



Order F24-97

## ORGANIZATION OF CHARTERED PROFESSIONAL ACCOUNTANTS OF BRITISH COLUMBIA

D. Hans Hwang  
Adjudicator

November 25, 2024

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**Summary:** The applicant requested access, under the *Freedom of Information and Protection of Privacy Act* (FIPPA), to information about a complaint he made to the Organization of Chartered Professional Accountants of British Columbia (CPABC). CPABC provided the responsive records to the applicant but withheld some information under several FIPPA exceptions. The adjudicator found that CPABC was required to withhold most of the information in dispute under s. 22(1) and was not authorized to withhold the disputed information under s. 15(1). The adjudicator found that it was not necessary to decide if s. 13(1) also applied. The adjudicator ordered CPABC to disclose the information it was not required or authorized to withhold to the applicant.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165, ss. 13(1), 15(1)(a), 15(1)(c), 15(1)(h), 22(1), 22(2)(e), 22(2)(f), 22(2)(h), 22(3)(b), 22(3)(d), 22(3)(h), 22(4) and Schedule 1 (Definitions).

### INTRODUCTION

[1] An individual (applicant) requested access under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to information about a complaint he made to the Organization of Chartered Professional Accountants of British Columbia (CPABC).

[2] CPABC provided the responsive records to the applicant but withheld some information under ss. 13(1) (advice or recommendations), 15(1) (harm to law enforcement), and 22(1) (unreasonable invasion of a third party's personal privacy) of FIPPA.<sup>1</sup>

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<sup>1</sup> From this point forward, whenever I refer to section numbers, I am referring to sections of FIPPA unless otherwise specified.

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

[4] Both parties provided written submissions. The OIPC permitted CPABC to submit some of its affidavit evidence *in camera*.

## ISSUES

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

1. Is CPABC authorized to refuse to disclose the information in dispute under ss. 13(1) or 15(1)?
2. Is CPABC required to refuse to disclose the information in dispute under s. 22(1)?

[6] Under s. 57(1), CPABC, which is the public body in this case,<sup>2</sup> has the burden of proving that the applicant does not have a right of access to the information withheld under ss. 13(1) and 15(1).

[7] With respect to s. 22(1), s. 57(2) says that the burden is on the applicant to prove that the disclosure of the information in dispute is not an unreasonable invasion of a third party's personal privacy. However, CPABC has the initial burden of proving the information at issue qualifies as personal information.<sup>3</sup>

## BACKGROUND<sup>4</sup>

[8] CPABC is the professional regulatory body for chartered accountants. Its governing statute is the *Chartered Professional Accountants Act* (CPAA)<sup>5</sup> which assigns CPABC responsibility for, among other things, establishing and enforcing standards for professional conduct. It receives and investigates complaints of member misconduct, including contraventions of CPABC's bylaws and code of professional conduct.

[9] The applicant filed a misconduct complaint (Complaint) against a CPABC member. The Chair of the CPABC's Investigation Committee designated a member who was also the Investigation Committee's Panel Vice Chair to conduct a preliminary screening of the Complaint. The Panel Vice Chair decided that the matter did not warrant investigation and two public representatives on the Investigation Committee reviewed and approved that decision. The applicant was

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<sup>2</sup> Schedule 1 "Definition".

<sup>3</sup> Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.

<sup>4</sup> The information in this background section is based on the information provided in the parties' submission and is not in dispute.

<sup>5</sup> SBC 2015 c 1.

dissatisfied with that decision. He wrote to several CPABC executive members objecting to the decision and complaining about CPABC's misconduct complaint process.

## **RECORDS AND INFORMATION AT ISSUE**

[10] The responsive records consist of a two-page investigation authorization form and a three-page email string. CPABC has withheld most of the information from these records.

## **PRELIMINARY ISSUE**

### ***Section 69 of CPAA***

[11] CPABC submits that it has a statutory obligation under s. 69 of CPAA to keep all facts, information and records obtained in an investigation confidential except for in limited circumstances, none of which applies here.<sup>6</sup> CPABC asserts that section also affects its analysis of s. 15.<sup>7</sup>

[12] Past OIPC orders have consistently said that parties may only introduce new issues at the inquiry stage if they request and receive permission from the OIPC to do so.<sup>8</sup> The notice of inquiry (notice), which was provided to both parties at the start of this inquiry, also states that parties may not add new issues into the inquiry without the OIPC's prior consent. In this case, CPABC did not request prior permission from the OIPC to add this issue or explain what circumstances would justify adding it at this late stage. Accordingly, I will not consider, or make any decision about, CPABC's submission about s. 69 of CPAA.

