 (disclosure harmful to individual health and safety), and 22(1) (unreasonable invasion of personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review TRU's decision. Mediation did not resolve the matter and it proceeded to inquiry.

Preliminary Issues

[3] Both parties argue that I should exclude parts of the other's submission. The applicant's arguments relate to an affidavit containing *in camera* materials, while TRU's relate to parts of the applicant's submissions to which it objects.

Applicant's request that I exclude TRU's in camera materials

[4] Section 56 of FIPPA permits the OIPC to conduct an inquiry in private¹ and gives the OIPC the discretion to decide whether a person is entitled "to have access to or comment on representations made to the commissioner by another person".² These provisions provide the OIPC with the ability to receive inquiry material *in camera*.

[5] When considering a party's request to submit material *in camera*, the OIPC balances 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 OIPC. 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.³

[6] The BC Supreme Court recently ruled that receiving *in camera* material in an OIPC inquiry is not procedurally unfair if the OIPC 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.⁴

[7] In this inquiry, the OIPC permitted TRU to submit some of the information in a witness' affidavit, including the witness' identity on an *in camera* basis.⁵ I will refer to this witness as Witness X.

[8] The applicant argues that the individual he believes to be Witness X committed perjury in past OIPC proceedings, and that various other individuals associated with TRU conspired to cover up the perjury and other instances where, he says, TRU submitted false evidence to the OIPC. Relying on these allegations, the applicant submits that it is unfair to proceed based on Witness X's *in camera* evidence because doing so would deny him the opportunity to identify and challenge Witness X's *in camera* evidence.⁶

¹ FIPPA s. 56(2).

² FIPPA s. 56(4).

³ Order F23-23, 2023 BCIPC 27 (CanLII) at para. 9.

⁴ *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>.

⁵ OIPC Adjudicator's letters to Counsel for TRU dated June 14 and 20, 2024.

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

[9] TRU explains that the applicant's allegations relate to Order F22-48.⁷ It states that there has been no finding of perjury against the individual in question and argues that the OIPC cannot make such a finding. TRU further explains that the affidavits in the inquiry that led to Order F22-48 were prepared at a time when the records at issue could not be located. It takes the position that what the applicant refers to as perjury is more appropriately described as a difference of opinion about the interpretation of a particular FIPPA provision, and at worst, a mistake resulting from the fact that the affiant did not have the records at the time they prepared the affidavit.

[10] While the applicant frames his submissions in terms of perjury, I understand the applicant's argument to be that the individual he believes to be Witness X provided false evidence in a past OIPC inquiry.

[11] Considered together, the parties' submissions are sufficient to give me some pause about the past conduct of the individual the applicant believes to be Witness X. However, I have a very incomplete picture of the evidence at issue in Order F22-48, and even if I had convincing evidence that Witness X provided false evidence in a past inquiry, that would not necessarily persuade me that they would do so in this inquiry. The Supreme Court of Canada has recognized that while "people generally act consistently with their known character" and past conduct, that is not always or necessarily true.⁸ I also find it relevant that the kind of evidence at issue in the two inquiries is substantially different. While the applicant challenges factual statements Witness X made about records related to Order F22-48, the *in camera* evidence in this inquiry relates to Witness X's feelings and personal circumstances.

[12] Ultimately, I am not persuaded that Witness X's *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.

[13] More generally, I have considered the correspondence between the adjudicator and TRU concerning TRU's request to provide *in camera* material as well as the material provided *in camera*. There is nothing before me to suggest that the adjudicator failed to weigh the correct factors in making the decision to accept certain information on an *in camera* basis. While I will consider the issues discussed above in weighing the *in camera* evidence, I am satisfied that it remains procedurally fair for me to consider this material on an *in camera* basis.

⁷ 2022 BCIPC 55 (CanLII).

⁸ *R. v. Handy*, 2002 SCC 56 at para. 39. See also paras. 35-37 and 82.

TRU's request that I disregard the applicant's submissions

[14] I now turn to TRU's request that I disregard certain parts of the applicant's submission. TRU asserts that the applicant's submissions about false evidence and conspiracy are unfounded, inaccurate, inflammatory, contrary to the OIPC's Instructions for Written Inquiries, inconsistent with the fundamental requirement of civility in adversarial proceedings, and a misuse of the OIPC's procedures. It asks that I exclude these submissions. It also states that in recent years, the applicant has brought more than 50 access requests, at least 20 of which have been referred to inquiry. It submits that the applicant has misused FIPPA as a platform to mount a campaign against persons at TRU with whom he has philosophical disagreements and personal grievances. TRU also states that the applicant has adopted a similar accusatory tone in the submissions filed in many other OIPC proceedings.

[15] The applicant made broad allegations that various individuals associated with TRU (many of whom have no connection to the instant inquiry) submitted false evidence or conspired to coverup false evidence in past OIPC proceedings. However, in many instances the applicant failed to provide information to substantiate these allegations. Furthermore, I can see no evidence to substantiate the applicant's conspiracy allegations.

[16] I also find that the language the applicant used to describe and discuss these same TRU officials improper. In addition to attacking the character, ethics, and professionalism of several individuals, he also repeatedly used disparaging language to describe them. By way of example the applicant's access request calls one individual a "shyster", and another as a "perjurer".

