Order F24-91

VANCOUVER ISLAND HEALTH AUTHORITY

Rene Kimmett
Adjudicator

October 22, 2024

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Summary: An applicant made a request, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to the Vancouver Island Health Authority (Island Health) for access to all correspondence between Island Health and the College of Physicians and Surgeons of British Columbia regarding a specific series of events involving the applicant. Island Health withheld all the records responsive to the applicant's request under s. 53 (confidential information) of the *Health Professions Act* and several exceptions to disclosure in FIPPA. The adjudicator found that Island Health was required to withhold most of the information in dispute under s. 22(1) (harm to third-party personal privacy) of FIPPA and was authorized to withhold some of the information in dispute under s.15(1)(d) (reveal confidential source of law enforcement information) of FIPPA. However, she found that Island Health was not authorized to withhold the other information in dispute under ss. 15(1)(a) (harm to law enforcement), 15(1)(d) or 19(1)(a) (harm to individual or public safety) of FIPPA. She found that FIPPA prevails over s. 53 of the *Health Professions Act* (HPA) and, therefore, Island Health was not required or authorized under s.53 of the HPA to withhold any information in the records responsive to the applicant's access request. Island Health was ordered to give the applicant access to the information it was not required or authorized to refuse to disclose.

Statutes Considered: *Freedom of Information and Protection of Privacy Act,* RSBC 1996, c. 165, ss. 15(1)(a), 15(1)(d), 19(1)(a), 22(1), 22(2)(c), 22(2)(e), 22(2)(f), 22(2)(h), 22(3)(b), 22(3)(h), and 22(4)(e); *Health Professions Act*, RSBC 1996, c. 183, ss. 26.2(1), 26.2(6), and 53.

INTRODUCTION

[1] An applicant made a request, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to the Vancouver Island Health Authority (Island Health) for access to all correspondence between Island Health and the College of Physicians and Surgeons of British Columbia (College) regarding a specific series of events involving the applicant.

[2] Island Health withheld all of the information in the records responsive to the applicant's request under s. 53 (confidential information) of the *Health Professions Act* and several exceptions to disclosure in FIPPA, specifically, ss. 15(1)(a) (harm to law enforcement), 15(1)(d) (reveal confidential source of law enforcement information), 19(1)(a) (harm to individual or public safety), and s. 22(1) (harm to third-party personal privacy).

[3] The applicant asked the Office of the Information and Privacy Commissioner (OIPC) to review Island Health's decision to withhold information. Mediation by the OIPC did not resolve the issues in dispute and the matter proceeded to this inquiry.

PRELIMINARY ISSUES

The applicant's initial submission

[4] On November 8, 2023, the OIPC issued the Notice of Written Inquiry, which sets out the issues to be adjudicated at inquiry and the deadlines for the parties to file their submissions on these issues. At various points, both parties requested adjournments, and, in response, the OIPC amended the submission schedule. The final deadline for the applicant to file his submission was February 16, 2024.

[5] On February 16, 2024, the applicant sent a password-protected document to the OIPC. On three separate occasions, the OIPC informed the applicant that the password he provided did not open the document and gave him the opportunity to resubmit the document without a password.[1] On April 23, 2024, the OIPC informed the applicant that if it did not receive his submission by April 25, 2024, then it would cancel the inquiry.[2]

[6] On April 25, 2024, the applicant emailed the OIPC and Island Health a document that he called his "amended initial submission". In this document, the applicant states that he "has already supplied a formal response" but acknowledges that the OIPC had informed him that it could not access the previous submission.[3]

[7] In its reply submission, Island Health submits, and provides supporting affidavit evidence, that it was never able to access a copy of the applicant's initial response submission filed February 16, 2024.

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[1] Registrar's emails to parties dated February 21, 2024, March 5, 2024, and April 23, 2024.
[2] Registrar's email to parties dated April 23, 2024.
[3] Applicant's submission dated April 25, 2024 (Applicant's initial submission) at para 2.

[8] I find that neither the OIPC nor Island Health received a copy of the applicant's February 16, 2024 submission. I further find that, despite acknowledging that the OIPC could not access this document, the applicant did not resubmit it on either April 25, 2024, when he filed his "amended submission", or May 11, 2024, when he filed a sur-reply.[4] In my view, the OIPC gave the applicant ample opportunity to resubmit his February 16, 2024 submission, but the applicant failed to do so.

[9] Based on the above, I find there is no procedural unfairness in making determinations about the issues in dispute at this inquiry without considering the document the applicant sent on February 16, 2024.

[10] Moving forward, I will refer to the applicant's April 25, 2024 submission as his "initial submission".

The applicant's concerns about Island Health's evidence

[11] The applicant's initial submission and sur-reply do not respond to Island Health's substantive arguments about whether the information in dispute can or must be withheld and instead detail the applicant's concerns about Island Health's affidavit evidence. The applicant has four main concerns about Island Health's evidence. I address each of these concerns below.

[12] First, the applicant submits that Island Health provided affidavit evidence and submissions *in camera* and that this denies him the right of rebuttal.[5] The applicant is referring to the OIPC's decision to permit Island Health to provide parts of its submissions and evidence "*in camera*", which means only to the OIPC and not the applicant. The applicant specifically takes issue with an affidavit (Physician's Affidavit) in which many of the substantive details and the affiant's name have both been withheld from him.

[13] In response to the applicant, Island Health submits it has fully complied with the OIPC's established process for obtaining leave to make, and making, submissions *in camera.*[6]

[14] Section 56(2) of FIPPA permits the OIPC to conduct an inquiry in private and s. 56(4)(b) of FIPPA gives the OIPC the discretion to decide whether a person is entitled "to have access to or comment on representations made to the

[4] In this context, a sur-reply is a submission filed in response to a public body's reply submission. The OIPC does not usually permit receipt of a sur-reply. However, on May 14, 2024, the Registrar informed the parties she had reviewed the sur-reply and decided it was appropriate, in this instance, to include the sur-reply in the documents provided for my consideration.
[5] Applicant's initial submission at paras 10-11.
[6] Island Health's reply submission at para 33.

commissioner by another person". These provisions provide the OIPC with the ability to receive inquiry material *in camera*.[7]

[15] 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), in assessing fairness, weighs the value of accepting materials *in camera* against the negative impact on the other party's ability to respond to the case presented.[8]

[16] I can see that Island Health sought and was granted permission by another OIPC adjudicator to provide *in camera* submissions and evidence. This adjudicator provided Island Health with written reasons for these decisions.[9] I can see from these decisions that the adjudicator accepted *in camera* materials only after considering fairness to both parties, including any impact on the applicant's ability to meet the case put forth by the public body. I can also see that the submissions and evidence Island Health filed complies with the *in camera* decisions. Nothing the applicant says persuades me that the *in camera* process was unfair or that I should reconsider the other adjudicator's decisions to accept some of Island Health's submissions and evidence *in camera*.[10]

[17] Second, the applicant submits that Island Health's affidavit from an individual in its Risk Management Department (Risk Management Affidavit) was never sworn.[11] He submits that expecting him to respond to an unsworn affidavit breaches the OIPC's guidelines and all acceptable legal standards.