### ***Complaint about CPABC's Bylaws and Code of Professional Conduct***

[13] The applicant submits that CPABC's bylaws (bylaws) and code of professional conduct (code) contain deficiencies respecting handling of a misconduct complaint.<sup>9</sup> He also submits that CPABC members who conducted the review of the Complaint failed to comply with their fiduciary duty under the bylaws and code.<sup>10</sup>

[14] In this inquiry, my task is to dispose of the issues listed in the OIPC investigator's fact report (report) and the (notice). Those issues are limited to whether certain FIPPA exceptions to disclosure apply to the information in dispute. The report and notice in this case do not mention the issues related to the code and bylaws. Further, I find that these issues have no connection to the

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<sup>6</sup> CPABC's initial submission at para 60.

<sup>7</sup> CPABC's initial submission at para 61.

<sup>8</sup> For example, Order F16-34, 2016 BCIPC 38 at para 9.

<sup>9</sup> Applicant's response submission at paras 13-17.

<sup>10</sup> Applicant's response submission at paras 9-12.

applicant's rights under FIPPA, and I do not have the authority to decide them. Therefore, although I have read all of the parties' submissions, I will only comment on those matters insofar as they directly relate to an issue under FIPPA.

### **HARM TO LAW ENFORCEMENT, S. 15(1)**

[15] CPABC is withholding most of the information in dispute under s. 15(1). The relevant provisions of s. 15(1) read as follows:

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,

...

(c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,

...

(h) deprive a person of the right to a fair trial or impartial adjudication,

[16] Additionally, Schedule 1 of FIPPA defines "law enforcement" as follows:

"law enforcement" means

(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.

[17] The standard CPABC must satisfy is a "reasonable expectation of harm"; this is a "middle ground between that which is probable and that which is merely possible."<sup>11</sup> CPABC is not required to prove that the alleged harm will occur, or even that the harm is more likely than not to occur, if the disputed information is disclosed.<sup>12</sup> It needs only prove that there is a "reasonable basis for believing that harm will result" from disclosure.<sup>13</sup> In addition, the release of the information

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<sup>11</sup> *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at para 201.

<sup>12</sup> *British Columbia Hydro and Power Authority v. British Columbia (Information and Privacy Commissioner)*, 2019 BCSC 2128 at para 93.

<sup>13</sup> *United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 170 v. British Columbia (Information and Privacy Commissioner)*, 2018 BCSC 1080 at para 42.

itself must give rise to a reasonable expectation of harm,<sup>14</sup> and there must be a direct link between the disclosure and the apprehended harm.<sup>15</sup>

[18] The harms analysis is contextual and the evidence required depends on the nature of the issue and “inherent probabilities and improbabilities or the seriousness of the allegations or consequences.”<sup>16</sup>

[19] CPABC has applied ss. 15(1)(a), (c) and (h) to withhold information from the two-page investigation authorization form (Authorization Form); and the three-page email string (Emails).<sup>17</sup>

***Harm to a law enforcement matter, s. 15(1)(a)***

[20] To assess whether disclosure of the information at issue would harm a law enforcement matter in accordance with s. 15(1)(a), I must determine the following:

1. whether the information in dispute relates to law enforcement; and
2. whether disclosure would harm a law enforcement matter.

*Does the information in dispute relate to law enforcement?*

[21] CPABC submits that pursuant to CPAA, it has the legislative authority to conduct investigations and issue penalties on members who contravened professional standard of conduct; therefore, the exercise of CPABC’s authority about the Complaint constitutes a law enforcement matter.<sup>18</sup>

[22] The applicant makes no submissions regarding whether the information in dispute relates to a law enforcement matter.

[23] Based on my review of the submissions I accept that CPABC has investigatory powers in accordance with CPAA. Section 51(1) of CPAA empowers an officer, a committee or any other person designated in accordance with the bylaws to conduct a practice review or an investigation. Sections 51(3) and 51(4)(b) of CPAA state an investigator may conduct an investigation of the conduct of a member, a former member or a student to determine whether

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<sup>14</sup> *British Columbia (Minister of Citizens’ Services) v. British Columbia (Information and Privacy Commissioner)*, 2012 BCSC 875 at para 43.