[17] In the circumstances, I will not consider the applicant's conspiracy allegations, or his allegations about individuals who are not relevant to the inquiry further. However, in addition to Witness X the applicant has made a specific allegation about TRU's Privacy and Access Officer, who provided evidence in this inquiry. As the Privacy and Access Officer's conduct is relevant to this inquiry, I will consider the applicant's allegations about the officer under s. 22(2)(e) and (h) when I consider the Privacy and Access Officer's evidence.

[18] In light of the findings above, I wish to remind the applicant of the OIPC's statement on improper conduct in its *Instructions for Written Inquiries* in which the OIPC reminds all participants to OIPC proceedings that they are expected to behave and communicate respectfully, and that improper conduct includes:

- Using rude, inflammatory, derogatory, disrespectful, inappropriate or threatening language in communications with other parties, their representatives or OIPC staff.

- Disparaging attacks on the character of other parties, their representatives, or OIPC staff.
- Indiscriminate and unfounded allegations that another party, their representative, or an OIPC staff member is acting in an improper manner.⁹

[19] These expectations are also explained in the Notice of Inquiry, and the accompanying FAQ document. The applicant has participated in numerous OIPC inquiries, so I expect that he is aware of the above expectations.

[20] I will not address TRU's submission that the applicant is misusing the OIPC's inquiry process by using the OIPC's process to make unfounded and inflammatory attacks intended to air his personal grievances. To start, the OIPC has discretion under s. 56(1) of FIPPA to decline to hear inquiries that amount to an abuse of process. I note that the OIPC has done so in two recent cases which bear some similarities to the conduct described by TRU in its submission.¹⁰ However, I will not consider whether to use the discretion under s. 56 to refuse to conduct this inquiry because the applicant's behaviour amounts to an abuse of FIPPA as this was not an issue in the Notice of Inquiry, and I do not interpret TRU's reference to a misuse of proceedings as a formal request to add it.

[21] To conclude with respect to the parties' preliminary arguments, I will consider both parties' submissions about the individual the applicant believes to be Witness X in considering what weight to give to their evidence. I will not consider the applicant's conspiracy allegations or his allegations about individuals who are not relevant to this inquiry further. I will not decide whether the applicant's behaviour amounts to an abuse of process and is grounds to decline to conduct this inquiry under s. 56(1) because the issue of whether is not properly before me. That being said, I caution the applicant that name calling, personal insults, and unsubstantiated attacks on the character of other parties or their representatives is improper and may result in restricted access to OIPC proceedings in the future.

ISSUES IN DISPUTE

[22] The issues to be decided in this inquiry are:

1. Whether TRU is authorized to refuse to disclose the information at issue under ss. 14 and 19 of FIPPA.
2. Whether TRU is required to refuse to disclose the information at issue under s. 22(1) of FIPPA.

⁹ *Instructions for Written Inquiries* available at <https://www.oipc.bc.ca/guidance-documents/3970>.

¹⁰ Orders F23-23, 2023 BCIPC 27 (CanLII) and Order F24-24, 2024 BCIPC 31.

[23] Section 57(1) of FIPPA places the burden on TRU to prove that the applicant has no right of access to the information withheld under ss. 14 and 19. While under s. 22(1) TRU has the initial burden to establish that the information in dispute is personal information about a third party, s. 57(2) places the burden on the applicant to prove that disclosure of any personal information would not be an unreasonable invasion of a third party's personal privacy.¹¹

BACKGROUND

[24] TRU is a post-secondary educational institution located in Kamloops, British Columbia. It is party to a collective agreement with the Thompson Rivers University Faculty Association (the Union). The applicant is a former member of faculty at TRU and former member of the Union.

[25] The applicant has a strained relationship with TRU and some of his former TRU colleagues. During his employment, the applicant was the subject of three workplace harassment complaints filed by other TRU faculty members, which ultimately led to his dismissal. For his part, the applicant's submissions are rife with allegations of misconduct, dishonesty, and conspiracy against him amongst TRU officials, lawyers, and faculty members. In addition, the applicant has been outspoken about his views about his TRU colleagues on social media.

[26] The instant access request relates to a workplace harassment complaint (the Complaint) that another faculty member (the Complainant) filed against the applicant alleging that the applicant published information on social media intended to harm the Complainant's professional reputation. TRU hired the Lawyer investigate the Complaint. In this access request, the applicant seeks access to records exchanged between TRU and the Lawyer in connection with the Lawyer's investigation.

RECORDS AT ISSUE

[27] The responsive records are 422 pages of emails and documents. As a result of the nature of the applicant's request, all the responsive records were exchanged between TRU and the Lawyer. They include the Complaint, a retainer agreement and other agreements between TRU and the Lawyer, a collective agreement between TRU and the Union, emails between TRU officials and the Lawyer, and other emails related to the Complaint. TRU withheld information from approximately 137 pages of the records.

SOLICITOR-CLIENT PRIVILEGE – S. 14

¹¹ Order 03-41, 2003 CanLII 49220 at paras. 9–11.

[28] The term “solicitor-client privilege” under s. 14 encompasses both legal advice privilege and litigation privilege.¹² TRU claims legal advice privilege.