[18] In response, Island Health submits and provides evidence that it received express permission from the OIPC to initially file unsworn affidavits in December 2023 due to the submission deadline falling during the holiday season.[12] On December 21, 2023, Island Health sent the unsworn *in camera* version of the Risk Management Affidavit to the OIPC and the unsworn redacted version to the applicant. Island Health submits that it sent the sworn *in camera* version of this affidavit to the OIPC on February 13, 2024, but that, due to an oversight, it did not provide the applicant with the sworn redacted version of this affidavit.[13] On May 9, 2024, Island Health sent the applicant the sworn redacted version and apologized for its oversight.[14] I can see that both the redacted and *in camera* versions of this affidavit were commissioned on January 26, 2024.

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[7] Order F24-76, 2024 BCIPC 86 (CanLII) at para 5.
[8] *Cimolai v British Columbia (Information and Privacy Commissioner)*, 2024 BCSC 948 at paras 32, 34, and 36.
[9] *In camera* decision #1 dated December 12, 2023; *in camera* decision #2 dated December 19, 2023.
[10] For similar reasoning, see Order F23-61, 2023 BCIPC 71 (CanLII) at paras 5-7.
[11] Applicant's initial submission at para 12; applicant's sur-reply at para 2.
[12] Island Health's reply submission at para 37; Legal Assistant's affidavit at para 2 and Exhibit A.
[13] Island Health's reply submission at paras 39 and 40.
[14] Island Health's letter to the applicant, copied to the OIPC, dated May 9, 2024.

[19] Generally speaking, the strict rules of evidence do not apply to administrative tribunals, and tribunals are entitled to act on any material which is logically probative, even though it would not be admissible in a court of law.[15] There is no requirement that parties provide, or that I make findings on, sworn evidence. In any event, the Risk Management Affidavit was eventually sworn, and I can see that the substantive content of the sworn and unsworn versions of Island Health's affidavits are identical. While the applicant was not provided with a sworn version of the redacted Risk Management Affidavit before his submission deadline, he filed his sur-reply after receiving access to the sworn version. In the circumstances, I find there is nothing procedurally unfair about the applicant needing to make his initial submissions based on the unsworn version of the Risk Management Affidavit.

[20] Third, the applicant submits that the Risk Management Affidavit contains "significant irregularities" and is "demonstrably false."[16] Specifically, he notes the affidavit says the affiant worked with Island Health in the summer of 2020, but the applicant believes this person did not start working at Island Health until 2021.[17]

[21] Island Health submits and provides affidavit evidence stating that it has confirmed with its Human Resources Department that the Risk Management affiant has been employed as a member of Island Health's Risk Management Department since 2016.[18]

[22] I find that the applicant has not provided an explanation or evidence about why he believes this affiant only began working at Island Health in 2021. I accept Island Health's evidence that this affiant has worked in its Risk Management Department since 2016, and I do not draw any adverse inference about the affiant's credibility based on the applicant's unsupported claims.

[23] Fourth, the applicant submits that the affiant that swore the Physician's Affidavit "has already intentionally libelled the applicant once in July 2021."[19] Island Health submits that the applicant has supplied no evidence in this inquiry "to ground in fact these serious and arguably defamatory allegations."[20] I find the applicant has not provided sufficient information or evidence to establish that the Physician's Affidavit evidence is irrelevant, unreliable, or uncredible.

[24] In conclusion, the applicant has not persuaded me that I should disregard Island Health's affidavit evidence. I will consider this evidence and refer to it as necessary when I decide the issues in this inquiry.

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[15] *Alberta (Workers' Compensation Board) v. Appeals Commission*, 2005 ABCA 276 at para 63.
[16] Applicant's initial submission at para 13.
[17] *Ibid* at para 11.
[18] Island Health's reply submission at para 28; Director, Information Stewardship, Access & Privacy and Chief Privacy Officer (Director)'s affidavit #2 at para 23.
[19] Applicant's initial submission at para 9.
[20] Island Health's reply submission at para 24.

ISSUES AND BURDEN OF PROOF

[25] In this inquiry, I must decide the following issues:

1. Is Island Health required or authorized to refuse access to the information in dispute under s. 53 of the *Health Professions Act*?

2. Is Island Health required to refuse access to the information in dispute under s. 22(1) of FIPPA?

3. Is Island Health authorized to refuse access to the information in dispute under ss. 15(1)(a), 15(1)(d), and 19(1)(a) of FIPPA?

[26] Under s. 57(1), Island Health has the burden of proving that the applicant has no right of access to the information it withheld under ss. 15(1)(a), 15(1)(d), and 19(1)(a).

[27] Under s. 57(2), the applicant has the burden of proving that disclosure of the information in dispute under s. 22(1) would not be an unreasonable invasion of a third party's personal privacy. However, Island Health has the initial burden of proving that the information at issue qualifies as personal information.[21]

[28] FIPPA does not say who has the burden of proof regarding provisions such as s. 53 of the *Health Professions Act.* However, I find that Island Health, as the party asserting that s. 53 prohibits disclosure of the records in dispute, has the burden to prove its claim.[22]

DISCUSSION

Background

[29] The *Health Professions Act* governs the licensing and discipline of persons engaged in designated health professions in British Columbia. The applicant is a registrant with the College and previously worked with Island Health.

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[21] Order 03-41, 2003 CanLII 49220 (BCIPC) at paras 9-11.
[22] Order 03-06, 2003 CanLII 49170 (BC IPC) at para 6; Order No. 170-1997, 1997 CanLII 1485 (BCIPC); Order 03-14, 2003 CanLII 49183 (BC IPC); Order F13-23, 2013 BCIPC 30 (CanLII); Order F15-49, 2015 BCIPC 52 (CanLII).