<sup>15</sup> *Merck Frosst Canada Ltd v Canada Health*, 2012 SCC 3 at para 219. See also Order F07-15, 2007 CanLII 35476 (BCIPC) at para 17.

<sup>16</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at para 54.

<sup>17</sup> For clarity, none of information on the third page has been withheld; it is not in dispute.

<sup>18</sup> CPABC’s initial submission at paras 55-56.

grounds exist for disciplinary action against them.<sup>19</sup> Section 53(2) of CPAA provides that CPABC's disciplinary committee may appoint a panel to inquire into the competence, fitness to practice or professional conduct of its members.<sup>20</sup> Further, ss. 53(4) to (8) of CPAA provide that after a hearing, the panel may issue a reprimand, suspend or cancel a membership or enrolment, bar applications for membership, impose conditions on membership and impose a fine or costs.

[24] I am satisfied that under the CPAA, the CPABC has established an investigation process that has the potential to lead to a hearing and a penalty or sanction being imposed. In this case, the first step in that investigation process involved the Investigation Committee Panel Vice Chair conducting a preliminary screening of the Complaint to decide if it warranted an investigation. On its face, the information in dispute clearly relates directly to the CPABC's exercise of its investigation powers. Therefore, I find that the disputed information relates to law enforcement within the meaning of s. 15(1)(a).

*Would disclosure harm a law enforcement matter?*

[25] I will now consider whether disclosure would harm a law enforcement matter.

[26] CPABC submits that the information in dispute contains information about:

- The individual who was alleged to have committed misconduct in the Complaint (Respondent);
- The Investigation Committee Panel Vice Chair who decided the Complaint did not warrant investigation; and
- One of the public representatives on the Investigation Committee who was assigned to review the Panel Vice Chair's decision (Committee Member).

[27] CPABC asserts that disclosure of this information will cause harm to a law enforcement matter because disclosure may:

- Reveal candid deliberation and confidential considerations of the Panel Vice Chair and Committee Member about whether the Complaint warrants investigation;<sup>21</sup>
- Reveal confidential information about CPABC's process;
- Expose the Respondent to reputational risk and harm; and

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<sup>19</sup> Also, s. 51(2) of the CPAA reads: (2) A reviewer may conduct a practice review of a person listed in subsection (4)(a) by reviewing the person's professional practice for the purpose of identifying any deficiencies in the practice or the fitness or professional conduct of the person.

<sup>20</sup> Sections 53(1) to (8) of the CPAA.

<sup>21</sup> CPABC's initial submission at para 58.

- Expose the Panel Vice Chair and Committee Member to the threat of undue influence and harassment by the applicant.<sup>22</sup>

[28] CPABC relies on an affidavit from its Vice President of Professional Conduct (Vice President) who states that the applicant was dissatisfied with CPABC's decision on the Complaint (Complaint Decision). The Vice President also says that the applicant wrote letters to several executive staff members of CPABC<sup>23</sup> to complain about the Complaint Decision.<sup>24</sup> The Vice President explains that names of, and information about, the Panel Vice Chair and Committee Member remain confidential and it is critical that CPABC protects its members serving on the Investigation Committee from harassment, intimidation and interference.<sup>25</sup>

[29] The applicant disputes CPABC's position. He says that determining whether the Complaint warrants investigation is not investigation and disclosure of the disputed information is highly unlikely to reveal the specific procedures and skills required for an investigation. He also says that CPABC's argument about threat of undue influence and harassment is exaggerated.<sup>26</sup>

[30] I am not persuaded by CPABC's argument that disclosure could reasonably be expected to harm its investigation. Given that CPABC reviewed the Complaint and determined in April 2022 that investigation is not required, I find that the law enforcement matter has been concluded for over two years. On the materials before me, I cannot identify, and CPABC does not point to, any connection between the disputed information and any ongoing investigation or a proceeding related to the records at issue which leads or could lead to a penalty or sanction being imposed. I conclude that CPABC has not explained that there is a reasonable basis for believing that harm will result from disclosure of the information in dispute.

[31] CPABC also submits that in 2022, the applicant made another complaint and it was against the Director, Professional Conduct. CPABC says that the complaint against the Director would be referred for investigation. However, I do not see, and CPABC does not explain, how disclosure of the disputed information could reasonably be expected to harm the investigation of the complaint against the Director.

[32] As a result, I find that disclosure of the information could not reasonably be expected to harm a law enforcement matter under s. 15(1)(a).

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<sup>22</sup> CPABC's initial submission at para 59.