[29] Legal advice privilege protects confidential communications between a solicitor and client made for the purpose of seeking or providing legal advice, opinion, or analysis.¹³ For information to be protected by legal advice privilege it must be:

1. A communication between solicitor and client (or their agent),
2. that is intended by the solicitor and client to be confidential, and
3. that entails the seeking or providing of legal advice.¹⁴

[30] Not every communication between solicitor and client is protected by legal advice privilege. However, if the conditions set out above are satisfied, then legal advice privilege applies.¹⁵

Parties’ Submissions

[31] TRU withheld seven email chains based on legal advice privilege. It asserts that it engaged the Lawyer to provide it with legal advice in connection with the investigation, and that disclosing the email chains would reveal privileged communications between TRU and the Lawyer.

[32] In support of its position, TRU relies on an affidavit from the Lawyer. The Lawyer states that they are licensed to practice law in BC, and that they have previously acted as legal counsel for TRU.

[33] Addressing the withheld information, the Lawyer states that TRU engaged them to provide legal advice and to conduct a privileged and confidential investigation into the Complaint.¹⁶ The Lawyer describes the withheld information as communications between themselves and the Associate Director of Faculty Relations for TRU (the Associate Director), and states that in some cases these communications also involved another lawyer and administrative assistant from their law firm and another administrator from TRU. The Lawyer describes the purposes of the communications as to establish the solicitor-client relationship, request and provide advice, discuss that advice, and exchange information for the purpose of giving advice.¹⁷ The Lawyer concludes by stating that the

¹² Order P06-01, 2006 CanLII 13537 at para. 53.

¹³ *Ibid* at para. 26.

¹⁴ *Solosky v The Queen*, 1979 CanLII 9 (SCC) [*Solosky*] at page 13.

¹⁵ *R. v B.*, 1995 CanLII 2007 (BC SC) at para. 22; *Solosky*, *ibid* at page 13; *R. v McClure*, 2001 SCC 14 [*McClure*] at para. 36, *Festing v Canada (Attorney General)*, 2001 BCCA 612 at para. 92.

¹⁶ Initial submission of TRU, affidavit of the Lawyer at paras 2 and 3.

¹⁷ *Ibid* at para 9.

communications were confidential and for the purposes of seeking, formulating, and providing legal advice.¹⁸

[34] The applicant asserts that the retainer agreement is not subject to privilege because it does not contain legal advice. Alternatively, he argues that those portions of it that do not contain legal advice should be disclosed. The applicant also asserts that TRU did not assert privilege over the investigation report prepared by the Lawyer, and that its failure to do so should be considered in assessing TRU's assertion of privilege over the communication related to that investigation report.

[35] Relying on the conspiracy and false evidence allegations that I discussed above, the applicant also asserts crime-fraud exception to privilege applies to the withheld information.

Findings and Analysis

[36] TRU provided the information it withheld under s. 14 for my review. In arriving at the findings below, I have considered the records, the Lawyer's evidence, and the parties' submissions.

[37] TRU withheld seven email chains under s. 14. Having reviewed the email communications, I can see that they are:

- email communications between the Associate Director and the Lawyer for the purpose of establishing the terms of the relationship between TRU and the Lawyer,
- a retainer agreement and other agreements establishing the formal relationship between TRU and the Lawyer's law firm,
- email communications from the Associate Director to the Lawyer in which the Associate Director requests legal advice, repeats legal advice received from the Lawyer, and instructs the Lawyer,
- email communications from the Lawyer to the Associate Director in which the Lawyer seeks instructions and provides legal advice to the Associate Director, and
- email communications in which the Associate Director provides information and documents to the Lawyer that relate to the investigation.

[38] Having reviewed the communications and agreements between TRU and the Lawyer (or the Lawyer's law firm), I find that they support the Lawyer's evidence that they were hired to provide TRU with legal advice in connection with the investigation. The nature of the parties' relationship is clear from both the

¹⁸ *Ibid* at para 10.

formal agreements establishing their relationship,¹⁹ and from the nature of their communications – that is, the Lawyer did provide legal advice to TRU.²⁰ Based on the Lawyer's evidence and the records themselves, I find that there was a solicitor-client relationship between the Lawyer and TRU for the purpose of the communications at issue.

[39] I also accept that both the Lawyer and TRU intended those communications to be confidential. In addition to express statements from both the Lawyer and TRU, this intention is reflected in the formal agreements establishing their relationship. Furthermore, having reviewed the communications, I can see that they were not shared with anyone outside of TRU and the Lawyer's law firm.

[40] With respect to the involvement of other individuals from the Lawyer's law firm, Canadian courts have long recognized that lawyers, their staff, and other firm members working together on a file may share privileged information amongst themselves without vitiating confidentiality.²¹ Relying on these principles, I find that the involvement of another lawyer and administrative employee of the law firm has no bearing on the confidentiality of the communications.

[41] Finally, turning to the nature of the communications themselves, I find that all the communications described above entail the seeking and/or providing of legal advice.