[30] In 2020, Island Health's Risk Management Department was notified that the applicant's behaviour may be affecting the safety and security of others and it developed a safety plan to address these concerns.[23] In 2021, Island Health determined, following an internal investigation, that the applicant had accessed his own and others' electronic health records without authorization.[24] During this period, Island Health was also made aware that the applicant was facing criminal investigations and charges for harassment and voyeurism against his ex-spouse.[25]

[31] In the summer of 2021, the College asked Island Health for records as part of an investigation it was conducting related to the applicant. In response, Island Health's representatives corresponded with, and provided records to, the College.

[32] Island Health suspended the applicant's workplace privileges and the applicant later resigned from Island Health.

Records and information at issue

[33] Island Health is withholding all 136 responsive records in their entirety under both s. 53 of the *Health Professions Act* and s. 15(1)(a) of FIPPA and is withholding some information from these records under ss. 15(1)(d), 19(1)(a), and 22(1) of FIPPA.[26]

[34] The records are letters, emails, and faxes exchanged between Island Health representatives and the College, as well as documents attached to these communications. The records all relate to the College's investigations into the applicant following complaints or reports made to the College from various sources.

[35] In addition to the severing under FIPPA and the *Health Professions Act*, the records contain other redactions which Island Health says are outside the scope of this inquiry. Island Health submits that its staff made these other redactions prior to sending the records to the College in 2021, before the applicant's access request.[27] Island Health submits that, since the applicant's request is only for the correspondence that Island Health had with the College, and that correspondence contained these other redactions, the redacted information is outside the scope of this inquiry. The applicant did not dispute this point. I accept Island Health's explanation that it made these other redactions before it sent the records to the College and not in response to the applicant's

[23] Risk Management Affidavit at paras 2-10.
[24] *Ibid* at paras 12-19.
[25] *Ibid* at para 10.
[26] Many of the records in the package are duplicates.
[27] Island Health's initial submission at para 37; Director's affidavit at paras 12-13.

access request. Given that this inquiry is limited to the applicant's request for access to Island Health's correspondence with the College, I find that the redacted information is not at issue in this inquiry.

Confidential Information – s. 53 of the Health Professions Act

[36] Island Health withheld all the records in dispute under s. 53 of the *Health Professions Act.* Island Health submits that s. 53 requires Island Health to maintain the confidentiality of these records and prohibits it from disclosing them to the applicant.[28]

[37] Section 53 of the *Health Professions Act* reads:

> (1) Subject to the *Ombudsperson Act*, a person must preserve confidentiality with respect to all matters or things that come to the person's knowledge while exercising a power or performing a duty under this Act unless the disclosure is
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> (a) necessary to exercise the power or to perform the duty, or
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> (b) authorized as being in the public interest by the board of the college in relation to which the power or duty is exercised or performed.
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> (2) Insofar as the laws of British Columbia apply, a person must not give, or be compelled to give, evidence in a court or in proceedings of a judicial nature concerning knowledge gained in the exercise of a power or in the performance of a duty under Part 2.1 or Part 3 unless
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> (a) the proceedings are under this Act, or
>
> (b) disclosure of the knowledge is authorized under subsection (1) (b) or under the bylaws or regulations made under this Act.
>
> (3) The records relating to the exercise of a power or the performance of a duty under Part 2.1 or Part 3 are not compellable in a court or in proceedings of a judicial nature insofar as the laws of British Columbia apply unless
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> (a) the proceedings are under this Act, or

[28] Island Health also submits that s. 53 "prohibits the production of the Responsive Records from being compelled in proceedings of a judicial nature, which includes this Inquiry" (para 46 of Island Health's initial submission). I understand this to mean Island Health does not believe the Commissioner can compel production of the records for his review during an inquiry. However, it was not necessary to consider this point because Island Health voluntarily provided the records to the OIPC for the purposes of this inquiry.

> (b) disclosure of the knowledge is authorized under subsection (1)(b) or under the bylaws or regulations made under this Act.

[38] Island Health submits that its representatives corresponded with and provided records to the College while performing a duty under the *Health Professions Act* and, therefore, these Island Health representatives are required, under s. 53(1), to preserve the confidentiality of all matters or things that came to their knowledge while performing these duties.[29]

[39] Island Health submits that in drafting the *Health Professions Act,* the Legislative Assembly clearly turned its mind to the desired limits that should be place on the operation of s. 53. It submits that if the Legislative Assembly had intended to make s. 53 subject to FIPPA it would have said so expressly as it did with the *Ombudsperson Act* by including the phrase "Subject to the *Ombudsperson Act"* at the beginning of s. 53(1).[30]

[40] I understand Island Health to be arguing that there is a conflict between the applicant's right of access to the records he requested from Island Health under FIPPA and the requirement under s. 53(1) that Island Health's representatives preserve the confidentiality of all matters that came to their knowledge during the College's investigation. I also understand Island Health to be arguing that the *Health Professions Act* should be interpreted to prevail over FIPPA to resolve this conflict. In other words, it is Island Health's view that even though the applicant has a right to access records under FIPPA that right is overridden by the obligations imposed on its representatives under s. 53 of the *Health Professions Act.*

[41] I accept Island Health's point that there is a conflict between s. 53(1) of the *Health Professions Act,* which requires it to keep records related to the College's investigation confidential, and s. 4(1) of FIPPA which says the applicant has a right of access subject only to limited exceptions.

[42] However, I find that Island Health's perspective that the *Health Professions Act* prevails over FIPPA is not supported by the express language of FIPPA. Specifically, s. 3(7) of FIPPA provides the framework for what happens in the event of a conflict between FIPPA and another statute. Section 3(7) of FIPPA states:

> If a provision of this Act is inconsistent or in conflict with a provision of another Act, this Act prevails unless the other Act expressly provides that it, or a provision of it, applies despite this Act.

[29] Island Health's initial submission at paras 53-54.
[30] *Ibid* at para 61.

[43] In other words, an applicant's right to access information, which is set out in FIPPA, prevails over any conflicting provision in another statute unless the other provision, or the whole statute, expressly overrides FIPPA.

[44] The *Health Professions Act* does not include a statement that s. 53 applies despite FIPPA. This absence is significant, particularly because another provision in the *Health Professions Act,* s. 26.2(6), uses the explicit language needed to override FIPPA.[31] The relevant parts of s. 26.2 read as follows:

> 26.2(1) Subject to subsections (2) to (6), a quality assurance committee, an assessor appointed by that committee and a person acting on that committee's behalf must not disclose or provide to another committee or person [specified types of records and information]
>
> […]
>
> (6) Subsection (1) applies despite the *Freedom of Information and Protection of Privacy Act*, other than section 44(2) or (3) of that Act.