<sup>23</sup> Director, Professional Conduct, Chair of the Investigation Committee, Executive Vice President, Registrar and Chair of the Board of Directors.

<sup>24</sup> Affidavit #1 of the Vice President at paras 20-35.

<sup>25</sup> Affidavit #1 of the Vice President at paras 10-11.

<sup>26</sup> Applicant's response submission at paras 43-44.

***Harm to the effectiveness of investigative techniques and procedures, s. 15(1)(c)***

[33] CPABC submits that disclosure of some of the information in dispute would harm the effectiveness of its investigative techniques. It says that disclosure of the information would enable complainants, respondents and witnesses the ability to review CPABC's techniques, analysis and procedures.<sup>27</sup> CPABC relies on an affidavit from the Vice President who says that in a matter unrelated to the Complaint, a participant uncovered a CPABC member's identity and engaged in intimidation and harassment against the member with the intent to improperly influence the outcome of their investigation.<sup>28</sup> CPABC says that the applicant is seeking the information in order to dispute the Panel Vice Chair and Committee Member's decision and to criticize them.<sup>29</sup>

[34] The applicant submits that it is unlikely that knowledge of the techniques used for preliminary screening of the Complaint can influence the way that the complainants, respondents and witnesses communicate or respond to questions.<sup>30</sup> He says that CPABC's assertion that disclosing the information would discourage its members taking a role with the Investigation Committee is an exaggeration.<sup>31</sup>

[35] I find that CPABC has not established the required "clear and direct connection" between the disclosure of the withheld information and the alleged harm for the purposes of s. 15(1)(c).<sup>32</sup>

[36] I am not persuaded that disclosure of the information in dispute could reasonably be expected to result in harm to the effectiveness of investigative techniques and procedures under s. 15(1)(c). On my review of the information, I find that CPABC does not explain any connection between the information and any particular investigative techniques and procedures contained in the records at issue (e.g., methods for interviewing witnesses; what evidence or information to request and under what circumstances; advice on investigating and the weight to be given to information; and how to determine whether or not to investigate a complaint). Additionally, there is nothing before me to suggest that the disputed information contains any investigative techniques CPABC currently uses which are not commonly known to the public.<sup>33</sup>

[37] Accordingly, I find that s. 15(1)(c) does not apply to the information in dispute.

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<sup>27</sup> CPABC's initial submission at para 70; Affidavit # 1 of Vice president at para 45.

<sup>28</sup> Affidavit # 1 of Vice President at para 43.

<sup>29</sup> Affidavit # 1 of Vice President at para 53.

<sup>30</sup> Applicant's response submission at para 46.

<sup>31</sup> Applicant's response submission at para 47.

<sup>32</sup> See for similar reasoning Order F08-03, 2008 CanLII 13321 (BC IPC) at para 27.

<sup>33</sup> See for similar reasoning Order F21-22, 2021 BCIPC 27 at para 22.



***Deprive a person of the right to a fair trial or impartial adjudication,  
s. 15(1)(h)***

[38] CPABC has applied s. 15(1)(h) to withhold the information in dispute.

[39] CPABC submits that the applicant's behaviour may deprive the Respondent of his right to an impartial adjudication because the applicant appears to intend to use the disputed information to criticize CPABC and its members.<sup>34</sup>

[40] The applicant objects to CPABC's assertion. He submits that the purpose of his request was not to criticize or harass<sup>35</sup> but to request CPABC to improve the complaint process.<sup>36</sup>

[41] I am not persuaded by CPABC's argument. I cannot find a direct link between the disclosure of the information in dispute and the deprivation of the Respondent's right to a fair trial or impartial adjudication. CPABC does not identify a reasonable expectation of any trial or adjudication involving the Respondent or anyone referenced in the information in dispute. Here, the Complaint process concluded over two years ago. CPABC's submissions and evidence do not establish that the Complaint involves any issues that may proceed to a trial or adjudication. Accordingly, I do not find that anyone's right to a fair trial or impartial adjudication is engaged, and I find that s. 15(1)(h) does not apply to the disputed information.

***Summary, s. 15(1)***

[42] For the reasons given above, I find that CPABC has not provided a sufficient evidentiary basis for concluding that disclosure of the information in dispute could reasonably be expected to result in harm to a law enforcement matter or the effectiveness of investigative techniques and procedures. Also, I do not find that disclosing the information could reasonably be expected to deprive a person of the right to a fair trial or impartial adjudication. Therefore, CPABC is not authorized to withhold the information in dispute under ss. 15(1)(a), (c) and (h).