[42] I begin with the communications and formal agreements establishing the relationship between TRU and the Lawyer. This information raises the question of when the solicitor-client relationship begins, and whether communications that relate to engaging a solicitor, rather than a legal matter, are not privileged. In *Descoteaux v Mierzwinski* [*Descoteaux*], the Supreme Court of Canada addressed both issues directly:

A lawyer's client is entitled to have all communications made with a view to obtaining legal advice kept confidential. Whether communications are made to the lawyer himself or to employees, and whether they deal with matters of an administrative nature such as financial means or with the actual nature of the legal problem, all information which a person must provide in order to obtain legal advice and which is given in confidence for that purpose enjoys the privileges attached to confidentiality. This

¹⁹ As TRU withheld the s. 14 materials in their entirety, I cannot provide details without disclosing information that is in dispute. However, the nature of the relationship between TRU and the Lawyer is set out at pages 14 and 28 of the Records.

²⁰ Again, I am unable to provide specifics, but see page 23 for an example of the Lawyer's legal advice.

²¹ *Shuttleworth v Eberts et. al.*, 2011 ONSC 6106 at paras 67 and 70-71 and *Weary v Ramos*, 2005 ABQB 750 at para 9.

confidentiality attaches to all communications made within the framework of the solicitor-client relationship, which arises as soon as the potential client takes the first steps, and consequently even before the formal retainer is established.²²

[43] Consistent with the Supreme Court’s ruling, both the OIPC and the BC courts have held that solicitor-client communications that set out the terms of the solicitor client relationship relate directly to the seeking, formulating, or giving of legal advice and are therefore privileged.²³ These authorities make clear that communications whose purpose it is to engage a lawyer fall within the solicitor-client framework. Relying on these authorities, I find that the communications and agreements about this in the present case entail the seeking and providing of legal advice.

[44] Communications in which the Associate Director requests legal advice and instructs the Lawyer, and in which the Lawyer requests instructions and provides legal advice fall squarely within the definition of legal advice. I find that these communications also entail the seeking and providing of legal advice.

[45] Finally, I turn to the email communications in which the Associate Director provides information and documents to the Lawyer that relate to the investigation. It is well-established that solicitor-client privilege includes all communications that are “part of the continuum of information exchanged”²⁴ between the client and the lawyer to obtain or provide the legal advice. This includes the necessary exchange of information between solicitor and client for the purpose of obtaining and providing legal advice such as “history and background from a client.”²⁵ Having reviewed the information and the content of the communications, I find that the Associate Director provided the information to the Lawyer because it was necessary for the Lawyer to provide TRU with legal advice and to conduct the investigation. Therefore, I find that this information also entails the seeking and providing of legal advice.

[46] I now turn to the applicant’s submission about the implication of TRU’s disclosure of the Lawyer’s final report about the Complaint. In its submission, TRU acknowledges that it disclosed the Lawyer’s final report into the Complaint, and states that did not intend to waive privilege over the communications at issue in this inquiry in so doing.

²² *Descôteaux v Mierzwinski*, 1982 CanLII 22 (SCC) [Descôteaux] at pp 892-893.

²³ Order F15-15, 2015 BCIPC 16 (CanLII) at para 17, and Order F23-101, 2023 BCIPC 117 (CanLII) at para. 76.

²⁴ *Camp Development Corporation v South Coast Greater Vancouver Transportation Authority*, 2011 BCSC 88 [Camp Developments] at paras 40-46, and *Huang v Silvercorp Metals Inc.*, 2017 BCSC 795 [Huang] at para 83.

²⁵ *Camp Developments*, *ibid* at para 40.

[47] Once legal advice privilege is established it will remain in place indefinitely²⁶ until it is waived. Solicitor-client privilege belongs to, and can only be waived by, the client.²⁷ Once privilege is established, the party seeking to displace it has the onus of showing it has been waived.²⁸ Given the importance of solicitor-client privilege to the functioning of the legal system, evidence justifying a finding of waiver must be clear and unambiguous.²⁹

[48] The final report into Complaint is not part of the responsive records in this inquiry. The communications at issue occurred prior to the investigation and were, therefore exchanged well in advance of any final report.

[49] The applicant does not assert that TRU waived privilege over the communications at issue, or otherwise explain why disclosure of the final report would undermine TRU's claim of privilege over the communications at issue in this inquiry. It is not clear to me how or why disclosure of the final report would undermine TRU's claim of privilege over separate communications that took place prior to the investigation. As the applicant has not explained, I do not accept the applicant's submission that TRU's disclosure of the final report undermines its assertion of privilege over the communications at issue in this inquiry.

[50] I am also not persuaded by the applicant's arguments about the crime-fraud exclusion. The crime-fraud exclusion doctrine holds that where communications between a client and their solicitor are made with a view to obtaining legal advice to facilitate unlawful conduct, solicitor-client privilege does not apply.³⁰ Ordinarily an adjudicator would only review privileged information for evidence of criminal activity if an applicant established a *prima facie* case. However, in this case, because TRU provided the s. 14 information for my review, I need not determine this question. Having reviewed the records, I find that there is nothing in the records themselves to substantiate the applicant's allegations any unlawful activity. Therefore, I find that the crime-fraud exclusion does not apply.

Conclusions – s. 14

[51] For the reasons set out above, I find that legal advice privilege applies to all the information TRU withheld under s. 14.

