Order F25-01

CULTUS LAKE PARK BOARD

Lisa Siew
Adjudicator

January 8, 2025

CanLII Cite: 2025 BCIPC 1
Quicklaw Cite: [2025] B.C.I.P.C.D. No. 1

Summary: An individual complained to the Office of the Information and Privacy Commissioner that the Cultus Lake Park Board (Board) contravened the *Freedom of Information and Protection of Privacy Act* (FIPPA) by improperly collecting, using and disclosing his personal information. The alleged contraventions took place when the complainant unsuccessfully applied to serve on one of the Board's committees. The Board argued the disputed use and disclosure of the complainant's personal information was authorized under ss. 32(a) and 33(2)(d) of FIPPA. The Board also argued the information at issue that it had collected verbally from an individual was not subject to FIPPA because it was not recorded information. The adjudicator found the verbally collected information about the complainant at issue in the inquiry did not qualify as "personal information" as defined in FIPPA because it did not exist in a recorded format. For the other information in dispute, the adjudicator determined the Board's use of the complainant's personal information was not authorized under s. 32(a) and its disclosure was not authorized under s. 33(2)(d). The adjudicator made an order under s. 58(3)(e) requiring the Board to stop using and disclosing the complainant's personal information in contravention of ss. 32(a) and 33(2)(d) of FIPPA.

Statute and sections considered in the order: *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c 165, ss. 2(1), 26(c), 32(a), 33(2)(d), 34, 34(a), 34(b), 58(3)(e), 65.4, 65.5, 65.6(2) and Schedule 1 (definition of "personal information" and "record").

INTRODUCTION

[1] This inquiry is about an individual's complaint that the Cultus Lake Park Board (Board)[1] contravened the *Freedom of Information and Protection of*

[1] The Board is a public body under FIPPA because the definition of "public body" includes a "local public body", which is defined to include a "local government body". A "local government body" includes a municipality and any board that is created or owned by a municipality and all the members or officers of which are appointed or chosen by or under the authority of the municipality. The City of Chilliwack is a municipality. Pursuant to *The Cultus Lake Park Act*, SBC

Privacy Act (FIPPA) by improperly collecting, using and disclosing his personal information. I will refer to this individual as the complainant. In response to the complainant's concerns, the Board informed the complainant that its actions complied with its policies and processes and the applicable law.

[2] The complainant was dissatisfied with the Board's response and requested the Office of the Information and Privacy Commissioner (OIPC) investigate the matter. As part of the OIPC's investigation process, the Board clarified its position by arguing that the disputed collection and some of the disputed use was not subject to FIPPA because the information at issue did not qualify as "personal information" as defined in FIPPA.

[3] Regarding the disputed disclosure, the Board said its disclosure of the applicant's personal information was in accordance with ss. 33(2)(d) and 34 of FIPPA. Those provisions allow a public body to disclose personal information only for the purpose for which the information was obtained or compiled or for a use consistent with that purpose. Ultimately, the matter was not resolved and proceeded to this inquiry.

[4] Both parties provided submissions for this inquiry. In the event the information at issue was the complainant's personal information under FIPPA, the Board specified in its inquiry submissions that its actions were authorized under the following provisions of FIPPA:

- Section 26(c) allows a public body to collect personal information only if the information relates directly to and is necessary for a program or activity of the public body.

- Section 27(1) requires the public body to collect personal information directly from the individual that the information is about, unless an exception under s. 27(1) applies.

- Section 32(a) allows a public body to use personal information in its custody or under its control only for the purpose for which the information was obtained or compiled or for a use consistent with that purpose.

- Section 33(2)(d) allows a public body to disclose personal information in its custody or under its control only for the purpose for which the information was obtained or compiled or for a use consistent with that purpose within the meaning of section 34.

- Section 34 defines what is a consistent use under ss. 32(a) and 33(2)(d).

1932, c. 63, the Board was created by the City of Chilliwack and the members of the Board are appointed under the authority of that Act.

ISSUES AND BURDEN OF PROOF

[5] The notice of inquiry states ss. 26, 27, 32 and 33 are at issue in this inquiry and does not specify which specific subsections under those provisions are relevant. Given the parties' submissions, I conclude ss. 26(c), 27(1), 32(a), 33(2)(d) are the specific provisions at issue in this inquiry. Therefore, the issues I must decide in this inquiry are as follows:

1. Did the Board collect the complainant's personal information? If it did, then:
    a. Was the Board authorized under s. 26(c) to collect the complainant's personal information?

    b. Did the Board collect the personal information in compliance with s. 27(1)?

2. Did the Board use the complainant's personal information? If it did, was the Board authorized under s. 32(a) to use the complainant's personal information?

3. Did the Board disclose the complainant's personal information? If it did, was the Board authorized under s. 33(2)(d) to disclose the complainant's personal information?

4. If the Board is found to have contravened either ss. 26(c), 27(1), 32(a) or 33(2)(d), what is the appropriate remedy?

[6] Section 57 of FIPPA establishes the burden of proof in an inquiry, but it does not specify which party has the burden to prove the above-noted issues, which fall under Part 3 of FIPPA. In Order F07-10, former Commissioner Loukidelis remarked that the absence of a statutory burden regarding provisions such as ss. 26 and 32 "is not surprising because s. 42 appears to contemplate that complaints under those provisions will proceed by way of an investigation rather than an inquiry."[2]

[7] Where FIPPA does not identify who bears the burden for a particular issue, previous OIPC adjudicators have relied on past precedents or determined which party should be assigned the burden of proof.[3] I note that previous OIPC orders have determined that in the absence of a statutory burden of proof, it is up to each party to provide evidence and argument to support their position where the inquiry engages Part 3 of FIPPA.[4] I adopt that approach here but recognize

[2] Order F07-10, 2007 CanLII 30395 (BCIPC) at para. 9.
[3] Order F21-35, 2021 BCIPC 43 (CanLII) at para. 20.
[4] Order F07-10, 2007 CanLII 30395 (BCIPC) at para. 11; Order F14-26, 2014 BCIPC 29 (CanLII) at para. 6; Decision F10-03, 2010 BCIPC 15 (CanLII) at para. 6.

"that the public body is ordinarily best placed to offer evidence of its compliance" with FIPPA.[5] Therefore, relying on past precedent, I conclude each party is responsible for providing evidence and argument to support their position on the above-noted issues.

DISCUSSION

Background

[8] Cultus Lake Park is located south of the Chilliwack River in the Fraser Valley.[6] It contains single-family homes, businesses and accommodates seasonal and full-time residents.[7] The park is held in trust for the City of Chilliwack (City) and administered by the Board. The Board is a corporation continued under and governed by *The Cultus Lake Park Act*, SBC 1932 c. 63.

[9] The Board is made up of five elected members, with two members representing the City and the other three members representing the residents of Cultus Lake Park. The Board's mandate is the use, regulation, protection, management, maintenance and improvement of Cultus Lake Park. To fulfill its mandate, the Board has the power to establish committees and appoint the members of those committees.

[10] In 2022, the Board invited residents of Cultus Lake Park to apply as a volunteer member of a specific Board committee. A Board member served as the chair of this committee. I will refer to this individual as the Chair. The Chair was responsible for reviewing the applications and recommending potential committee members to the Board for a final decision.

[11] The complainant applied to serve on the committee and filled out the required application form. As part of his application, the complainant voluntarily attached a document that listed his education, employment experience and other professional qualifications and experience.

[12] Unbeknownst to the complainant at the time, the Chair contacted one of the complainant's former employers listed in the document attached to the complainant's application form. I will refer to this individual as the Employer. The Chair and the Employer spoke over the phone about the complainant and his previous work experience and history.

[13] In 2023, the Board approved and appointed eight members of the public to the committee. The complainant was not one of the successful appointees.

---

[5] Order F07-10, 2007 CanLII 30395 (BCIPC) at para. 11.
[6] Unless otherwise indicated, the information in this background section is compiled from the parties' submissions and evidence.
[7] *Kosub et al. v Cultus Lake Park Board*, 2006 BCSC 1410 (CanLII) at para. 4.

[14] The complainant later discovered the Chair had spoken to the Employer about him. The complainant contacted the Board's corporate officer to discuss his concerns about the Chair's actions. The complainant was not satisfied with the corporate officer's response or a response he later received from the Board's chief administrative officer; therefore, he made the complaint that is the subject of this inquiry.

Did the Board collect the complainant's personal information?