[43] CPABC has applied s. 22(1) to withhold most of the information to which it applied ss. 15(1)(a), (c) and (h). I will now consider whether s. 22(1) applies to this information.

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<sup>34</sup> CPABC's initial submission at para 74.

<sup>35</sup> Applicant's response submission at para 48.

<sup>36</sup> Applicant's response submission at para 34.

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**UNREASONABLE INVASION OF A THIRD PARTY’S PERSONAL PRIVACY,  
S. 22**

[44] Section 22(1) requires a public body to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy.

[45] Past OIPC orders have established the analytical approach for s. 22 as follows: (1) s. 22(1) only applies to “personal information” as defined by FIPPA; (2) s. 22(4) lists circumstances where s. 22 does not apply because disclosure would not be an unreasonable invasion of personal privacy; (3) s. 22(3) specifies information for which disclosure is presumed to be an unreasonable invasion of a third party’s personal privacy, however, this presumption can be rebutted; (4) the public body must consider all relevant circumstances, including those listed in s. 22(2), to determine whether disclosing the personal information would be an unreasonable invasion of a third party’s personal privacy.<sup>37</sup> I will also apply this approach here.

***Personal information***

[46] As I noted above, the first step in the s. 22 analysis is to determine whether the information in dispute is “personal information” within the meaning of FIPPA.

[47] FIPPA defines personal information as “recorded information about an identifiable individual other than contact information.” Contact information is defined as “information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.”<sup>38</sup> Whether information is “contact information” depends upon the context in which it appears.<sup>39</sup>

[48] CPABC submits that the information it withheld is the personal information of third parties.<sup>40</sup> The applicant submits that, other than individuals’ names, telephone numbers and addresses, the disputed information does not qualify as personal information.<sup>41</sup>

[49] From my review of the records, I find that most of the information withheld under s. 22(1) is personal information because it is about the Respondent, Panel

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<sup>37</sup> Order F15-03, 2015 BCIPC 3 (CanLII) at para 58; and Order F16-38, 2016 BCIPC 42 (CanLII) at para 108.

<sup>38</sup> Schedule 1, Definition.

<sup>39</sup> Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

<sup>40</sup> CPABC’s initial submission at paras 86-87.

<sup>41</sup> Applicant’s response submission at para 58.

Vice Chair and Committee Member and they are identified by name and signature.

[50] There are several instances where the Panel Vice Chair and Committee Member are identifiable by email address in the sender and recipient fields. I find that this information also qualifies as personal information. An individual's work email address in the sender and recipient fields and the signature block of email is generally considered contact information. However, whether information will be considered "contact information" depends on the context.<sup>42</sup> Here, these third parties provided their email addresses while they were carrying out a role with the Investigation Committee, on a temporary basis, outside the normal course of their business capacity. Having considered this context, I do not find that this information relates to the ability to communicate with a person at that person's workplace, in a normal business capacity. As a result, I conclude that this is not contact information.

[51] Additionally, it is clear on the face of these email addresses that they consist of a combination of first name (or initial) and last name of the third parties. Therefore, disclosing these email addresses would reveal these third parties' names.

[52] I find a small amount of information is not personal information. It is generic or template language in the Authorization Form, document package numbers, dates of the Emails and log information of the records which consists of time and date of email transactions. I also find that there are instances where the withheld information only reveals information that CPABC already disclosed elsewhere in the records.<sup>43</sup> I find that none of this information contains third-party personal information because it is not reasonably capable of identifying particular individuals.

***Disclosure not an unreasonable invasion of privacy, s. 22(4)***

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

[54] CPABC says that s. 22(4) does not apply in this case.<sup>44</sup> The applicant does not address s. 22(4).

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<sup>42</sup> Order F08-03, 2008 CanLII 13321 at para 82; Order F14-45, 2014 BCIPC 48 at para 41; Order F20-13, 2020 BCIPC 15 (CanLII) at para 42.

<sup>43</sup> A file number was disclosed at the top of page 1 and withheld on pages 3 (at the top) and 4.

<sup>44</sup> CPABC's initial submission at para 95.

[55] I have reviewed the circumstances set out in s. 22(4), and I conclude that none of them apply to the personal information.