[45] It is clear from s. 26.2(6) that the Legislative Assembly turned its mind to the application of FIPPA to the *Health Professions Act* and chose not to have s. 53 override FIPPA. Therefore, to the extent that s. 53 of the *Health Professions Act* is inconsistent or in conflict with FIPPA, FIPPA prevails.

[46] Regardless of whether s. 53 of the *Health Professions Act* requires Island Health to keep records confidential, s. 4(1) of FIPPA gives a right of access to records in Island Health's custody and control and that right of access prevails over the confidentiality requirements of s. 53.

[47] Based on the above, I find that s. 53 of the *Health Professions Act* does not require or authorize Island Health to withhold information in the records responsive to the applicant's access request made under Part 2 of FIPPA.

[48] Former Commissioner David Loukidelis made a similar finding that FIPPA prevailed over s. 70 of the *Medical Practitioners Act*, which was the statutory predecessor of s. 53 of the *Health Professions Act.*[32] This finding was upheld by the BC Supreme Court on judicial review.[33]

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[31] For clarity, Island Health has not said that s. 26.2 of the *Health Professions Act* applies in this case and, based on my review of the records, I understand that this section does not apply to this inquiry.
[32] Order 00-08, 2000 CanLII 9491 (BC IPC) at page 34.
[33] *College of Physicians and Surgeons of British Columbia v. British Columbia (Information and Privacy Commissioner),* 2001 BCSC 726 at paras 112-119.

Harm to third-party personal privacy – s. 22(1)

[49] Island Health has withheld some information under s. 22(1). Section 22(1) requires a public body to refuse to disclose personal information if its disclosure would unreasonably invade a third party's personal privacy. There are four steps in the s. 22(1) analysis,[34] and I apply each step of this analysis under the headings that follow.

Is the withheld information "personal information"?

[50] The first step in the s. 22(1) analysis is to determine if the information in dispute is personal information. Personal information is defined in FIPPA as "recorded information about an identifiable individual other than contact information".[35] Information is about an identifiable individual when it is reasonably capable of identifying a particular individual, either alone or when combined with other available sources of information.[36]

[51] 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". Whether information is "contact information" depends on the context in which it appears.[37]

[52] The records in dispute are letters, emails, and faxes exchanged between Island Health representatives and the College, as well as documents attached to these communications. Island Health is withholding the following categories of information from the records under s. 22(1):

a) template or automatically generated information in faxes and emails, as well as the College's address, phone number and fax number ("Template Information");

b) the name, position, and business email address of a College employee in an email in which he acknowledges receipt of correspondence ("College Employee Information");

c) the name, position and opinions of third parties related to the criminal investigations into the applicant (Criminal Investigation Information"); and

[34] Order F15-03, 2015 BCIPC 3 (CanLII) at para 58.
[35] Schedule 1 of FIPPA.
[36] Order F05-30, 2005 CanLII 32547 (BC IPC) at para 35.
[37] Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

d) the name, position and opinions of third parties related to Island Health's internal investigation into whether the applicant accessed electronic health records without authorization ("Internal Investigation Information").

[53] Island Health submits that the information in the records is third-party personal information.[38]

[54] I find that the Template Information is not about identifiable individuals and, therefore, is not personal information under FIPPA. This information cannot be withheld under s. 22(1).

[55] I find that the rest of the information in dispute under s. 22(1) is the personal information of identifiable third parties or the applicant and is not contact information. It is not contact information because it does not appear in the records for the purpose of enabling an individual to be contacted at a place of business.

[56] I also find that some information that Island Health withheld under various exceptions, but not under s. 22(1), is personal information. This information is about identifiable individuals and is not contact information. More specifically, this information is third-party personal information related to Island Health's internal investigation or the criminal investigation. Given the mandatory nature of s. 22(1), I have also considered this personal information in my s. 22(1) analysis.[39]

Is disclosure not an unreasonable invasion of a third party's personal privacy under s. 22(4)?

[57] The second step in the s. 22(1) analysis is to determine if the personal information falls into any of the categories of information listed in s. 22(4). Section 22(4) sets out circumstances where disclosure of personal information is not an unreasonable invasion of third-party personal privacy. If s. 22(4) applies to the information in dispute, then its disclosure would not be an unreasonable invasion of a third party's personal privacy.

[58] Island Health submits that none of the categories in s. 22(4) apply to the responsive records.[40]

[59] I have reviewed the information in dispute and find that s. 22(4)(e) applies to the College Employee Information.

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[38] Island Health's initial submission at para 92.
[39] For similar reasoning, see Order F14-44, 2014 BCIPC 47 (CanLII) at para 39.
[40] Island Health's initial submission at para 94.

[60] Section 22(4)(e) provides that the disclosure of personal information about a public body employee's position, functions or remuneration is not an unreasonable invasion of that third party's personal privacy. Previous OIPC orders have found that s. 22(4)(e) applies to third-party identifying information that in some way relates to a third party's job duties in the normal course of work-related activities.[41] This type of information would include objective, factual statements about what the third party did or said in the normal course of discharging his or her job duties.[42]

[61] The College is a public body, and its employee sent the relevant email, confirming receipt of communications, in the normal course of performing his ordinary job duties. Therefore, I find his personal information, as it appears in this email, is about his position and functions as a public body employee and disclosing it would not be an unreasonable invasion of his personal privacy. This information falls under s. 22(4)(e) and cannot be withheld under s. 22(1).

[62] The remainder of my s. 22(1) analysis will only consider the Criminal Investigation Information and the Internal Investigation Information.

Is disclosure presumed to be an unreasonable invasion of a third party's personal privacy under s. 22(3)?

[63] The third step in the s. 22(1) analysis is to determine whether any of the presumptions listed under s. 22(3) apply to the personal information in dispute. If one or more apply, then disclosure of that personal information is presumed to be an unreasonable invasion of third-party personal privacy.

[64] Island Health submits that ss. 22(3)(b) and 22(3)(h) apply to the information in dispute.[43]

Investigation into a possible violation of law – s. 22(3)(b)

[65] Island Health has applied s. 22(3)(b) to all of the information in dispute under s. 22(1). Section 22(3)(b) states that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where the personal information was "compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation".