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

²⁷ *Canada (National Revenue) v. Thompson*, 2016 SCC 21 at para 39; *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, 2002 SCC 61 at para 39.

²⁸ *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.*, 2007 BCSC 1420 at para 22; *Maximum Ventures Inc. v. de Graaf*, 2007 BCSC 1215 ["Maximum"] at para 40.

²⁹ *Maximum ibid* at para. 40.

³⁰ *Camp Developments*, *supra* note 15 at para 43.

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

[52] Section 22(1) of FIPPA requires a public body to refuse to disclose personal information that would be an unreasonable invasion of a third party's personal privacy. Numerous orders have considered the application of s. 22, and I will apply those same principles here.³¹

Section 22(1) – Personal Information

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

[54] Personal information is defined in Schedule 1 of FIPPA as “recorded information about an identifiable individual other than contact information.” Information is “about an identifiable individual” when it is “reasonably capable of identifying an individual, either alone or when combined with other available sources of information.”³²

[55] Contact information is defined in Schedule 1 of FIPPA 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.”³³ The purpose of the “contact information” exclusion is to clarify that information relating to the ability to communicate with a person at that person's workplace, in a business capacity, is not personal information.³⁴

[56] TRU describes the information it withheld under s. 22 as identifying information about third parties, the personal views and opinions of third parties, information about the psychological and medical state of third parties, and information related to employment.

[57] The applicant states that some of the withheld information is email addresses and argues that they cannot be withheld under s. 22 because they are contact information.

Findings and analysis

³¹ For example, see Order F15-03, 2015 BCIPC 3 at para 58.

³² Order F19-13, 2019 BCIPC 15 at para 16, citing Order F18-11, 2018 BCIPC 14 at para 32.

³³ Schedule 1.

³⁴ Order F05-31, 2005 BCIPC 39585 (CanLII) at para 26. See also Order F08-03, 2008 BCIPC 13321 (CanLII) at para 82.

[58] The information TRU withheld under s. 22(1) is found in emails about the Complaint and in the Complaint itself. That information is individuals’:

- names,
- email addresses,
- statements that would reveal the nature of their participation in the Complaint,
- opinions and personal feelings,
- statements about the impact of the applicant’s conduct on them, and
- detailed information about their psychological diagnoses, conditions, and treatments.

[59] I find that all the withheld information is about identifiable individuals. A name is the most direct means of identifying an individual.³⁵ The email addresses include the individuals’ names. The remaining information is detailed and specific and arises within the context of a particular set of workplace issues with which the applicant is familiar. Considered in this context, I find that the applicant could easily connect the remaining information to identifiable individuals if that information was disclosed.

[60] Some of the names and email addresses are found in the sender and recipient fields of work-related email messages. As the applicant notes, this type of information is generally considered contact information. However, whether information is “contact information” depends on the context in which it appears.³⁶ and past orders have repeatedly held that information that arises in the context of a workplace investigation is not contact information.³⁷ In the context of this case, I find that the names and email addresses are not contact information because they arise in the context of a workplace investigation, and disclosing them would reveal that the affected individuals participated in a workplace investigation.

[61] In summary, I find that all the information TRU withheld under s. 22(1) is personal information within the meaning of FIPPA.

Section 22(4) – Circumstances where Disclosure is not an Unreasonable Invasion of a Third Party’s Personal Privacy

[62] The second step in the s. 22 analysis is to consider whether s. 22(4) applies to any of the information that I have found is personal information. Section 22(4) lists circumstances where disclosure of personal information is not

³⁵ Order F21-47, 2021 BCIPC 55 (CanLII) at para. 13.

³⁶ Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

³⁷ For similar findings, see Order F23-33, 2023 BCIPC 39 (CanLII) at para 60, Order F20-13, 2020 BCIPC 15 at para 42; and Order F20-08, 2020 BCIPC 9 at para 52, Order F22-10, 2022 BCIPC 10 (CanLII) at para 79, and Order F23-33, 2023 BCIPC 39 at para 60.

an unreasonable invasion of a third party's personal privacy. If information falls into one of the circumstances enumerated in s. 22(4), the public body is not required to withhold it under s. 22(1).

[63] TRU submits that none of the categories listed in s. 22(4) apply to the withheld information, and in particular, s. 22(4)(e) does not apply because the information in dispute arises in the context of a workplace investigation. The applicant does not address s. 22(4).

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

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

[65] Section 22(4)(e) applies to “objective, factual statements about what the third party did or said in the normal course of discharging [their] job duties, but not qualitative assessments or evaluations of such actions.”³⁸ When assessing whether s. 22(4)(e) applies, the key question is, considered in its full context, what does the information reveal about the affected individual?³⁹

[66] In this case, I find that disclosing the information in dispute would reveal details about the nature of the affected individuals' participation in the workplace investigation, and subjective information about their opinions, feelings, and personal experiences.⁴⁰ In this regard, the names and email addresses would allow a reader to connect the individuals to the information described above, and the balance of the information is itself this kind of information. Therefore, I find that the information in dispute is not the kind of objective, factual information to which s. 22(4)(e) applies.

[67] Having considered the remaining categories listed in s. 22(4), I find that no others apply.