***Presumptively unreasonable invasion of personal privacy, s. 22(3)***

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

[57] CPABC submits that disclosing the information at issue is presumed to be an unreasonable invasion of third-party personal privacy because some of it is information compiled as part of an investigation under s. 22(3)(b),<sup>45</sup> and some is a third party's employment or occupational history under s. 22(3)(d).<sup>46</sup>

*Part of an investigation into a possible violation of law, s. 22(3)(b)*

[58] Section 22(3)(b) states that a disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if 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.

[59] Section 22(3)(b) requires two things: (1) an investigation into a violation of law, and (2) the compilation of information that is identifiable as part of that investigation. The compilation of information must involve some exercise of judgment, knowledge, or skill on behalf of the public body.<sup>47</sup>

[60] CPABC submits that the information in dispute relates to investigation into possible violation of law within the meaning of s. 23(3)(b) because it relates to investigation of the Complaint against the Respondent.<sup>48</sup> The applicant suggests that s. 22(3)(b) does not apply to information because there was no investigation into the Complaint.<sup>49</sup>

[61] For the first requirement of s. 22(3)(b), previous orders establish that professional regulation investigations qualify as investigations into a possible violation of law,<sup>50</sup> and I agree with this approach. In this case, however, the Complaint did not proceed to an investigation because the CPABC determined that the matter did not warrant investigation.<sup>51</sup> Absent any formal investigation,

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<sup>45</sup> CPABC's initial submission at para 88.

<sup>46</sup> CPABC's initial submission at para 90.

<sup>47</sup> Order F19-02, 2019 BCIPC 2 at para 39.

<sup>48</sup> CPABC's initial submission at paras 88-89.

<sup>49</sup> Applicant's response submission at para 58.

<sup>50</sup> Order 02-20, 2002 CanLII 42445 (BC IPC) at paras. 28-31. See also: Order F23-78, 2023 CanLII 90556 (BC IPC) at para 95 and Order F08-16, 2008 CanLII 57359 (BC IPC) at para 22.

<sup>51</sup> CBAPC's initial submission at para 19.

I find the first requirement of s. 22(3)(b) is not met, so I need not consider the second part of the s. 22(3)(b) test.

[62] For these reasons, I find that s. 22(3)(b) does not create a presumption against disclosure of any of the personal information.

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

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

[64] CPABC submits that the personal information relates to the Respondent's employment and occupational history because it was about an allegation of misconduct against them.<sup>52</sup>

[65] I find it clear that some of the personal information withheld in the records at issue is about the Respondent who is identified by their name, title and business. I also find that the Investigation Committee's comments upon review of the alleged misconduct and the Respondent's employment and membership information with CPABC relate to the Respondent's employment or occupational history.

[66] Therefore, I find that disclosure of this personal information is presumed to be an unreasonable invasion of the Respondent's personal privacy under s. 22(3)(d).

***Relevant circumstances, s. 22(2)***

[67] The final step in the s. 22 analysis is to consider whether disclosing the personal information at issue would constitute an unreasonable invasion of a third party's personal privacy. This is determined by considering all relevant circumstances, including those listed under s. 22(2). It is at this stage of the analysis that any applicable presumptions under s. 22(3)(d) may be rebutted.

[68] CPABC submits that ss. 22(2)(e), (f) and (h) are relevant.<sup>53</sup> The applicant does not address circumstances listed in s. 22(2) or any unlisted factors.

*Unfair exposure to financial or other harm – s. 22(2)(e)*

[69] Section 22(2)(e) says whether disclosure would unfairly expose a third party to financial or other harm is a relevant circumstance to consider. It is the exposure to harm, not the likelihood of the actual occurrence of harm, that

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<sup>52</sup> CPABC's initial submission at para 90.

<sup>53</sup> CPABC's initial submission at paras 105-107.

matters.<sup>54</sup> Harm includes serious mental distress or anguish or harassment.<sup>55</sup> However, embarrassment, upset, or negative reactions do not rise to the required level of mental harm.<sup>56</sup>

[70] CPABC submits that disclosure of the third-party personal information would result in serious mental distress or anguish or harassment to CPABC members who carried out a role with the Investigation Committee.<sup>57</sup> It submits that the applicant's previous actions, which demonstrate no respect for the official lines of communication or appropriate boundaries in his communications, indicate a reasonable likelihood of harm to the Panel Vice Chair if the information were disclosed.<sup>58</sup>

[71] The applicant submits that disclosing the personal information would help to clarify whether CPABC had complied with the bylaws and whether the Panel Vice Chair had the necessary accounting expertise to review the Complaint.<sup>59</sup>

[72] Based on the materials before me, I find that it is not apparent how the disclosure of the personal information would unfairly expose the third parties to the type of harm required under s. 22(2)(e).