[15] A public body is permitted to collect personal information if that collection is authorized under FIPPA.[8] Section 26 restricts that collection to a defined set of circumstances, which includes s. 26(c). Once the public body has established that it has the authority under s. 26 to collect personal information, s. 27 requires, with a few exceptions, that it be collected directly from the individual the information is about.[9] To consider those provisions, the first question I must address is whether the Board collected the complainant's "personal information" as defined in FIPPA.

[16] The parties did not dispute the Board's collection of the complainant's personal information via the application form; therefore, I find this collection is not at issue between the parties. Instead, the collection at issue occurred when the Chair called the Employer to obtain information about the complainant. The complainant alleges the Chair inappropriately collected his personal information from the Employer by obtaining this information without his knowledge or consent. The complainant says he spoke with the Employer who told him the Chair contacted the Employer by phone and asked about the work the complainant had performed for the Employer and questioned why the complainant no longer worked for the Employer.

[17] The complainant argues the Chair acted inappropriately because the application form did not request references, and he did not provide his consent for the Board to contact any of his previous employers. Citing Order F14-26, the complainant submits "when a public body wishes to collect past work performance information from a source not provided by an applicant, the applicant should be informed and allowed to agree or disagree to that collection."[10] Among other things, the complainant argues Order F14-26 is relevant because the information in that case also involved verbal statements which the adjudicator found qualified as personal information as defined in FIPPA.

---

[8] Section 25.1 of FIPPA.
[9] Order F14-26, 2014 BCIPC 29 (CanLII) at para. 12.
[10] Complainant's submission dated July 29, 2024 at p. 5, citing Order F14-26, 2014 BCIPC 29 (CanLII) at para. 74.

[18] The Chair provided an affidavit in this inquiry and confirms he phoned the Employer to learn more about the complainant's "skills and experience and their relevance to the work of the Committee."[11] The Chair says the Employer "provided a positive reference" and told him that the complainant no longer worked for the Employer because the complainant was retired.[12] The Chair also attests that he did not take notes of the phone conversation or document the conversation in written or electronic form.[13]

[19] I am satisfied the Chair collected information about the complainant from his former employer. The parties do not dispute this fact. However, the Board argues the information verbally collected by the Chair from the Employer was not personal information under FIPPA because "it was not recorded in writing."[14] In support of its position, the Board cites the following definitions of "personal information" and "record" under Schedule 1 of FIPPA:

> "personal information" means recorded information about an identifiable individual other than contact information; [my emphasis]
>
> "record" includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means, but does not include a computer program or any other mechanism that produces records;

[20] The Board says FIPPA does not define "recorded information" but argues the "common sense meaning of those words and FIPPA's definition of 'record' indicate that recorded information must be recorded or stored in some physical or electronic medium."[15] Therefore, the Board argues the information that the Chair verbally received from the Employer is not personal information because it was not recorded or stored in a physical or electronic form.

[21] The Board also says Order F14-26 is distinguishable from the present situation because the collected information at issue in that case was recorded in writing which led the adjudicator to conclude it was "personal information" as defined in FIPPA. The Board submits the adjudicator's decision in Order F14-26 hinged on the fact that the public body's hiring manager contacted an individual's former employer and recorded the conversation in writing by taking notes of the discussion.

---

[11] Chair's affidavit at para. 15.
[12] Chair's affidavit at para. 17.
[13] Chair's affidavit at para. 19.
[14] Board's submission dated August 21, 2024 at para. 38.
[15] Board's submission dated August 21, 2024 at para. 37.

[22] In response to the Board's arguments, the complainant finds it "hard to believe" that verbal information not recorded in writing means it "does not exist".[16] The complainant notes certain cultures have an oral history and questions "if it is not recorded in writing does it mean it did not exist?"[17]

[23] To be clear, verbal statements clearly exist and I find the Board is not arguing otherwise. Instead, the question raised by the parties' submission is whether verbal statements not recorded in writing or in another format qualify as "personal information" under FIPPA. If it does not, then that information is not subject to Part 3 of FIPPA and I have no jurisdiction to review how that verbal information was collected, used or disclosed.

[24] For information to qualify as "personal information" under FIPPA, it must be "recorded information about an identifiable individual other than contact information."[18] As noted by the Board, FIPPA does not define what the term "recorded information" means in the definition of "personal information". However, the ordinary meaning of the word "recorded" means, among other things, "to set down in writing" or "to cause (sound, visual images, data, etc.) to be registered on something…in reproducible form."[19] There is nothing in my review of FIPPA that contradicts the ordinary meaning of the word "recorded" in the definition of "personal information". Instead, I note previous decisions from the OIPC and Ontario's Information and Privacy Commissioner reinforce this ordinary meaning.

[25] In Order F14-26, the adjudicator concluded "verbally communicated information about an identifiable individual is 'personal information' as long as it exists or existed at one time in recorded format."[20] The adjudicator in Order F14-26 found the verbally communicated information in that case was the complainant's personal information under FIPPA because the hiring manager collected that information from the complainant's past employers and recorded it in her notes. The adjudicator said, "To decide otherwise, would be inconsistent with the purposes of FIPPA and would allow the provisions that address personal information, in particular those in Part 3 of FIPPA, to be circumvented merely by claiming that the information was shared verbally."[21]

[26] In reaching their conclusion, the adjudicator in Order F14-26 relied on decisions from the office of the Information and Privacy Commissioner of Ontario (IPC).[22] The IPC has taken the position that verbal disclosures are subject to the

[16] Complainant's submission dated September 5, 2024 at p. 5.
[17] Complainant's submission dated September 5, 2024 at p. 5.
[18] Definition of "personal information" under Schedule 1 of FIPPA.
[19] Merriam-Webster's online dictionary: https://www.merriam-webster.com/dictionary/recorded.
[20] Order F14-26, 2014 BCIPC 29 (CanLII) at para. 16.
[21] Order F14-26, 2014 BCIPC 29 (CanLII) at para. 16.
[22] Privacy Complaint No. MC-020008-1, 2003 CanLII 53695 (ON IPC) and Privacy Complaint No. PC-060004-1, 2006 CanLII 50784 (ON IPC).

privacy protections of Ontario's FIPPA only when the information in question exists or existed at one time in recorded format.[23] If not, then the information in question would not be considered "personal information" under Ontario's FIPPA.

[27] For example, one of the Ontario decisions relied on by the adjudicator in Order F14-26 dealt with a complaint that an art teacher had inappropriately verbally disclosed a student's probable grade on an art assignment to another student. The student who complained about the verbal disclosure ultimately received a different grade for their art project. The decision-maker in that Ontario case found "as the grade recorded by the teacher does not appear to be the same as the grade reportedly disclosed to her classmate, any such verbal disclosure would not relate to information which existed in recorded format."[24] Therefore, the decision-maker concluded the verbal disclosure at issue in that case did not qualify as personal information as defined in Ontario's FIPPA.

[28] I also find Order P19-03,[25] a decision made under the *Personal Information Protection Act*[26] (PIPA), is instructive on how "personal information" should be interpreted under FIPPA. While PIPA orders are not binding, previous OIPC orders have found that, when interpreting a statute, it is appropriate to refer to similar language or provisions in other statutes dealing with the same subject matter.[27] Both FIPPA and PIPA deal with the collection, use and disclosure of an individual's personal information and, with some exceptions, their definitions of "personal information" are similar.[28]

[29] In Order P19-03, the adjudicator had to decide whether the definition of "personal information" under PIPA included information an organization collects or compiles about someone without recording it. The adjudicator found that it did, partly because PIPA defines "personal information" as "information about an identifiable individual" without the requirement in FIPPA's definition that the information be "recorded".[29] In reaching her decision, the adjudicator considered the *Personal Information Protection and Electronic Documents Act* (PIPEDA), which is the federal private sector privacy law that was partially in force at the time.[30] PIPEDA also defines personal information like PIPA and the adjudicator took into account the fact that the Privacy Commissioner of Canada determined PIPEDA is not limited to recorded information.