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

³⁸ Order 01-53, 2001 CanLII 21697 (BC IPC) at para 40.

³⁹ See for example Order F23-28, 2023 BCIPC 32 at para 42; Order F21-08, 2021 BCIPC 12 (CanLII) at paras. 126-129; Order F10-21, 2010 BCIPC 32 (CanLII) at para 24; Order F08-04, 2008 CanLII 13322 (BC IPC) at para 27; Order 00-53, 2000 CanLII 14418 (BC IPC) at p. 7; and Order 01-53, 2001 CanLII 21607 (BC IPC) at para 40.

⁴⁰ For a further discussion of when information relating to a workplace investigation falls under s. 22(4)(e), see for example Order F24-48, 2024 BCIPC 56 (CanLII) at para 80, Order F23-71, 2023 BCIPC 84 at para 51, Order F21-08, 2021 BCIPC 12 (CanLII) at paras 126 and 127, and Order 01-07, 2001 CanLII 21561 (BC IPC) at para 8.

[68] Section 22(3) lists circumstances where disclosure is presumed to be an unreasonable invasion of a third party's personal privacy. TRU argues that ss. 22(3)(a) and (d) apply. The applicant does not address s. 22(3).

Medical, psychiatric, or psychological history – s. 22(3)(a)

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

[70] TRU withheld detailed information about third parties' psychological diagnoses, conditions, and treatments. I find that the s. 22(3)(a) presumption against disclosure applies to this information.

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

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

[72] Past orders have held that "employment history" includes qualitative information about a third party's workplace behaviour such as complaints, investigations or discipline relating to a third party's workplace conduct.⁴¹ More specifically, the OIPC has recognized that "employment history" includes personal information about individuals who initiate workplace complaints,⁴² and who are the subject of complaints.⁴³

[73] All the information at issue was exchanged between TRU and the Lawyer as part of the Lawyer's investigation into the Complaint. It is all the personal information of individuals who initiated workplace complaints. In addition, some of it is at the same time about the applicant who was the subject of those complaints. In addition to the names and email addresses of individuals who initiated workplace complaints, it is details about the nature of the affected individuals' participation in workplace investigations, and information about their opinions, feelings, and personal experiences in relation to the matters under investigation.⁴⁴ In my view, the information at issue falls squarely within

⁴¹ See for example: Order 01-53 2001 CanLII 21607 (BCIPC) at paras 32-33 and Order F16-28, 2016 BCIPC 30 (CanLII) at para 94.

⁴² Order F22-07, 2022 BCIPC 7 (CanLII) at paras 42-44, and Order F24-48, 2024 BCIPC 56 (CanLII) at para. 93.

⁴³ Order 01-53, 2001 CanLII 21607 (BCIPC) at paras 32 and 41; Order F20-13, 2020 BCIPC 15 (CanLII) at para 55.

⁴⁴ For a further discussion of when information relating to a workplace investigation falls under s. 22(4)(e), see for example Order F24-48, 2024 BCIPC 56 (CanLII) at para 80, Order F23-71, 2023

s. 22(3)(d), and therefore I find that the s. 22(3)(d) presumption against disclosure applies to all the information TRU withheld under s. 22.

[74] I have considered the remaining presumptions listed in s. 22(3), I find that no others apply.

Section 22(2) – All Relevant Circumstances

[75] The final step in the s. 22 analysis is to consider the impact of disclosing the personal information at issue in light of all relevant circumstances, including those listed in s. 22(2).

[76] TRU asserts that s. 22(2)(e), (f), and (h) weigh in favour of withholding the information in dispute. The applicant argues that s. 22(2)(a) and his familiarity with some of the information in dispute weighs in favour of disclosure. I also find that the fact that some of the information is about the applicant is a relevant factor to consider.

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

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

[78] For s. 22(2)(a) to apply, the disclosure of the specific information at issue must be desirable for subjecting the public body’s activities to public scrutiny as opposed to subjecting an individual third party’s activities to public scrutiny.⁴⁵

[79] The applicant argues that s. 22(2)(a) applies because disclosing the information in dispute would reveal evidence to support his allegations about false evidence and conspiracy.

[80] I have examined the information in dispute. I find that it does not reveal the kinds of wrongful activities the applicant alleges, and I can see no other connection between the information in dispute and public scrutiny of TRU’s activities. For these reasons, I am not persuaded that disclosing the information in dispute is desirable for the purpose of subjecting TRU’s activities to public scrutiny and I find that s. 22(2)(a) does not apply.

Supplied in confidence – s. 22(2)(f)

BCIPC 84 at para 51, Order F21-08, 2021 BCIPC 12 (CanLII) at paras 126 and 127, and Order 01-07, 2001 CanLII 21561 (BC IPC) at para 8.

⁴⁵ Order F16-14, 2016 BCIPC 16 (CanLII) at para 40, and Order F24-48, 2024 BCIPC 56 (CanLII) at para 105.

[81] Section 22(2)(f) provides that whether “the personal information has been supplied in confidence” is a factor to consider in determining whether disclosure would be an unreasonable invasion of a third party's personal privacy.