[73] CPABC relies on an affidavit from its Past Chair, Board of Directors (Past Chair) who states that the applicant wrote several times to her CPABC address and to her home address to express his dissatisfaction, and she explains how this made her feel.<sup>60</sup> CPABC also relies on an affidavit from the Vice President who states that the applicant wrote letters to several CPABC executive staff members<sup>61</sup> to complain about their conduct involving the Complaint.<sup>62</sup> However, I do not find that any of this evidence assists CPABC's arguments on s. 22(2)(e).

[74] Here, the personal information in dispute relates to the allegation of misconduct against the Respondent and the opinions and assessment of the Panel Vice Chair and Committee Member. The information in dispute is not about, nor does it even refer to, the people who provided affidavit evidence. CPABC did not provide evidence about the impact disclosure may have on the people who the disputed information is actually about. Therefore, what the Past

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<sup>54</sup> Order F23-106, 2023 BCIPC 122 at para 53.

<sup>55</sup> Order 01-37, 2001 CanLII 21591 (BC IPC) at para 42.

<sup>56</sup> Order 01-15, 2001 CanLII 21569 (BC IPC), at paras 49-50; and Order F20-37, 2020 BCIPC 43 (CanLII), at para 120.

<sup>57</sup> CPABC's initial submission at para 106.

<sup>58</sup> CPABC's initial submission at paras 108-109; Affidavit #1 of Past Chair, Board of Directors at para 16-20.

<sup>59</sup> Applicant's response submission at paras 42 and 51.

<sup>60</sup> Affidavit #1 of Past Chair at paras 8-11 and 16-18.

<sup>61</sup> Director, Professional Conduct, Chair of the Investigation Committee, Executive Vice President, Registrar and Chair of the Board of Directors.

<sup>62</sup> Affidavit #1 of the Vice President at paras 20-35.

Chair and the other affiants say does not show a connection between disclosure of the information in dispute and the type of harm s. 22(2)(e) is about. Further, the withheld personal information is factual statements and professional opinion, and I cannot see how disclosing it could cause the type of serious mental distress or anguish that past orders have said is harm under s. 22(2)(e). In the circumstances, I am not persuaded that disclosing the personal information in dispute would unfairly expose anyone to financial or other harm under s. 22(2)(e). As a result, I conclude that s. 22(2)(e) is not a factor in favour of disclosure.

*Supplied in confidence, s. 22(2)(f)*

[75] 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.

[76] For s. 22(2)(f) to apply, there must be evidence that a third party supplied personal information under an objectively reasonable expectation of confidentiality, at the time of its supply.<sup>63</sup>

[77] CPABC submits that all of the personal information has been supplied in confidence. It says that maintaining confidentiality during investigation is important to protect the decision-making process of the professional conduct complaint investigation.<sup>64</sup> The applicant does not address s. 22(2)(f).

[78] I find that the personal information in dispute consists of the Investigation Committee's review, advice and opinions about the Complaint. There are no express statements of confidentiality in the records at issue; however, I accept the CPABC's evidence that its policy and practice is to keep the identity and opinions of the Investigation Committee members confidential.<sup>65</sup> Also, given the content and context of the records at issue, I find it reasonable to conclude that the third-party personal information provided during deliberation on the Complaint is generally understood to be supplied with an expectation that it will be kept confidential by its recipient.<sup>66</sup> Therefore, I find that when the third parties supplied the information to CPABC, they did so under an objectively reasonable expectation of confidentiality. I find that s. 22(2)(f) weighs in favour of withholding this information.

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<sup>63</sup> Order F11-05, 2011 BCIPC 5 at para 41 citing Order 01-36, 2001 CanLII 21590 (BC IPC) at paras 23-26.

<sup>64</sup> CPABC's initial submission at para 107; Affidavit #1 of Vice President at para 50.

<sup>65</sup> Affidavit #1 of Vice President at paras 10-11 and 39.

<sup>66</sup> See for similar reasoning Order F24-48, 2024 BCIPC 56 (CanLII), at para 136; Order F24-17, 2024 BCIPC 23 (CanLII), at para 168.