---

[23] Privacy Complaint No. PC-060004-1, 2006 CanLII 50784 (ON IPC) at p. 3 of pdf.
[24] Privacy Complaint No. MC-020008-1, 2003 CanLII 53695 (ON IPC) at p. 3 of pdf.
[25] 2019 BCIPC 42 (CanLII).
[26] SBC 2003, c 63.
[27] For example, Order P19-03, 2019 BCIPC 42 (CanLII) at para. 23, quoting Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed. (Markham, Ont.: LexisNexis Canada, 2014) at para. 13.25.
[28] Order P19-03, 2019 BCIPC 42 (CanLII) at para. 23.
[29] Definition of "personal information" under s. 1 of PIPA.
[30] SC 2000, c. 5, cited by Order P19-03, 2019 BCIPC 42 (CanLII) at para. 26

[30] The adjudicator also found it relevant that PIPA was enacted after FIPPA which means the "Drafters and legislators were therefore aware, in preparing and passing PIPA, of FIPPA's stricture that it only applies to 'recorded' information" and chose not to include the word "recorded" in PIPA's definition.[31] The adjudicator ultimately concluded PIPA can apply to unrecorded information and said:

> When one views the PIPA definition in its statutory context, and in the context of the Legislature's choice, in FIPPA, to expressly require that information about an identifiable individual be "recorded", I conclude that the grammatical and ordinary sense of the definition is that "personal information" is not limited to information that is recorded. PIPA can, therefore, apply where an organization collects or compiles information about someone without recording it.[32]

[31] Considering all the above, I conclude that "recorded information" under FIPPA means information that is recorded in a physical or electronic form, such as information recorded on paper or in an electronic format. Therefore, when it comes to verbal information and FIPPA, it is necessary to determine whether the information at issue exists or existed at one time in a physical or electronic form. If so, the information in question may be "personal information" within the meaning of FIPPA so long as that information is about an identifiable individual and is not contact information. However, if the information at issue does not, or did not, exist in a physical or electronic form, then it is not subject to Part 3 of FIPPA and the OIPC has no jurisdiction to review whether a public body's collection, use or disclosure of that personal information complies with FIPPA.

[32] In the present case, there is no evidence the Chair wrote down or electronically recorded the information about the complainant that he verbally collected from the Employer. The Chair deposes that he did not take notes of the phone conversation with the Employer during the conversation or document the conversation in written or electronic form after the conversation.[33] I was not provided with any information that contradicts the Chair's affirmed statements, so I accept his evidence that what the Employer told him about the complainant was not recorded. Accordingly, I find this verbally collected information is not "personal information" under FIPPA and I do not have the jurisdiction to determine whether that information was collected in accordance with ss. 26(c) and 27(1) of FIPPA or used in compliance with s. 32(a).[34]

Did the Board use the complainant's personal information?

---

[31] Order P19-03, 2019 BCIPC 42 (CanLII) at para. 25.
[32] Order P19-03, 2019 BCIPC 42 (CanLII) at para. 33.
[33] Chair's affidavit at para. 19.
[34] The Board also provided arguments about the use of this information under s. 32(a) at para. 47 of its submission dated August 21, 2024.

[33] A public body and its employees, officers or directors are permitted to use personal information if that use is authorized under FIPPA.[35] Section 32 requires a public body to ensure that personal information in its custody or under its control is used only as specified under that section. The Board is relying on s. 32(a) which allows a public body to use personal information in its custody or under its control for the purpose for which the information was obtained or compiled or for a use consistent with that purpose.

[34] To consider s. 32(a), the first question I must address is whether the Board or its employees, officers or directors used the complainant's "personal information" as that term is defined in FIPPA. For information to qualify as "personal information" under FIPPA, it must be "recorded information about an identifiable individual other than contact information."[36]

[35] The complainant submits the Chair inappropriately used the information on his volunteer application form to conduct an unauthorized reference check with the Employer. Both parties provided me with a copy of the application form and its attachment. The complainant submits the Chair's actions were inappropriate because he chose to speak to individuals not involved in the committee selection process without the complainant's knowledge or consent instead of accepting what the complainant submitted in his application.

[36] The Chair acknowledges using information provided by the complainant on his application form to contact the Employer to learn more about the complainant's skills and experience and their relevance to the work of the committee.[37]

[37] Given the parties' submissions, I accept the Chair used the information on the complainant's volunteer application form to obtain information about the complainant from the Employer. I am satisfied the information on the application form was about an identifiable individual, specifically the complainant, and is not contact information as defined in FIPPA. Moreover, the complainant provided this information about his past employment and experience in writing to the Board. Therefore, I am satisfied this information about the complainant existed in a recorded format at the time of its use and, therefore, qualifies as "personal information" under FIPPA.

[38] The complainant also alleges the Chair used the information on the complainant's volunteer application form to contact the Employer to "dig up dirt" about him, which the complainant says has damaged his reputation.[38] The complainant submits there can be no other reason why the Chair would find it

[35] Section 25.1 of FIPPA.
[36] Definition of "personal information" under Schedule 1 of FIPPA.
[37] Chair's affidavit at para. 15.
[38] Complainant's submission dated July 29, 2024 at p. 4.

necessary to "dig into someone's past work experience from 18 years ago" without their knowledge or consent, when the application form only requested applicants to list their last five years of business or work experience.[39]

[39] The Board denies using any of the complainant's information to dig up dirt about the complainant or to discredit the complainant, his experience or his reputation. The Board says the complainant's allegations are "baseless speculation" that is "unsupported by any evidence."[40]

[40] Based on the materials before me, I am not persuaded the Chair used the information that the complainant provided on his volunteer application form to uncover dirt about the complainant or to discredit the complainant and damage his reputation. I understand the complainant distrusts the Chair and the Board and questions the committee selection process. However, I have no evidence before me that supports the use alleged by the complainant or that substantiates any allegations of wrongdoing on the part of the Board and its members or staff. I, therefore, conclude the only use at issue in this inquiry occurred when the Chair used the information on the complainant's volunteer application form to contact the complainant's former employer to obtain information about the complainant's work experience and history. I will consider next whether that use was authorized under s. 32(a) of FIPPA.

Use of personal information – s. 32(a)

[41] Section 32(a) allows a public body to use personal information in its custody or under its control for the purpose for which the information was obtained or compiled or for a use consistent with that purpose.

[42] As noted, the use at issue in this inquiry occurred when the Chair used the information on the complainant's volunteer application form to contact the complainant's former employer to obtain information about the complainant's work experience and history. The parties do not dispute the fact that the Board had custody or control of the information that the complainant provided about himself in his application form. What the parties disagree on is the Board's purpose for originally obtaining that information and whether it was used for that purpose.

[43] The Board submits the complainant's personal information on his volunteer application form was obtained "to evaluate and confirm his experience for the purpose of selecting members for the Committee from the pool of applicants."[41] The Board argues the Chair's use of this information to contact the

[39] Complainant's submission dated September 5, 2024 at p. 5, referring to question 9 of the volunteer application form.
[40] Board's submission dated August 21, 2024 at paras. 43-44.
[41] Board's submission dated August 21, 2024 at para. 46.

Employer was for the same purpose or a use consistent with that purpose and, therefore, complied with s. 32(a).

[44] On the other hand, the complainant argues the Board's purpose for obtaining the complainant's personal information on his volunteer application form was for the Board and its members to review the information provided on the form to determine the complainant's suitability for the committee. The complainant submits it was not to use the information to confirm his experience by conducting further inquiries about his previous employment history without his permission or knowledge.

[45] As support for his interpretation, the complainant points to the following information on the volunteer application form that specifies who will have access to his completed application form and for what reason:

> Your application/resume will be made available to Cultus Lake Park Board, civic staff, and the applicable Committee/Commission/Board for the purpose of making appointments. Your information is collected under the Authority of the *Freedom of Information and Protection of Privacy Act* and any applicable bylaws.[42]

[46] The complainant says the form "does not say it will be shared with outside parties as was done by the [Chair] or that consent is given to do so by the simple act of applying for a committee."[43] The complainant also says the form does not ask for references and only required interested applicants to list their previous five years of business or work experience. Therefore, the complainant argues it was inappropriate and unnecessary for the Chair to contact his former employer from 18 years ago.

[47] The complainant also notes the Board subsequently changed its volunteer application form to now require an applicant to sign the form authorizing the Board and its staff to do the following:

> Your application/resume will be made available to Cultus Lake Park Board, civic staff, and the applicable Committee/Commission/Board for the purpose of making appointments. Further to that purpose, the Cultus Lake Park Board, civic staff, or members of the applicable Committee/Commission/Board may contact the individuals or entities (including current or former employers, representatives, or members of the entities) listed on your application/resume regarding your application and qualifications. Your information is collected and used, and may be disclosed, in accordance with the Freedom of Information and Protection of Privacy Act and any applicable bylaws. I authorize the Cultus Lake Park Board to collect, use and disclose information, including my personal information, relating

[42] Volunteer application form attached as Appendix 1 in complainant's submission dated July 29, 2024, emphasis in original.
[43] Complainant's submission dated July 29, 2024 at pp. 1-2.