[66] Previous OIPC orders, have interpreted the term "law" in FIPPA to mean "(1) a statute or regulation enacted by, or under the statutory authority of, the Legislature, Parliament or another legislature, (2) where a penalty or sanction

[41] Order 01-53, 2001 CanLII 21607 (BC IPC) at para 40.
[42] Order F20-49, 2020 BCIPC 58 (CanLII) at para 16.
[43] Island Health's initial submission at paras 98-101.

could be imposed for violation of that law".[44] I adopt this interpretation for the purpose of this order.

[67] I find that the College's investigation is an investigation into a "possible violation of law" within the meaning of s. 22(3)(b) because I can see from the records that the College's investigation was conducted under Part 3 of the *Health Professions Act.* This part of the *Health Professions Act* gives the College the authority to impose penalties or sanctions for violations following an investigation or hearing.[45]

[68] I am satisfied that the Criminal Investigation Information and the Internal Investigation Information was compiled and is identifiable as part of the College's investigation into the applicant under the *Health Professions Act*. It is clear from the records and Island Health's evidence that the College sought, and Island Health provided, the records in dispute to assist with the College's investigation. Section 22(3)(b) applies to this personal information and, as a result, its disclosure is presumed to be an unreasonable invasion of third-party personal privacy.

Personal evaluation or personnel evaluation - s. 22(3)(h)

[69] Section 22(3)(h) states that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where disclosure would reveal: (i) the identity of a third party who supplied, in confidence, a personal evaluation; or (ii) the content of a personal recommendation supplied, in confidence, by a third party, if the applicant could reasonably be expected to know the identity of the third party. The purpose of s. 22(3)(h) is to protect the identity of a third party who has provided evaluative or similar material, in confidence, about an individual. It has generally been found to apply in the context of a formal workplace investigation or human resources matters.[46]

[70] Island Health submits that it is "obvious […] that disclosure would reveal the identity of one or more third parties who supplied, in confidence, personal or personnel evaluations of the Applicant, as well as the content of those evaluations".[47]

[71] While I can see that personal information in the records was provided by third parties to the College in confidence, it is not clear from the records that this information is a formal evaluation and Island Health's submissions do not

[44] Order 01-12, 2001 CanLII 21566 (BC IPC) at para 17, cited in Order F21-64, 2021 BCIPC 75 (CanLII) at para 82.
[45] *Health Professions Act,* ss. 33-39.
[46] Order F10-08, 2010 BCIPC 12 (CanLII) at para 33.
[47] Island Health's initial submission at para 101.

persuade me that it is. As a result, I find this presumption does not apply to any of the personal information in dispute.

Considering all relevant circumstances, including those listed in s. 22(2), would disclosure be an unreasonable invasion of a third party's personal privacy?

[72] The final step in the s. 22(1) analysis is to consider all relevant circumstances, including those listed in s. 22(2), before determining whether the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy. It is at this step that any applicable s. 22(3) presumptions may be rebutted.

Fair determination of the applicant's rights – s. 22(2)(c)

[73] Section 22(2)(c) requires a public body to consider whether the personal information in dispute is relevant to a fair determination of the applicant's rights. If yes, this is a circumstance that may weigh in favour of disclosure.

[74] Island Health submits that it specifically considered whether s. 22(2)(c) weighed in favour of disclosure and concluded that it did not. Island Health submits that while the applicant was subject to disciplinary proceedings by Island Health in 2021, he ultimately resigned and, as a result, there are no outstanding determinations for Island Health to make regarding the applicant.[48]

[75] Island Health also submits that any disclosure necessary for the applicant to respond to the College's investigation should come from the College because the College is the investigative body.[49]

[76] The applicant has not made any submissions regarding whether the personal information is relevant to a fair determination of his rights. As a result, I find that s. 22(2)(c) does not apply to the personal information in question.

Financial or other harm – s. 22(2)(e)

[77] 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. Previous OIPC orders have held that "other harm" for the purposes of s. 22(2)(e) consists of "serious mental distress or anguish or harassment".[50]

[48] *Ibid* at paras 104-106.
[49] *Ibid* at para 105.
[50] Order F15-29, 2015 BCIPC 32 (CanLII) at para 33.

[78] Island Health submits that disclosure could expose third parties unfairly to harm, including harm to mental health, explaining that given the applicant's history of inappropriate behaviour towards third parties, notably his ex-spouse, "there is a reasonable prospect of harm to mental health being suffered by various third parties if their personal information were to be disclosed to the Applicant".[51]

[79] I find that Island Health has not established that what it calls "harm to mental health" meets the threshold of "serious mental distress or anguish" required under s. 22(2)(e) nor adequately explained the connection between disclosure of the specific information in dispute and the contemplated harm. As a result, I find that s. 22(2)(e) does not apply to the information in dispute.

Supplied in confidence – s. 22(2)(f)

[80] Section 22(2)(f) requires a public body to consider whether the personal information in dispute has been supplied in confidence. If it has been supplied in confidence, this is a factor that weighs in favour of withholding the personal information.

[81] Island Health submits the third-party personal information was supplied to Island Health and/or the College in confidence.[52]

[82] I can see that both the College and Island Health, when exchanging the records in dispute, included statements that the other party must ensure the confidentiality of the records exchanged. As a result, I find the information in dispute was supplied by Island Health to the College, and vice versa, with the objectively reasonable expectation that it would be held in confidence.

Unfair damage to reputation – s 22(2)(h)

[83] 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 record requested by the applicant.

[84] Island Health submits that given the nature of the allegations the applicant made about some third parties, at least some of the information is likely inaccurate and, therefore, disclosure would risk unfairly damaging the reputation of those third parties.[53]

[51] Island Health's initial submission at para 84.
[52] *Ibid* at para 107(b).
[53] *Ibid* at para 107(c).

[85] Island Health has not specifically identified which information it believes is inaccurate. While some of the personal information in dispute relates to the applicant's allegations, it is clear, from the context in which they appear in the records, that they are unsubstantiated and are not to be treated as factual statements. I find that Island Health has not adequately explained how disclosure of this information, or any of the information in dispute, could unfairly damage any third party's reputation. I find that s. 22(2)(h) does not apply to the information in dispute.

[86] I have considered the other circumstances listed under s. 22(2) and find that none of them apply to the information in dispute.

Sensitivity of the third-party personal information

[87] Sensitivity is not an enumerated factor under s. 22(2), however, many past orders have considered it as a relevant circumstance. Where information is sensitive, its sensitivity is a circumstance that weighs in favour of withholding the information. However, where information is not sensitive, past orders have found that this circumstance weighs in favour of disclosure.[54] Some of the withheld information includes descriptions of alleged harassment and child welfare concerns. This type of information is highly sensitive and, as a result, I find this factor weighs against its disclosure.