*Damage to reputation, 22(2)(h)*

[79] Section 22(2)(h) asks whether the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant. For s. 22(2)(h) to apply, two requirements must be met. First, the information must damage an individual's reputation. Second, that damage must be unfair.<sup>67</sup> If they met, this factor weighs in favour of withholding the personal information.

[80] CPABC submits that disclosing the information would cause harm to the Respondent by negatively impacting their reputation in the professional accounting community.<sup>68</sup> The applicant does not address s. 22(2)(h).

[81] I find that disclosure of the personal information about the alleged misconduct against the Respondent could damage their reputation. Also, given the context of the information, it appears to me that the Respondent has not had the opportunity to respond to or correct that implication anywhere in the records, so the reputational damage would be unfair. Therefore, I find that s. 22(2)(h) weighs against disclosing that specific information.

*Applicant's personal information*

[82] Where an applicant is seeking release of their own personal information, this can weigh heavily in favour of disclosing that information to them. However, where the applicant's personal information is interwoven with the personal information of third parties this factor carries less weight.<sup>69</sup>

[83] I have reviewed the information at issue and find that some of it is information about the applicant. However, this information is intermingled with information about the third parties' opinions respecting the Respondent.<sup>70</sup> In my view, the applicant's personal information is so closely intermingled with the Respondent's personal information that it cannot be reasonably severed and disclosed to him.

[84] Therefore, in the instances where the applicant's personal information is interwoven with third-party personal information, I find that this factor carries minimal weight in this case.

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<sup>67</sup> Order F19-02, 2019 BCIPC 2 (CanLII), at para 69.

<sup>68</sup> CPABC's initial submission at para 91; Affidavit #1 of Vice President at para 51.

<sup>69</sup> Order F14-47, 2014 BCIPC 51 at para 36.

<sup>70</sup> Records at pages 1, 3 and 4.



**Conclusion, s. 22(1)**

[85] I found that some of the information is not personal information under FIPPA. CPABC cannot withhold this information under s. 22(1). The balance of the information at issue under s. 22 is personal information.

[86] I found that none of circumstances listed in s. 22(4) apply to the disputed information.

[87] I found that disclosure of the personal information would be an unreasonable invasion of the Respondent's personal privacy because some of the personal information consists of their employment or occupational history within the meaning of s. 22(3)(d).

[88] Additionally, I found that ss. 22(2)(f) and 22(2)(h) weigh against disclosing the personal information because the information was supplied in confidence and because disclosure may unfairly damage the Respondent's reputation. I found that the fact that the applicant's personal information is interwoven with some of the third-party personal information minimally weighs in favour of disclosure.

[89] After weighing all of the above, I find that disclosure of the personal information would be an unreasonable invasion of third parties' personal privacy.

**Summary of personal information supplied in confidence about the applicant, s. 22(5)**

[90] Section 22(5)(a) says that if a public body refuses to disclose personal information supplied in confidence about an applicant, the public body must give the applicant a summary of the information unless the summary cannot be prepared without disclosing the identity of a third party who supplied the personal information.

[91] Neither party addressed whether the CPABC could prepare such a summary under s. 22(5).

[92] In my view, the personal information in dispute that was supplied in confidence to CPABC cannot be meaningfully summarized without disclosing the identities of third parties. Therefore, CPABC is not required to provide a summary of that information under s. 22(5).

**ADVICE OR RECOMMENDATIONS, S. 13(1)**

[93] CPABC has applied s. 13(1) to some of the information it withheld under s. 22(1).<sup>71</sup> Given that I found s. 22(1) applies to this information, it is not necessary for me to consider whether s. 13(1) also applies to the same information.

**CONCLUSION**

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

1. CPABC is not authorized to refuse to disclose the information withheld under s. 15(1) of FIPPA.
2. Subject to item 3 below, CPABC is required to refuse to disclose the information it withheld under s. 22(1) of FIPPA.
3. CPABC is not required to withhold information that is not personal information under s. 22(1) of FIPPA. In a copy of the records that will be provided to CPABC with this order, I have highlighted in yellow the information in dispute that CPABC is not required to refuse to disclose under s. 22(1). CPABC is required to give the applicant access to the information that I have highlighted.
4. CPABC must provide the OIPC registrar of inquires with a copy of its cover letter and the records it provides to the applicant in compliance with item 3 above.

[95] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **January 9, 2025**.

November 25, 2024

**ORIGINAL SIGNED BY**

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D. Hans Hwang, Adjudicator

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<sup>71</sup> Emails on pages 3-4 of the records at issue.