> to my application to the Committee/Commission/Board from and to the individuals or entities (including current or former employers, representatives, or members of the entities) listed on my application/resume. This consent to remain in effect until the appointment(s) to the Committee/Commission/Board have been made.[44]

[48] The complainant believes this amendment to the application form supports what he says about the Board's original purpose for obtaining his personal information on the application form and proves the Board realized the Chair had acted inappropriately by contacting the Employer without his knowledge and consent.

[49] I find the complainant's arguments and evidence to be persuasive. The application form completed by the complainant informs applicants interested in serving on the committee that their application "will be made available to the Board, civic staff, and the applicable Committee/Commission/Board for the purpose of making appointments."[45] I find this wording indicates the Board's purpose for obtaining the complainant's personal information was to allow relevant Board members and staff to evaluate that information to determine the complainant's suitability for the committee and, when needed, to make the approved committee appointment.

[50] I am not persuaded that the Board's purpose for obtaining the complainant's personal information on the application form was to both evaluate *and* confirm the complainant's experience and suitability as a committee member, as argued by the Board. It is not obvious from the application form completed by the complainant, the application process or from any of the materials before me, that the Board would contact an applicant's former employer as part of the evaluation and selection process. The application form completed by the complainant did not ask for references and there is nothing on that application form, or in any of the other materials before me, that indicates the Board's purpose for obtaining the information on the application form included using that information to confirm the complainant's work experience or history.

[51] As a result, for the reasons given, I find the Chair's use of the complainant's personal information to contact the Employer to obtain further information about the complainant was not for the same purpose that the Board originally obtained that personal information from the complainant, as required under s. 32(a).

[52] The parties also made arguments about whether the complainant consented to or authorized the Board to contact the Employer. The Board says the complainant's "reliance in his application on his work experience with the

---

[44] Complainant's submission dated July 29, 2024 at pp. 1-2.

[45] Volunteer application form attached as Appendix 1 in complainant's submission dated July 29, 2024.

[Employer] constituted authorization, or implied authorization, to contact the [Employer] regarding his former employment there."[46] On the other hand, the complainant says the application form "does not say it will be shared with outside parties as was done by the [Committee] Chair or that consent is given to do so by the simple act of applying for a committee."[47]

[53] In Order F07-10, former Commissioner Loukidelis explained that consent is not needed if the use at issue is authorized under s. 32(a):

> …Where personal information is being used for the purpose for which it was obtained, or for a use consistent with that purpose within the meaning of s. 34, there is no need to obtain consent in the prescribed manner under s. 32(b). From a privacy perspective, it is good practice to obtain written consent whenever feasible, but it is not strictly necessary to do so if s. 32(a) otherwise authorizes the use.[48]

[54] I agree with former Commissioner Loukidelis' conclusions regarding s. 32(a). Whether a complainant has consented to, or by implication authorized, the use of their personal information by a public body is not a consideration under s. 32(a). The issue of consent is relevant under s. 32(b) which authorizes a public body to use personal information "if the individual the information is about has identified the information and has consented, in the prescribed manner, to the use."[49] Therefore, under s. 32(a), it is not necessary to obtain consent when the personal information at issue is being used by the public body for the intended purpose for which that information was obtained or compiled, or for a use consistent with that purpose within the meaning of s. 34.

A use consistent with the public body's purpose – ss. 32(a) and 34

[55] The Board also argued the Chair's use of the complainant's personal information was a use consistent with the Board's purpose for obtaining the complainant's personal information on the application form. Under s. 32(a), a public body may use an individual's personal information for a use that is consistent with the public body's purpose for obtaining or compiling that personal information. Section 34 defines the phrase "a use consistent with that purpose" in s. 32(a) as follows:

> For the purposes of section 32(a)…a use of personal information is consistent with the purpose for which the information was obtained or compiled if the use

[46] Board's submission dated August 21, 2024 at para. 55.
[47] Complainant's submission dated July 29, 2024 at pp. 1-2.
[48] Order F07-10, 2007 CanLII 30395 (BC IPC) at para. 96.
[49] Section 32(b) was not listed as an issue in the notice of inquiry and the parties did not seek or obtain the OIPC's permission to add it to this inquiry; therefore, I have not considered it.

> (a) has a reasonable and direct connection to that purpose, and
>
> (b) is necessary for performing the statutory duties of, or for operating a program or activity of, the public body that uses or discloses the information.

[56] To determine whether a use was consistent with the purpose for which the information was obtained or compiled, it is first necessary to identify: (1) the public body's purpose for obtaining the personal information in the first place, and (2) the disputed use at issue. As discussed above, I find the Board's purpose for obtaining the personal information on the application form was to allow relevant Board members and staff to review that information to determine the complainant's suitability for the committee or to make the approved committee appointment. Furthermore, as noted, the disputed use at issue in this inquiry occurred when the Chair used the information on the complainant's application form to contact the Employer to obtain information about the complainant's work experience and history.

[57] The next step is to consider whether the Chair's use of the complainant's personal information was consistent with the Board's purpose in obtaining the complainant's personal information on the application form. As cited above, s. 34 requires the public body's use of the complainant's personal information have a reasonable and direct connection to the public body's purpose for obtaining or compiling that personal information in the first place and the use must be necessary for the public body to perform its statutory duties or operate a program or activity of the public body.

[58] The Board submits the Chair's use of the complainant's personal information was a use consistent with its original purpose for obtaining the complainant's personal information, but it did not sufficiently explain how the requirements under s. 34 are met.[50] I note, however, that the Board discusses and applies s. 34 to support its position about the *disclosure* of the complainant's personal information under s. 33(2)(d).[51] Section 33(2)(d) allows a public body to disclose personal information for the purpose for which the information was obtained or compiled, or for a use consistent with that purpose within the meaning of section 34. The provisions in FIPPA regarding use under s. 32(a) and disclosure under s. 33(2)(d) are similar and both refer to s. 34. Therefore, I have considered the Board's submissions about disclosure under ss. 33(2)(d) and 34 to determine whether the Board's use of the complainant's personal information was a use consistent with its purpose under ss. 32(a) and 34. I will discuss and consider the s. 34 requirements below.

What is a "reasonable and direct connection" under s. 34(a)?

[50] Board's limited arguments about use at paras. 46-47 of its submission dated August 21, 2024.
[51] Board's arguments about disclosure and s. 34 at paras. 49-54.

[59] The first requirement under s. 34(a) is "a reasonable and direct connection" between the Chair's use of the complainant's personal information to contact the Employer and the Board's purpose for obtaining the complainant's personal information on the application form. To make this determination, it is necessary to consider what the phrase a "reasonable and direct connection" means under s. 34. That phrase and its individual words are not defined in FIPPA.

[60] When a phrase or a word is not defined in a statute, the starting point of the interpretative analysis is to determine the plain and ordinary meaning of the phrase or words. The "plain and ordinary meaning" has been described as "the reader's first impression meaning, the understanding that spontaneously comes to mind when words are read in their immediate context."[52] To assist with determining the plain and ordinary meaning, one can consider dictionary definitions and whether the phrase or word has been judicially interpreted.[53]

[61] The dictionary meaning of the words "reasonable", "direct" and "connection" are defined in part as follows:

> Reasonable (adjective): being in accordance with reason, fair, possessing sound judgment. Synonyms: logical, sensible, rational.[54]
>
> Direct (adjective): stemming immediately from a source, characterized by close logical, causal, or consequential relationship. Synonym: immediate.[55]
>
> Connection (noun): causal or logical relation or sequence. Synonyms: linkage, association.[56]

[62] Based on the dictionary definitions, the plain and ordinary meaning of the phrase "a reasonable and direct connection" in s. 34 means a sensible, logical, immediate association or link between the use at issue in the inquiry and the public body's original purpose for obtaining or compiling the individual's personal information.