Conclusions on s. 22

[88] I found that, other than the Template Information, all of the information in dispute under s. 22(1), as well as some additional information in dispute that Island Health did not withhold under s. 22(1), is personal information.

[89] I found that the College Employee Information falls under s. 22(4)(e) and cannot be withheld under s. 22(1).

[90] I found that the rest of the personal information was compiled and is identifiable as part of an investigation into a possible violation of law and, therefore, its disclosure is presumed to be an unreasonable invasion of third parties' personal privacy under s. 22(3)(b).

[91] I found that the sensitivity of some of the personal information and the fact that all of the personal information was supplied in confidence are factors that weigh in favour of withholding this information. I find that none of the relevant factors rebut the presumption that disclosure of this information is an unreasonable invasion of third-party personal privacy.

[54] Order F16-52, 2016 BCIPC 58 at paras 87-93.

[92] In conclusion, with the exception of the College Employee Information, I find Island Health is required to withhold the personal information in dispute under s. 22(1).

Harm to law enforcement – s. 15(1)(a)

[93] Island Health withheld all of the records in their entirety under s. 15(1)(a). Subsection 15(1)(a) reads:

> 15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
>
> (a) harm a law enforcement matter,

Is the College's investigation a law enforcement matter?

[94] The first step under s. 15(1)(a) is to determine whether the activity to which the information in question relates is a "law enforcement" matter.[55] FIPPA defines "law enforcement" as:

> (a) policing, including criminal intelligence operations,
>
> (b) investigations that lead or could lead to a penalty or sanction being imposed, or
>
> (c) proceedings that lead or could lead to a penalty or sanction being imposed;

[95] Previous OIPC orders have found that, in order for a public body's investigation to meet the definition of law enforcement in FIPPA, the public body must have a specific statutory authority or mandate to conduct the investigation and to impose sanctions or penalties.[56]

[96] Island Health submits that Part 3 of the *Health Professions Act* establishes a statutory framework for investigations and disciplinary sanctions by the College.[57] It submits that the OIPC has previously accepted that the College has a law enforcement mandate under the *Medical Practitioner's Act*, which was the statutory predecessor to the *Health Professions Act.*[58] It also submits that the OIPC has found that other regulatory colleges created under the *Health*

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[55] Order F14-45, 2014 BCIPC 48 (CanLII) at para 13.
[56] Order F18-31, 2018 BCIPC 34 (CanLII) at para 43 citing Order 36-1995, [1995] B.C.I.P.C.D. No. 8 at 14; Order 00-52, 2000 CanLII 14417 (BCIPC); Order F15-26, 2015 BCIPC 23 (CanLII).
[57] Island Health's initial submission at para 66.
[58] *Ibid* at para 67, citing Order F00-08, 2000 CanLII 9491 (BCIPC).

Professions Act¸ for example the College of Psychologists of British Columbia, have law enforcement mandates.[59]

[97] I find that Part 3 of the *Health Professions Act* requires the College to investigate and dispose of reports and complaints it receives under the *Health Professions Act.* Part 3 also gives the College the authority to impose penalties or sanctions against a registrant following an investigation or hearing.[60]

[98] Furthermore, I can see, from the records themselves, that the College sought and received the records in dispute as part of its investigation into one or more reports or complaints it received under the *Health Professions Act.*

[99] For these reasons, I find that the records in dispute relate to the College's investigation into the applicant and that this investigation is a law enforcement matter within the meaning of s. 15(1)(a).

Could disclosure reasonably be expected to harm the College's investigation?

[100] The phrase "could reasonably be expected to harm" requires the public body to establish a "reasonable expectation of probable harm". To demonstrate a reasonable expectation of probable harm, a public body does not need to prove that disclosure will in fact result in harm or even that such harm is probable. Instead, a public body must provide evidence of a risk of harm that is "well beyond" or "considerably above" the merely possible or speculative.[61] The evidence must be detailed enough to establish specific circumstances under which disclosure of the information in dispute could reasonably be expected to result in the contemplated harm.[62]

[101] A public body must also show that the disclosure of the information itself could reasonably be expected to result in the harm contemplated.[63] In other words, there must be a clear and direct connection between the disclosure of the information in dispute and the harm that is alleged.[64]

[102] Island Health's Freedom of Information Coordinator (FOI Coordinator) states that she understands the College's investigations about the applicant

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[59] *Ibid* at para 68, citing Order F05-13, 2005 CanLII 11964 (BC IPC) and Order 03-24, 2003 CanLII 49202 (BC IPC).
[60] *Health Professions Act,* ss. 33-39.
[61] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at paras 52-66 and *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 at para 93.
[62] Order 02-50, 2002 CanLII 42486 (BCIPC) at para 137.
[63] *British Columbia (Minister of Citizens' Services) v British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875 at para 43-44.
[64] Order F19-10, 2019 BCIPC 12 (CanLII) at para 31; Order F07-15, 2007 CanLII 35476 (BCIPC) at para 17.

remain open but held in abeyance while the applicant resides outside of Canada.[65] She states that the applicant's status is listed as "Temporarily Inactive" on the College's public-facing registrant directory.

[103] Island Health submits that, given that the investigations into the applicant are being controlled and run by the College, it "is loath to risk undermining the College's investigation processes, including the disclosure processes that form part of the larger investigation".[66] Island Health submits that the College "is far better placed than Island Health to make decisions about what can or must be disclosed from its investigation files".[67]

[104] Island Health submits that one of the purposes of s. 53 of the *Health Professions Act* is to prevent the disclosure of records and information from a College investigation file by anyone other than the College. It submits that the existence and function of s. 53 is, therefore, "an indicator that the Legislative Assembly considered any such disclosure [by Island Health and not the College] could reasonably harm an ongoing investigation".[68]

[105] I invited the College to participate in this inquiry and gave it the opportunity to make submissions on the application of ss. 15(1)(a) and 15(1)(d) to the records in this inquiry.[69] I provided the College with the applicant's access request, the parties' submissions, and, with Island Health's permission, an unredacted copy of the records in dispute. In response, the College stated

> A review of both our own records and the records you have provided indicates that the matters in this inquiry are currently open within the Legal and Investigations Department of the College. All third-party materials provided to the College as part of the complaint and investigation process are considered confidential under section 53 of the *Health Professions Act* (HPA). As such, we request that all materials provided to or from the College as part of this inquiry be withheld under section 15(1)(a) and (d) of [FIPPA].[70]

[106] For the reasons that follow, I find Island Health has not established there is a reasonable expectation of probable harm to a law enforcement matter from disclosure of any of the information in dispute.