[82] For s. 22(2)(f) to apply, there must be evidence that an individual supplied the personal information, and that they did so under an objectively reasonable expectation of confidentiality at the time the information was provided.⁴⁶

[83] TRU submits that the individual who filed the Complaint did so under an objectively reasonable expectation of confidentiality. To support this submission, TRU points to the evidence of its affiants and the general circumstances under which the Complaint was submitted. It also points to the Collective Agreement language which provides that “any complaint of harassment will be kept confidential except as is necessary to investigate and resolve the issue. Investigators will stress the confidentiality of the investigation with person(s) interviewed”.⁴⁷

[84] The applicant does not address TRU's arguments under s. 22(2)(f).

[85] Some of the information in dispute was provided to TRU by complainants in workplace harassment complaints against the applicant. I find that this information was supplied within the meaning of s. 22(2)(f).

[86] The supplied information contains no express statement of confidentiality. However, in my view, the sensitive nature of some of the information in the records, and the circumstances under which it was supplied – in the context of a workplace harassment complaint – supports a finding that the information was supplied under an objectively reasonable expectation of confidentiality.

[87] While the Collective Agreement language does contemplate some information being shared for the purpose of an investigation and resolution of a complaint, it also stresses the importance of confidentiality and makes clear that information will be kept confidential to the extent possible. In my view, the impact of this language is mixed - while not an absolute guarantee of confidentiality, it does emphasize the importance of confidentiality.

[88] Considering all these circumstances together, I am satisfied that when the Complainant supplied the disputed information to TRU, they did so under an objectively reasonable expectation that TRU would keep that information confidential, insofar as possible. In this circumstance, I find that the personal information supplied by the Complainant was supplied in confidence and that

⁴⁶ Order F11-05, 2011 BCIPC 5 at para 41 citing and adopting the analysis in Order 01-36, 2001 CanLII 21590 (BC IPC) at paras. 23-26 regarding s. 21(1)(b).

⁴⁷ See TRU initial submission at para 65 and article 9.2.3.2 of the Collective Agreement which is found at page 126 of the records.

weighs against its disclosure. However, I find that the weight of this factor is diminished somewhat by the fact that the Collective Agreement expressly contemplates the need to disclose some information supplied in the context of a workplace harassment complaint.

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

[89] As TRU provides substantially the same arguments in support of its position under ss. 22(2)(e) and (h), I will consider both sections together.

[90] Section 22(2)(e) requires a public body to consider whether disclosure of a third party's personal information will unfairly expose the third party to financial or other harm. Harm under s. 22(2)(e) can include mental harm, in the form of serious mental distress or anguish, but embarrassment, upset or having a negative reaction do not rise to the level of mental harm.⁴⁸

[91] Section 22(2)(h) requires a public body to consider whether disclosure of personal information may unfairly damage a third party's reputation. 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. Second, the reputational damage must be unfair.⁴⁹

Parties' arguments

[92] TRU argues that the applicant has engaged in a pattern of behaviour of making public statements about his coworkers that are derogatory and damaging to their personal and professional reputations, and that have caused serious mental harm in the past. Therefore, according to TRU, providing him with the personal information at issue would unfairly expose the affected individuals to other harm within the meaning of s. 22(2)(e), and may unfairly damage their reputations as contemplated by ss. 22(2)(h). In support of this position, TRU relies on affidavit evidence from its Privacy and Access Officer and Witness X, as well as the information in the records.

[93] TRU's Privacy and Access Officer states that they have been informed by several TRU faculty members that the applicant's conduct toward them caused them to experience intense feelings of stress and anxiety, and the thought that the applicant continues to pursue access requests to obtain information about them exacerbates these feelings and impacts their health and mental health.⁵⁰

⁴⁸ Order F20-37, 2020 BCIPC 43 (CanLII) at para 120; Order 01-15, 2001 CanLII 21569 (BC IPC) at paras 49-50; and Order 01-37, 2001 CanLII 21591 (BCIPC) at para 42.

⁴⁹ Order F21-69, 2021 BCIPC 80 (CanLII), at para 80.

⁵⁰ TRU's initial submissions, affidavit of the Privacy and Access Officer, para 14.

[94] Some of the information in the records and in Witness X's affidavit details the harm caused by the applicant's past conduct and sets out concerns about the harm that may result should the applicant gain access to the personal information that is at issue in this inquiry. As this information is in dispute, or was submitted *in camera*, I cannot provide further details. However, I find that the *in camera* portions of Witness X's affidavit are internally consistent, and consistent with evidence of the Privacy and Access Officer and the information in the records.

[95] In addition to his arguments about Witness X, which are detailed above, the applicant states that in past OIPC proceedings the Privacy and Access Officer provided affidavits that contained "either false or clearly questionable statements."

Findings and analysis

[96] To start, there is no dispute that the applicant has spoken out on social media about his issues with TRU and his TRU colleagues in the past. TRU makes this clear in its submissions, and the records and other materials submitted by the applicant confirm it.

[97] I also find that some of the information in the responsive records suggests that the applicant intends to continue to speak out about issues related to the Complaint. The Complaint relates to allegations that the applicant published information on social media intended to harm the complainant's professional reputation. The records include a social media post by the applicant in which the applicant refers to the complainant as a perjurer and states that he intends to provide further updates on the issues discussed in the post.⁵¹

[98] The personal information at issue is the employment history, medical information, and opinions and feelings of individuals who participated in the Complaint. Much of it is about the complainant.