[63] I find the dictionary definitions and the ordinary meaning are consistent with prior jurisprudence on s. 34. In *Canadian Office and Professional Employees' Union, Local 378 v. Coast Mountain Bus Company Ltd.*, the BC Court of Appeal accepted that "a reasonable and direct connection" under s. 34 of FIPPA means the public body's "new use" is "logically or rationally connected

---

[52] *AT v. British Columbia (Mental Health Review Board)*, 2023 BCCA 283 (CanLII) at para. 43.
[53] *R v. Skakun*, 2014 BCCA 223 at para. 19.
[54] Merriam-Webster's online dictionary: https://www.merriam-webster.com/dictionary/reasonable.
[55] Merriam-Webster's online dictionary: https://www.merriam-webster.com/dictionary/direct.
[56] Merriam-Webster's online dictionary: https://www.merriam-webster.com/dictionary/connection.

to the original purpose."[57] Moreover, in *Investigation Report 00-01*, former Commissioner Loukidelis accepted a portfolio officer's conclusion that "a reasonable and direct connection" under s. 34 "must have a logical and plausible link to the original purpose. It must flow or be derived directly from the original use or be a logical outgrowth of the original use."[58] Former Commissioner Loukidelis also accepted that in determining whether there is a "consistent use" under s. 34, one can consider "whether the person concerned would expect his or her personal information to be used in the proposed way, even if that use has not been spelled out."[59]

[64] There is nothing in my review of BC's FIPPA that would contradict the meaning of the phrase "a reasonable and direct connection" as described above or that would indicate those words are capable of a different meaning. I also agree that a reasonable and direct connection under s. 34 should be a logical extension of the original use. The public body will have obtained or compiled the personal information at issue from the individual, or from another authorized source as set out under s. 27, for a particular purpose and will have used it, or plan to use it, for that intended purpose. Therefore, to comply with s. 34, any additional or alternative use of the personal information should flow or be derived directly from that original use and have a logical connection to the public body's original purpose for obtaining or compiling the individual's personal information.

[65] Taking all the above into account, I conclude a "reasonable and direct connection" under s. 34 of FIPPA means a logical, plausible and clear connection. In other words, a public body's use of an individual's personal information will have "a reasonable and direct connection" when there is a logical, plausible and clear connection between that use and the public body's purpose for obtaining or compiling that personal information in the first place.

[66] I note that this plain and ordinary meaning of the phrase "a reasonable and direct connection" is also consistent with decisions from Nova Scotia. Nova Scotia's FIPPA has provisions that are identical or similar in wording to ss. 32(a) and 34 of BC's FIPPA.[60] In applying Nova Scotia's equivalent to s. 34 of BC's FIPPA, Nova Scotia's former Information and Privacy Commissioner defined a "reasonable connection" to mean "fair and sensible, suggesting sound judgement" and a "direct connection" to mean "a straightforward and clear

---

[57] 2005 BCCA 604 (CanLII) at para. 60, citing *Investigation Report 00-01Use of Alumni Personal Information by Universities* dated October 25, 2000, at p. 12 of the pdf which is available online at <https://www.oipc.bc.ca/documents/investigation-reports/1161>.
[58] *Investigation Report 00-01 Use of Alumni Personal Information by Universities* dated October 25, 2000, at p. 12 of the pdf.
[59] *Ibid*.
[60] Sections 26(a) and 28 of Nova Scotia's *Freedom of Information and Protection of Privacy Act*, SNS 1993, c 5.

connection."[61] Similar to the OIPC's *Investigation Report 00-01*, the Nova Scotia decisions also accepted that there is a reasonable and direct connection if there is a "logical extension of the original use."[62]

[67] I considered whether Ontario's legislation and jurisprudence may provide some interpretative assistance because the heading to s. 34 of BC's FIPPA reads, "Definition of consistent purpose", which suggests a similarity to Ontario's provisions. Ontario's s. 41(b) authorizes an "institution" to use personal information in its custody or under its control "for the purpose for which it was obtained or compiled or for a *consistent purpose*."[63] Section 43 of Ontario's FIPPA clarifies what is a "consistent purpose" under s. 41(b). However, I find Ontario's provisions are different from ss. 32(a) and 34 of BC's FIPPA.

[68] The difference between Ontario and BC's provisions is that Ontario focuses on a "consistent purpose" and the analysis looks at the institution's original purpose for collecting the personal information and whether the use or disclosure at issue was for that original purpose or for a different purpose "that is consistent with that original purpose."[64] On the other hand, BC's provisions are not about a "consistent purpose" but instead focuses on a consistent "use" and the analysis considers whether the public body's use of an individual's personal information is consistent with the public body's initial purpose for obtaining or compiling that personal information. Unlike Ontario's provisions, s. 34 of BC's FIPPA does not require or even consider whether a public body used an individual's personal information for a "consistent purpose". Therefore, the heading to s. 34 of BC's FIPPA is inaccurate because the analysis required under s. 34 is about a consistent *use* of personal information and not a "consistent purpose". Accordingly, given their substantive differences, I conclude decisions about Ontario's ss. 41(b) and 43 are not helpful or relevant to interpreting the parts of ss. 32(a) and 34 of BC's FIPPA that are at issue here.

Was there a "reasonable and direct connection" under s. 34(a)?

[69] I found the Board's purpose for obtaining the personal information on the application form was to allow relevant Board members and staff to review that information to determine the complainant's suitability for the committee and, if necessary, to make the approved committee appointment. The Chair was responsible for reviewing those applications and "recommending citizen members of the Committee to the Board" for their consideration and approval.[65] Therefore, the review of the complainant's suitability for the committee should

[61] Review Report 16-06, 2016 NSOIPC 6 (CanLII) at para. 48 and Review Report 16-14, 2016 NSOIPC 14 (CanLII) at para. 71.
[62] Review Report 16-14, 2016 NSOIPC 14 (CanLII) at para. 72.
[63] *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, my emphasis.
[64] *Transportation (Ministry) (Re)*, 2019 CanLII 115232 (ON IPC) at para. 16.
[65] Chair's affidavit at paras. 12-13 and Board's submission dated August 21, 2024 at paras. 17-18 and 26.

have been limited to the information provided by the complainant as part of his application.

[70] However, the Chair used the information on the complainant's application form to contact the Employer to obtain further information about the complainant. The Chair says the complainant "appeared to have relevant qualifications and experience" and he decided to contact the Employer to learn more about the complainant's skills and experience and their relevance to the work of the committee.[66]

[71] In terms of what information was obtained from the Employer, the complainant says he spoke with the Employer who told him that the Chair asked the Employer about the work the complainant had performed for the Employer.[67] The Board confirms the Employer "provided a positive reference" for the complainant.[68] Both parties also agree that the Chair asked the Employer why the complainant no longer worked for the Employer, although they disagree on the answer given by the Employer.[69]

[72] To meet the first element of a consistent use under s. 34, the Chair's disputed use of the complainant's personal information must have a reasonable and direct connection to the Board's purpose for obtaining the complainant's personal information on the application form. As discussed above, a "reasonable and direct connection" under s. 34 means a logical, plausible and clear connection.

[73] As I will explain, I find the Chair's disputed use of the complainant's personal information was not logically, plausibly or clearly connected to the Board's purpose for obtaining the complainant's personal information on the application form. The Chair used that personal information to contact the Employer to find out about the work the complainant did for the Employer and to discover why the complainant no longer worked for the Employer. It is not apparent why the Chair needed to know the complainant's reasons for no longer working for the Employer in order to assess the complainant's suitability to serve on the committee.

[74] It is also unclear why the Chair would need to obtain information from the Employer about the complainant's work experience when the Chair had already reviewed the complainant's application and found the complainant "appeared to have the relevant qualifications and experience" to serve on the committee.[70] The

---

[66] Chair's affidavit at para. 14.
[67] Complainant's submission dated July 29, 2024 at p. 3.
[68] Board's submission dated August 21, 2024 at para. 22.
[69] Complainant's submission dated July 29, 2024 at p. 3 and Board's submission dated August 21, 2024 at paras. 22 and 24.
[70] Chair's affidavit at para. 14.

next logical step would have been for the Chair to forward the complainant's application to the Board for their consideration and approval, obtain the complainant's consent to speak with the Employer, or contact the complainant directly regarding any concerns or questions about his work history or experience.

[75] Instead of choosing any of those sensible options, the Chair conducted an "employment reference"[71] check when the application and selection process did not ask applicants to provide references; therefore, applicants would not have known or expected that reference checks would be part of the application and selection process. To assist with determining whether there is a "consistent use" under s. 34, one can consider "whether the person concerned would expect his or her personal information to be used in the proposed way, even if that use has not been spelled out."[72] Given the circumstances, I am satisfied the complainant would not have expected the Chair to use his personal information to contact the Employer for a reference check.