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[65] FOI Coordinator's affidavit at para 31.
[66] Island Health's initial submission at para 74.
[67] *Ibid* at para 75.
[68] Island Health's initial submission at para 72.
[69] Adjudicator letter to College and parties dated August 15, 2024.
[70] College of Physicians and Surgeons of British Columbia submission dated September 18, 2024.

[107] I accept that s. 53 of the *Health Professions Act* requires individuals to preserve the confidentiality of all matters or things that come to their knowledge while exercising a power or performing a duty under the *Health Professions Act,* including when participating in a College investigation.

[108] However, I do not accept Island Health's submission that the existence of s. 53 indicates that the Legislative Assembly intended to convey that any disclosure could reasonably be expected to harm an ongoing investigation, if the disclosure is made by someone other than the College. As explained earlier in this order, FIPPA prevails over s. 53 of the *Health Professions Act* in so far as these provisions are inconsistent or in conflict with one another. As a result, public bodies must provide records responsive to an access request (subject to few exceptions) regardless of the confidentiality obligations imposed under s. 53 of the *Health Professions Act.*

[109] Here, Island Health has applied s. 15(1)(a) to withhold all information in the records responsive to the applicant's access request and, therefore, has the burden to prove that disclosure of this information could reasonably be expected to harm a law enforcement matter.

[110] Island Health's position is that the information in dispute relates to the College's investigation, which is ongoing, and was supplied to the College in confidence during that investigation and, therefore, its disclosure could reasonably be expected to result in harm to the College's investigation.

[111] I found above that the College's investigation is a law enforcement matter under FIPPA. I accept the submissions from Island Health and the College that this investigation is ongoing. I also accept, based on the assurances I can see in the records themselves, that the information in dispute was exchanged between Island Health and the College in confidence.

[112] However, the fact that a law enforcement matter, in the form of a College investigation, is ongoing is not, on its own, enough to establish that disclosure of the information in dispute could reasonably be expected to result in harm to that law enforcement matter.[71]

[113] I recognize there may be circumstance in which disclosure of confidential information related to an ongoing law enforcement matter may reasonably be expected to result in harm to that law enforcement matter.[72] However, in this inquiry, neither Island Health nor the College has adequately explained how disclosure of the information at issue in the records could reasonably be expected to cause harm to the College's investigation. Their submissions on this

[71] Order F16-25, 2016 BCIPC 27 (CanLII) at para 30; Order F05-24, 2005 CanLII 28523 (BC IPC) at para 19.
[72] For example, see Order F16-25, 2016 BCIPC 27 (CanLII) at para 21.

subject are vague and do not adequately explain the connection between disclosure of the information in dispute and the harm alleged.

[114] In conclusion, Island Health has established that the information in dispute relates to a law enforcement matter, namely the College's investigation under the *Health Professions Act*, but it has not adequately explained how disclosure of the information in dispute could reasonably be expected to harm that investigation. As a result, I find that Island Health has not met its burden to prove that disclosure of the information in dispute could reasonably be expected to harm a law enforcement matter. Island Health is not authorized under s. 15(1)(a) to withhold the information in dispute.

Reveal the identity of a confidential source – s. 15(1)(d)

[115] Island Health withheld some information in the responsive records under s. 15(1)(d). Section 15(1)(d) reads:

> The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to
>
> (d) reveal the identity of a confidential source of law enforcement information,

[116] I understand, based on the interpretation of s. 15(1)(d) in previous OIPC orders, that "a confidential source of law enforcement information" is an individual that supplies information related to a law enforcement matter, in confidence, to the public body conducting the law enforcement matter. Therefore, to meet its burden under s. 15(1)(d), Island Health must establish that:

1) an individual was the source of law enforcement information;

2) the individual supplied the law enforcement information in confidence; and

3) disclosure of the information in dispute could reasonably be expected to reveal the identity of the individual that supplied law enforcement information in confidence.[73]

[117] I address each of these criteria under the subheadings that follow.

Was an individual the source of law enforcement information?

[118] On the first point, Island Health submits the individuals who made a report or complaint to the College are sources of law enforcement information.[74]

[73] Order F21-57, 2021 BCIPC 66 (CanLII) at para 21.
[74] Island Health's initial submission at para 78.

[119] I found above that the College's investigation qualifies as law enforcement, as defined in FIPPA. I can see that the reports and complaints made to the College resulted in or contributed to the College's investigation into the applicant. I am, therefore, satisfied that the individuals who made reports or complaints to the College are sources of law enforcement information.

Did the individuals supply the law enforcement information in confidence?

[120] Second, I find that the law enforcement information was supplied in confidence. I base this finding on the College's and Island Health's statements, in the records, that the other party must ensure the confidentiality of the records exchanged.

Could disclosure reasonably be expected to reveal the identity of the individual?

[121] Island Health is withholding the following information under s. 15(1)(d) on the basis that disclosure of this information could reasonably be expected to reveal the identities of the people that reported or complained to the College:

a) the names, positions, email addresses and phone numbers of individuals that made reports or complaints to the College and the timing and content of those reports or complaints ("Complainant Information");

b) the Template Information;[75]

c) the College Employee Information;[76]

d) the names, positions, and business email addresses and business phone numbers of employees with Island Health's Information Stewardship, Access & Privacy (ISAP) department who communicated with the College in an administrative capacity on behalf of the individuals that reported or complained to the College (ISAP Employee Information); and

e) the name, position, and business email address of an Island Health employee who was asked by Island Health to provide additional

[75] As a reminder, the "Template Information" is template or automatically generated information in faxes and emails, as well as the College's address, phone number and fax number.
[76] As a reminder, the "College Employee Information" is the name, position, and business email address of a College employee in an email in which he acknowledges receipt of correspondence.

information about the applicant to the College, but who does not appear to have done so (Island Health Employee Information).

[122] Regarding the Complainant Information, Island Health submits that it would be insufficient to withhold only the name of the individuals that reported or complained to the College and that the timing and content of each report or complaint is specific enough to render the individuals identifiable. Based on my review of the records, I accept Island Health's submission on this point and find that the applicant's personal knowledge would allow him to determine the identity of the confidential sources from any of the Complainant Information. Island Health is authorized to withhold all of the Complainant Information under s. 15(1)(d).