[99] Turning to the applicant's allegations against the Privacy and Access Officer, while the applicant alleges that the officer submitted false evidence in past OIPS proceedings, he does not identify the statements to which he refers, explain the basis for his allegations, or even identify the inquiry or inquiries in which he says the statements were made. Absent an explanation from the applicant, I decline to consider these allegations in assessing the weight to give to the Privacy and Access Officer's evidence.

[100] In my view, the circumstances described above substantiate the concerns identified by Witness X and the Privacy and Access Officer about the harms of providing the personal information at issue to the applicant. Even giving less

⁵¹ The post is found at page 48 of the records. TRU has already disclosed the post to the applicant.

weight to the evidence of Witness X, together TRU affiants' evidence, the information in the records, and the circumstances persuade me that disclosing the information in dispute could result in feelings of stress and anxiety to the extent that it adversely affects individuals' health and mental health.⁵² Accordingly, I accept that disclosure of the personal information at issue would risk exposing the affected individuals to the kind of serious mental harm contemplated by s. 22(2)(e).

[101] I also accept that s. 22(2)(h) weighs against disclosure of the withheld information. The information in dispute relates to a workplace matter in relation to which the applicant has publicly called one of his former colleagues a perjurer and stated that he intends to provide an update on the situation. I find that providing the applicant with additional information related to the Complaint is likely to result in him posting additional similar statements about the complainant. In my view, there is no question that referring to a faculty member at a university as a perjurer may result in damage to their reputation. As no findings have been made, I also find that any resulting reputation damage would be unfair.

[102] Accordingly, I find that ss. 22(2)(e) and (h) weigh against disclosure of all information about the Complainant.

Applicant's prior knowledge

[103] Prior knowledge is not an enumerated factor under s. 22(2), but many past orders have held that the fact that an applicant already knows the third party personal information in dispute is a relevant circumstance that may weigh in favour of disclosure.⁵³

[104] The applicant submits that he has knowledge of some of the information in dispute and that that knowledge weighs in favour of disclosure. In support of this position, the applicant relies on a document titled "Particulars of Harassment Complaint – Further Revised."⁵⁴ The document appears to be a summary of some of the allegations made against him in the Complaint.

[105] I have compared the information in the document submitted by the applicant to the information in dispute. In my view, the document does accurately summarize some of the personal information in dispute. I find that this factor weighs in favour of disclosure of that accurately summarized personal information.

⁵² TRU's initial submissions, affidavit of the Privacy and Access Officer, para 14.

⁵³ Order F17-02, 2017 BCIPC 2 (CanLII) at paras 28-30, Order 03-24, 2005 BCIPC 11964 (CanLII) at para 36, and Order F15-14, 2015 BCIPC 14 (CanLII) at paras 72-74.

⁵⁴ Applicant's response at

Applicant's personal information

[106] Past OIPC decisions have recognized that if information is also the applicant's personal information, this is a factor that weighs in favour of disclosure.⁵⁵

[107] While for the most part the personal information at issue is about third parties only, some if it is at the same time about the applicant. This is the information about the impact of the applicant's conduct on third parties and some of the opinion information. I find that this factor weighs in favour of disclosure of this information.

Conclusion – s. 22(1)

[108] All the information TRU withheld under s. 22(1) is the personal information of third parties. The presumption against disclosure of employment history information in ss. 22(3)(d) applies to all of it, and the presumption against disclosure of medical information applies to the information about third parties' psychological diagnosis, condition, and treatment. In addition, I have found that ss. 22(2)(e) and (h) favour withholding all the personal information, and that s. 22(2)(f) favours withholding all the personal information about the Complainant.

[109] While the applicant has prior knowledge of some of the information in dispute, and some of the information is about the applicant, I do not find these factors sufficient to outweigh the s. 22(3)(d) presumption against disclosure, particularly when considered in light of the other presumptions and factors that favour withholding the information.

[110] In making this finding, I am particularly cognizant of my findings under ss. 22(2)(e) and (h). Given the applicant's history of making denigrating statements online about the Complainant, I find that disclosing information about the third parties' employment history, medical information, opinions and feelings, and information about their participation in the Complaint would be a particularly unreasonable invasion of their personal privacy.

[111] For the reasons above, I find that TRU is required to withhold all third-party personal information under s. 22(1).

SECTION 19 - THREAT TO SAFETY OR HEALTH

[112] TRU applied s. 19(1)(a) to some of the information that it withheld under s. 22. In light of my determination that TRU is required to withhold all the

⁵⁵ Order F23-56, 2023 BCIPC 65 (CanLII) at para 90; and Order F23-101, 2023 BCIPC 117 (CanLII) at paras 194-196.

information it withheld under s. 22, it is not necessary to decide if s. 19 also applies. Accordingly, I will not consider s. 19.

CONCLUSION

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

1. I confirm TRU's decision to withhold the information it withheld under s.14.
2. I require TRU to refuse access to the information it withheld under s. 22(1).

September 18, 2024

ORIGINAL SIGNED BY

Allison J. Shamas, Adjudicator

OIPC File No.: F23-92053