[76] For the reasons given, I find the Chair's use of the complainant's personal information, when he conducted an unauthorized and unexpected employment reference check with the Employer, was not consistent with the Board's intended purpose for obtaining the complainant's personal information on the application form.

[77] For this part of the s. 34 analysis, the Board argues that I should follow Order F14-26 where the adjudicator found the public body's collection of a job applicant's personal information from their former employers was directly related to the public body's hiring activities.[73] In that case, the public body did not contact the employment references the applicant had supplied but chose instead to contact other individuals about the job applicant's past work performance. The public body claimed s. 26(c) authorized the collection. Section 26(c) authorizes a public body to collect personal information only if "the information relates directly to and is necessary for a program or activity of the public body."

[78] The Board submits that I should follow Order F14-26 and find that the disputed use of the complainant's personal information in this case was "directly related to and consistent with the Board's activities regarding the selection of Committee members."[74] However, I am not persuaded that Order F14-26 is helpful precedent in this case because it is not about s. 34 and does not discuss what is a "reasonable and direct connection" between a public body's use of personal information and its original purpose for obtaining that information. As

---

[71] Board's submission dated August 21, 2024 at para. 20.
[72] *Investigation Report 00-01 Use of Alumni Personal Information by Universities* dated October 25, 2000, at p. 12 of the pdf.
[73] 2014 BCIPC 29 (CanLII) at para. 32.
[74] Board's submission dated August 21, 2024 at para. 53.

well, s. 34 requires the connection to be both reasonable and direct, while s. 26(c) does not have a reasonableness requirement. Therefore, I find the analysis required under s. 34 regarding a "reasonable and direct connection" is different from what is required under s. 26(c).

[79] Moreover, the facts in Order F14-26 are distinguishable because it involved an employment position where the application process required interested applicants to provide references. In the present case, the application form completed by the complainant did not ask for references so applicants would not have expected the Board to check their past work performance. Instead, the application form informed applicants that the personal information on their application would be "made available to Cultus Lake Park Board, civic staff, and the applicable Committee/Commission/Board for the purpose of making appointments."[75] There is no indication that the personal information provided by the complainant on the application form would be used to confirm or obtain further information about the complainant's work experience or history. Therefore, I find the facts in Order F14-26 and the present case are significantly different, which impacts what conclusion and findings can be made. Ultimately, contrary to the Board's position, when it comes to the interpretation and application of "reasonable and direct connection" in s. 34, I am not persuaded that it is appropriate to adopt the analysis or make the same findings as in Order F14-26.

[80] To conclude, based on the materials before me, I find the Chair's use of the complainant's personal information to conduct an unauthorized and unexpected employment reference check with the Employer was not reasonably and directly connected to the Board's intended purpose for obtaining the complainant's personal information on the application form.

What does "necessary" mean under s. 34(b)?

[81] I found the Chair's use of the complainant's personal information was not reasonably and directly connected to the Board's intended purpose for obtaining the complainant's personal information on the application form. Therefore, it is not necessary to deal with the second requirement under s. 34, which considers whether the Chair's use of the complainant's personal information to contact the Employer was necessary for performing the statutory duties of the Board or for operating a program or activity of the Board. However, to provide the parties with a complete s. 34 analysis, I will also discuss and consider the remaining s. 34 requirement.

[82] I am not aware of any previous OIPC order that clarified what the word "necessary" means under s. 34(b) and that word is not defined in FIPPA.

[75] Volunteer application form attached as Appendix 1 in complainant's submission dated July 29, 2024.

However, the Supreme Court of Canada has said, "'Necessary' is a word whose meaning varies somewhat with the context" and the Court accepted that "its force and meaning must be determined with relation to the particular object sought."[76] Citing *Black's Law Dictionary*, the Court recognized that the word "necessary" can mean something indispensable "which in the accomplishment of a given object cannot be dispended with" or it can have a less restrictive meaning such as "something reasonably useful and proper and of greater or lesser benefit or convenience."[77]

[83] In Order F07-10, former Commissioner Loukidelis considered the meaning of "necessary" in the context of the collection of personal information under s. 26(c) and concluded that it is not enough that the personal information would be nice to have or merely convenient to have, or that it could perhaps be of use some time in the future.[78] He also said the word "necessary" in s. 26(c) does not mean indispensable "where it would be impossible to operate a program or carry on an activity without the personal information."[79] Therefore, his comments suggest that "necessary" in s. 26(c) means something that falls somewhere within those two extremes. However, he did not say how far above the lower standard of "nice to have" or "merely convenient" is required for the collection of personal information to be "necessary" under s. 26(c).

[84] Since the courts have said the word "necessary" is capable of a variety of meanings, I need to engage in statutory interpretation to determine its meaning within the context of s. 34. The modern approach to statutory interpretation is sometimes described as the "contextual and purposive approach" which requires "the words of a statute be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the statute and its objects and purposes."[80]

[85] I find the proper interpretative approach to apply in this case is found in the recent BC Court of Appeal decision of *T.L. v. British Columbia (Attorney General).*[81] I will refer to this case as *Attorney General*. That decision considered what the word "necessary" means in the child protection context, specifically s. 96(1) of the *Child, Family and Community Service Act* (the *CFCSA*).[82] The Court noted that, depending on the legislative context, the term "necessary" is

---

[76] *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, 2004 SCC 45 (CanLII) at para. 91.
[77] *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, 2004 SCC 45 (CanLII) at para. 91.
[78] Order F07-10, 2007 CanLII 30395 (BCIPC) at para. 48.
[79] Order F07-10, 2007 CanLII 30395 (BCIPC) at para. 49.
[80] *G.D. v. South Coast British Columbia Transportation Authority*, 2024 BCCA 252 (CanLII) at para. 73, citing *Re Rizzo & Rizzo Shoes Ltd*., 1998 CanLII 837 (SCC) at para. 21.
[81] 2023 BCCA 167 (CanLII) [*Attorney General*].
[82] RSBC 1996, c. 46.

capable of a variety of meanings ranging from simply "useful" to a more stringent standard of "indispensable" or "essential".[83]

[86] Applying the modern approach to statutory interpretation, the Court determined that the word "necessary" in s. 96(1) of the *CFCSA* engages a relatively low threshold and means a director has the expansive authority to request any information in the custody or control of a public body that the director "subjectively considers useful in exercising their powers or performing their duties or functions under the *CFCSA*."[84] In reaching their conclusion, the Court considered the purpose of the *CFCSA*,[85] the context and purpose of s. 96(1),[86] the plain and ordinary meaning of the provision,[87] how court decisions from other jurisdictions have interpreted the word "necessary" in their equivalent statutes,[88] and the difference between s. 96(1) and another related provision in the *CFCSA*.[89]

[87] I find the Court's analysis in *Attorney General* helpful for interpreting the term "necessary" in s. 34. From that analysis, I understand the word "necessary" is capable of a variety of meanings ranging from simply "useful" to a more stringent standard of "indispensable" in the sense that the public body cannot operate its activity without that information. Alternatively, the word "necessary" can mean something in the middle of that range. As I will explain, I find the word "necessary" in s. 34 falls in the middle range of possible meanings.

[88] To determine the meaning of "necessary" under s. 34(b), I need to consider FIPPA's legislative purposes and the statutory context of s. 34. As identified in s. 2(1), FIPPA's dual purposes are to "make public bodies more accountable to the public" and to "protect personal privacy." Those purposes are achieved, in part, by "preventing the unauthorized collection, use or disclosure of personal information by public bodies."[90]

[89] Section 34 is part of the legislative provisions that specify when the use or disclosure of personal information by public bodies will be lawful and appropriate. As noted in Order F07-10, the context in which s. 34 operates means public bodies need personal information to do their work.[91] Therefore, while one of FIPPA's purposes is to protect personal privacy, the overall statutory context requires me to consider that sometimes public bodies must use and disclose

---

[83] *Attorney General* at paras. 102, 125-130.
[84] *Attorney General* at para. 144, emphasis in original.
[85] *Attorney General* at para. 134.
[86] *Attorney General* at para. 118 and 120.
[87] *Attorney General* at paras. 110-112 and 136.
[88] *Attorney General* at para. 132-133.
[89] *Attorney General* at paras. 139-143.
[90] Section 2(1)(d).
[91] Order F07-10, 2007 CanLII 30395 (BCIPC) at para. 47.

personal information to do their work and carry out their functions and responsibilities.