[123] Island Health has not made submissions explaining how the other withheld information could reasonably be expected to reveal the identity of the individuals that reported or complained to the College. Without more information, I cannot conclude that Island Health has met its burden of proof under s.15(1)(d). I find that Island Health has not established that disclosure of this information could reasonably be expected to reveal a confidential source of law enforcement information and, therefore, Island Health cannot withhold it under s. 15(1)(d).

Harm to individual or public safety – s. 19(1)(a)

[124] Island Health is withholding the following information under s. 19(1)(a):

a) the Complainant Information;

b) the Template Information;

c) the College Employee Information;

d) the ISAP Employee Information;

e) the Island Health Employee Information;

f) the names of Island Health employees and other public body employees contained in records the applicant sent to Island Health;

g) the names, position, business phone numbers and business email addresses of Island Health employees actioning Island Health's internal investigation and suspension of the applicant's workplace privileges ("Actioning Information").

[125] Section 19(1)(a) reads as follows:

> 19(1) 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
>
> (a) threaten anyone else's safety or mental or physical health

[126] Under s. 19(1)(a) Island Health must establish a "reasonable expectation of probable harm" and, therefore, my explanation of this standard of proof in paragraphs 100 and 101, above, applies in the context of s. 19(1)(a) as well.

[127] Previous OIPC orders have said that "a threat to 'mental health' is not raised merely by the prospect of someone being made 'upset' but rather "where disclosure can reasonably be expected to cause 'serious mental distress or anguish'".[77]

[128] Island Health submits "there is a reasonable prospect of harm to mental health of various third parties if their personal information were to be disclosed to the Applicant".[78] It submits that there are a number of circumstances that support this conclusion, including:

- The applicant's ex-spouse had obtained at least two protection orders against the applicant;
- The applicant was the subject of multiple criminal charges relating to his actions concerning his ex-spouse;
- The applicant had contacted and attended in person his ex-spouse's workplace and had threatened and intimidated the staff of that workplace to the point where the Island Health had to become involved to ensure the future safety of the staff;
- The applicant breached the privacy of several individuals by accessing the highly sensitive personal information contained in their electronic health records when he was not in a care provider relationship with any of those individuals; and
- Multiple individuals had alleged that the applicant was seen observing the activities at their homes while in his vehicle.

[77] Order F20-54, 2020 BCIPC 63 (CanLII) at para 16.
[78] Island Health's initial submission at para 84.

[129] I understand Island Health to be arguing that if the information in dispute is disclosed to the applicant, then the applicant could reasonably be expected to target the types of behaviour listed above at the third parties identified in the records.

[130] Island Health's FOI Coordinator states that she spoke to the applicant on the phone while processing his access requests and "found his manner to be extremely aggressive and intimidating" so much so that she will now only communicate with him in writing.[79] However, she states that she recognizes her own feelings of upset do not meet the requirements under s. 19(1)(a).[80] None of Island Health's other affiants discuss the harm contemplated under s. 19(1)(a).

[131] For the reasons that follow, I find Island Health has not met its burden of proof under s. 19(1)(a).

[132] I found that Island Health is authorized to withhold the Complainant Information under s. 15(1)(d) and, therefore, I will not consider whether Island Health is also authorized to withhold this information under s. 19(1)(a).

[133] The Template Information is not about identifiable individuals and, as a result, I do not see how disclosure of this information could threaten anyone's safety or mental or physical health.

[134] The information provided to Island Health by the applicant is already known to the applicant. Island Health has not adequately explained how disclosing this information to him again could cause the applicant to act in a manner that could reasonably be expected to threaten the safety or health of the public body employees identified in these records.

[135] Similarly, in an affidavit, Island Health's Chief Privacy Officer states, in open evidence, that she was asked to have Island Health's ISAP department communicate with and send records to the College on behalf of one or more of the individuals that reported or complained. Given that Island Health has already disclosed that the Chief Privacy Officer was delegated the administrative task of communicating with the College, I do not see how disclosing her identity where it appears in the records could result in harm under s. 19(1)(a).

[136] The rest of the information withheld under s. 19(1)(a) is the names, positions, and business email addresses of Island Health and College employees and factual information about what they did or said in the normal course of performing their duties.

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[79] FOI Coordinator's affidavit at para 42.
[80] *Ibid.*

[137] There are certainly circumstances where employee information can be withheld under s.19(1)(a). For example, in Order F20-40, the adjudicator found that the personal information of employees that were witnesses in a workplace investigation could be withheld under s. 19(1)(a).[81] This finding was reached based on the public body's extensive affidavit evidence from the third parties identified in the records.

[138] However, I distinguish the circumstances in this other OIPC order from those present in this inquiry. Here, Island Health has not adequately explained the connection between disclosure of the information at issue and the expectation that the applicant may target the third parties identified in the records.[82] It is my understanding that none of the individuals identified in the information withheld under s.19(1)(a) have been targeted by the applicant and this information is not these individuals' opinions about the applicant. Further, Island Health has not provided affidavit evidence from any of these individuals regarding the anticipated threat to their safety or health flowing from disclosure of the information in dispute. Without more information I cannot conclude that disclosure could reasonably be expected to result in the harm contemplated by s. 19(1)(a).

[139] Based on the above, I find that s. 19(1) does not authorize Island Health to withhold any of the information in dispute.

CONCLUSION

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

1. Under s. 22(1), Island Health is required to refuse access to the information I have highlighted in blue in the copy of the records that will be provided to Island Health with this order.

2. I confirm, in part, Island Health's decision to withhold the information in dispute under s. 15(1)(d). Island Health is authorized to withhold the information I have highlighted in green in the copy of the records that will be provided to Island Health with this order.

3. Subject to items 1 and 2, Island Health is not authorized or required to refuse access to the remainder of the information in the responsive records and is required to give the applicant access to this information.

[81] Order F20-40, 2020 BCIPC 48 at paras 21-23.
[82] For a similar finding, see Order F18-14, 2018 BCIPC 17 (CanLII) at paras 43-46.

4. Island Health must provide the OIPC registrar of inquiries with a copy of the records it provides to the applicant in compliance with this order.

[141] Pursuant to s. 59(1) of FIPPA, Island Health is required to comply with this order by **December 4, 2024**.

October 22, 2024

ORIGINAL SIGNED BY

Rene Kimmett, Adjudicator

OIPC File No.: F22-89529