[90] Considering FIPPA's purposes and the overall statutory context, I find the word "necessary" in s. 34(b) cannot mean the use was simply "useful" or "helpful" to the public body's activity. This interpretation would be inconsistent with FIPPA's objective to protect an individual's personal privacy. It would give public bodies an overly expansive authority to use an individual's personal information and would prioritize a public body's goals, duties and activities without due recognition of an individual's right to privacy. There is nothing in my review of FIPPA or the language used in s. 34 that indicates the Legislature intended public bodies to have such a broad power over the use of an individual's personal information.

[91] On the other hand, I find the word "necessary" in s. 34 does not mean the use at issue must be "essential" or "indispensable" to the public body's activity. As noted, public bodies need personal information to perform their statutory duties and activities. An interpretation that permits public bodies to use personal information only when that information is indispensable to the operation of the program or activity ignores the context and reality in which public bodies operate and would make it difficult for public bodies to do their work. It could have the negative effect of potentially frustrating or preventing a public body from performing its statutory duties or from operating a beneficial program or essential activity.

[92] I note that decisions from Ontario have interpreted the word "necessary" in legislation similar to FIPPA to mean something in the middle range of possible meanings. For example, in *Cash Converters Canada Inc. v. Oshawa (City)*,[92] the Ontario Court of Appeal considered what the word "necessary" means in s. 28(2) of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA),[93] which partly reads, "No person shall collect personal information on behalf of an institution unless the collection is…necessary to the proper administration of a lawfully authorized activity." The Court determined that the word "necessary" in s. 28(2) means the personal information collected must be more than "merely…helpful to the activity."[94]

[93] While decisions from Ontario are not binding on me, I find this decision persuasive. The Court's conclusion that the word "necessary" means more than merely helpful and is, therefore, above the lower range of possible meanings is consistent with former Commissioner Loukidelis' assessment in Order F07-10 that necessary in s. 26(c) means more than nice to have or merely convenient to

[92] 2007 ONCA 502 (CanLII).
[93] RSO 1990, c M.56.
[94] *Cash Converters Canada Inc. v. Oshawa (City)*, 2007 ONCA 502 (CanLII) at para. 40.

have.[95] Although, the Ontario Court of Appeal's decision and Order F07-10 were about the collection of personal information, I find that they support taking a similar approach when it comes to the use of personal information in s. 34 of FIPPA.

[94] Taking the above into account, I conclude the word "necessary" in s. 34 falls in the middle range of possible meanings, which the BC Court of Appeal in *Attorney General* described as "more than helpful, more than desirous" and something less than "essential".[96] This interpretation is consistent with FIPPA's purpose of protecting personal privacy by elevating the level of necessity beyond merely helpful or useful. A middle range between the lower standard of "helpful" or "useful" and the higher standard of "essential" also recognizes the statutory context of s. 34. Public bodies do not need to prove the personal information is necessary or essential in the sense that the public body cannot fulfill their duties and operate their programs and activities without that information. Instead, I conclude a use of personal information will be necessary under s. 34(b) when the use is more than helpful or useful for a public body to perform its statutory duties or operate a program or activity.

[95] The Board submits the analysis under s. 34 should follow how previous OIPC orders, such as Order F07-10 and Order F14-26, have determined whether a collection is necessary under s. 26(c). In Order F07-10, former Commissioner Loukidelis said that in assessing whether personal information is "necessary for a program or activity of the public body" under s. 26(c), the assessment should be "conducted in a searching and rigorous way" taking into account "the sensitivity of the personal information, the particular purpose for the collection and the amount of personal information collected" and "FIPPA's privacy protection objective" which is "consistent with the internationally recognized principle of limited collection.[97]

[96] The Board submits I should adopt the factors identified by former Commissioner Loukidelis in Order F07-10 for the analysis under s. 34. Applying those factors to s. 34, the Board argues the Chair's use was necessary to ascertain the Employer's opinions and observations regarding the complainant for the purpose of assessing the complainant's qualifications, experience and suitability for membership on the committee. The Board also submits the Chair's use "was limited in scope to that which was necessary to achieve that end" and the information was not sensitive.[98]

---

[95] Order F07-10, 2007 CanLII 30395 (BCIPC) at para. 48.
[96] *Attorney General* at paras. 132-133, citing *Children and Family Services for York Region v. LM et al*, 2018 ONSC 6156 (CanLII) at para. 49 and *Newfoundland (Director of Child Welfare) v. T(B)*, 1993 CanLII 7786 at para. 16.
[97] Order F07-10, 2007 CanLII 30395 (BCIPC) at para. 49, cited by the Board in its submission dated August 21, 2024 at para. 52.
[98] Board submission dated August 21, 2024 at para. 54.

[97] I find, however, those factors do not transplant neatly into what the word "necessary" means under s. 34. For example, I am unable to determine from the former Commissioner's analysis and reasons, or from the Board's submissions in this inquiry, how the sensitivity of the information or the amount of personal information collected by a public body is relevant to whether a use is necessary under s. 34. It is unclear how the amount of personal information collected by a public body makes the use of personal information necessary or unnecessary under s. 34. Further, it is not evident how the degree of sensitivity assists with determining whether or not a use is necessary under s. 34. If the personal information is sensitive, then does that mean the public body's use of that information is unnecessary?

[98] In my opinion, the amount of personal information and its sensitivity are factors better suited for an assessment of the *reasonableness* of a public body's actions rather than whether a use is *necessary* under s. 34. The Legislature did not include any language in s. 34 that suggests reasonableness should be part of the interpretative analysis in the way it did with other provisions such as ss. 26(d)(ii) and 30.[99] Therefore, the adoption of those two factors identified in Order F07-10 would amount to adding a reasonableness requirement into s. 34 that is not supported by language used in the provision. Accordingly, I do not find the amount of personal information and its sensitivity are appropriate factors to consider in the interpretation of the word "necessary" under s. 34.

Was the use necessary for operating an activity of the public body?

[99] Applying the standard discussed further above to the present case, I must consider whether the Chair's use of the complainant's personal information was necessary for the Board to operate its activity of selecting and appointing individuals to serve on the committee. Specifically, was the Chair's use of the complainant's personal information more than helpful or useful in allowing the Board to determine the complainant's suitability to serve on the committee?

[100] The complainant questions why it would be necessary for the Chair to obtain the Employer's opinions and observations about a position that the complainant occupied 18 years ago, especially when the application form only asked interested applicants to list any relevant experience from the past five years. On the other hand, the Board submits the Chair's actions were necessary to operate a Board activity, specifically who to select and appoint to serve on the committee.

---

[99] Section 26(d) authorizes a public body to collect personal information where the individual the information is about has consented in the prescribed manner to the collection, and *a reasonable person* would consider that collection appropriate in the circumstances. Section 30 requires a public body to protect personal information in its custody or under its control by making *reasonable* security arrangements against such risks as unauthorized collection, use, disclosure or disposal.

[101] As previously noted, the Chair used the personal information that the complainant provided on his application form to contact the Employer to find out about the work the complainant did for the Employer and to discover why the complainant no longer worked for the Employer. The Chair says he contacted the Employer to learn more about the complainant's skills and experience and their relevance to the work of the committee.[100]

[102] However, the Board's evidence indicates that before calling the Employer, the Chair had reviewed the complainant's application and concluded the complainant "appeared to have the relevant qualifications and experience" to serve on the committee.[101] The evidence also indicates the Chair contacted the complainant by telephone and told him that "his qualifications were impressive" and asked the complainant questions about how his qualifications would help if he served on the committee.[102] Therefore, it is not apparent why it would be necessary for the Chair to contact the Employer to obtain further information about the complainant when the Chair already had sufficient information to assess the complainant's suitability to serve on the committee, including an opportunity to speak directly with the complainant to address any questions or concerns about his qualifications and experience.

[103] I can see how the Chair may have found it helpful or useful to contact the Employer to learn more about the complainant's skills and experience as part of the committee selection process. However, as noted, the term "necessary" in s. 34 requires the Chair's use of the complainant's information be more than helpful or useful and, based on the materials before me, I find that standard was not met here. The evidence indicates it was not necessary for the Chair to use the complainant's personal information to contact the Employer as part of the Board's committee selection process.

Conclusion on consistent use under ss. 32(a) and 34

[104] Under s. 32(a), a public body may use an individual's personal information where the use is consistent with the public body's purpose for obtaining or compiling that personal information in the first place. The use at issue in this inquiry occurred when the Chair used the information on the complainant's volunteer application form to contact the complainant's former employer to obtain information about the complainant as part of the Board's committee selection process.

[105] Section 34 defines what is a consistent use under s. 32(a) and specifies two conditions that must be satisfied. Section 34 requires the public body's use of the complainant's personal information have a reasonable and direct connection

[100] Chair's affidavit at para. 15.
[101] Chair's affidavit at para. 14.
[102] Chair's affidavit at para. 19.

to the public body's purpose for obtaining or compiling that personal information and the use must be necessary for the public body to perform its statutory duties or operate one of its programs or activities. For the reasons discussed above, I find both conditions under ss. 34(a) and 34(b) have not been met. As a result, I conclude the Board's disputed use of the complainant's personal information was not authorized under s. 32(a).

Did the Board disclose the complainant's personal information?

[106] A public body and its employees, officers or directors are permitted to disclose personal information if that disclosure is authorized under FIPPA.[103] The Board is relying on s. 33(2)(d) which allows a public body to disclose personal information for the purpose for which the information was obtained or compiled, or for a use consistent with that purpose within the meaning of s. 34. To consider those provisions, the first question I must address is whether the Board, its members or employees disclosed the complainant's "personal information" as that term is defined in FIPPA. As noted, for information to qualify as "personal information" under FIPPA, it must be "recorded information about an identifiable individual other than contact information."[104]

[107] The Board acknowledges there was a disclosure of the complainant's personal information. It says the Chair told the Employer that the Board was considering the complainant's application for the committee and that the complainant had listed the Employer as part of their employment history.[105] I am satisfied this disclosed information is about an identifiable individual, specifically the complainant, and is not contact information as defined in FIPPA.

[108] Given the Chair verbally disclosed the information about the complainant to the Employer, it is necessary to determine whether that information qualifies as recorded information. As discussed earlier in this order, "recorded information" under FIPPA means information that exists or existed at one time in a recorded format, such as information recorded on paper or in an electronic document. I find the information that the Chair disclosed to the Employer about the complainant was recorded in a physical form. The complainant applied for the committee position by completing and submitting the required volunteer application. The complainant also attached a document to his application that included the relevant information about his past employment history. Therefore, I am satisfied this information about the complainant existed in a recorded format at the time of its disclosure and, therefore, qualifies as personal information under FIPPA.

---

[103] Section 25.1 of FIPPA.
[104] Definition of "personal information" under Schedule 1 of FIPPA.
[105] Board's submission dated August 21, 2024 at para. 48.

[109] The applicant questions whether the Chair contacted other people without his permission and knowledge. However, I was not provided with sufficient proof of any other disclosures, and there are no other substantiated disclosures that are apparent from the parties' submissions. Therefore, I conclude the disclosure at issue in this inquiry occurred when the Chair told the Employer that the Board was considering the complainant's application for the committee and that the complainant had listed the Employer as part of their employment history.

Disclosure of personal information – s. 33(2)(d)

[110] A public body is permitted to disclose personal information in its custody or under its control if that disclosure is authorized under FIPPA. The list of authorized disclosures is set out under ss. 33 and 33.3 of FIPPA. The purpose of FIPPA's disclosure provisions is to give public bodies the statutory authority to disclose personal information while carrying out their duties and functions.[106]

[111] The Board is relying on s. 33(2)(d) which allows a public body to disclose personal information for the purpose for which the information was obtained or compiled, or for a use consistent with that purpose within the meaning of section 34. Section 34 partly states:

> For the purposes of section 33(2)(d)…a use of personal information is consistent with the purpose for which the information was obtained or compiled if the use
>
> (a) has a reasonable and direct connection to that purpose, and
>
> (b) is necessary for performing the statutory duties of, or for operating a program or activity of, the public body that uses or discloses the information.

[112] The Board argues the Chair's disclosure was necessary to ascertain the Employer's opinions and observations regarding the complainant for the purpose of assessing the complainant's qualifications, experience and suitability for membership on the committee. The Board also submits the Chair's disclosure "was limited in scope to that which was necessary to achieve that end" and the information was not sensitive.[107]

[113] As noted, the disclosure at issue in this inquiry occurred when the Chair told the Employer that the Board was considering the complainant's application for the committee and that the complainant had listed the Employer as part of their employment history. To determine whether this disclosure of personal information is in accordance with s. 33(2)(d), it is first necessary to determine the

[106] Order F08-08, 2008 CanLII 21700 (BCIPC) at para. 50.
[107] Board submission dated August 21, 2024 at para. 54.

Board's purpose for obtaining or compiling the complainant's personal information. The Board says the disclosure to the Employer was for the purpose of obtaining further information about the complainant's qualifications, experience and suitability for the committee.[108] However, I am not persuaded the Board obtained the complainant's personal information on the application form for that purpose.

[114] As discussed earlier, I find the Board's purpose for obtaining the personal information on the complainant's application form was to allow relevant Board members and staff to review that information to determine the complainant's suitability for the committee or to make the approved committee appointment. Given this purpose, the review of the complainant's qualifications and the determination of his suitability to serve on the committee should have been limited to discussions between Board members or, if needed, between Board members and staff. Instead, the Chair disclosed the complainant's personal information to an individual who was not involved in the Board's committee selection or appointment process. Therefore, I find the Chair's disclosure of the complainant's personal information to the Employer was not for the same purpose that the Board originally obtained or compiled the complainant's personal information.

[115] The remaining question under s. 33(2)(d) is whether the Chair's disclosure of the complainant's personal information was for a *use* that is consistent with the Board's purpose for obtaining or compiling the complainant's personal information on the application form. As noted, s. 34 defines what is a consistent use under s. 33(2)(d). Therefore, the analysis under s. 33(2)(d) regarding a consistent use is the same analysis required under s. 32(a). Both provisions require considering the concepts of "reasonable and direct connection" and "necessary" under ss. 34(a) and 34(b). Accordingly, my discussion and findings earlier on in this order about a consistent use under ss. 32(a) and 34 is equally applicable to a consistent use under s. 33(2)(d) because I considered everything the Board said in its submissions about s. 34.

[116] As a result, instead of unnecessarily repeating those earlier submissions and findings here, I find it appropriate in this case to adopt my analysis and reasons discussed further above about a consistent use under ss. 32(a) and 34 for the purposes of s. 33(2)(d). For those same reasons, I find both conditions under ss. 34(a) and 34(b) have not been met regarding the Board's disclosure of the complainant's personal information. I conclude, therefore, that the Board's disclosure of the complainant's personal information was not authorized under s. 33(2)(d) as a consistent use under s. 34.

[108] Board's submission dated August 21, 2024 at para. 53.

Remedy available under FIPPA for unauthorized use or disclosure

[117] I found the Board's use of the complainant's personal information was not authorized under s. 32(a) and its disclosure of the complainant's personal information was not authorized under s. 33(2)(d). The parties disagree on the appropriate remedy to address these contraventions of FIPPA.

Parties' position on remedies

[118] The complainant has requested a variety of remedies, including a letter of apology from the Chair to him and the Employer and a letter to the "constituents of Chilliwack" via a local newspaper for failing to follow the appropriate laws, bylaws and policies.[109] The complainant has also requested the Chair resign from the committee and from the Board for "an abuse of power" and seeks disciplinary action, including termination of employment, for any Board staff that were "an accessory" to the Board's breach of the complainant's privacy.[110]

[119] The Board submits the remedies sought by the complainant are not available under FIPPA. It says s. 58(3) of FIPPA specifies what order an adjudicator can issue at the end of this inquiry. The Board submits the provision relevant to this inquiry is s. 58(3)(e) which requires a public body to stop collecting, using or disclosing personal information in contravention of FIPPA.[111]

[120] The Board also submits no order is needed under 58(3) of FIPPA because it has already amended its policy "to require persons applying for membership on Board committees to provide signed authorization for the collection, use and disclosure of information relating to the application" and any committee appointments for 2024 were made under the amended policy.[112]

[121] In response, the complainant acknowledges that some of his requested remedies, such as the resignation of the Chair and the termination of employees, are not available under FIPPA and would instead be available under the Board's jurisdiction and policies.[113] However, the complainant says there are other provisions in FIPPA that might be applicable in this case such as provisions about privacy offences, corporate liability and penalties.

[122] The complainant also disputes the Board's assertion that no order is needed under s. 58(3) for this inquiry. The complainant says the fact the Board has amended its policy does not mean his privacy was not breached or that a ruling and order are not needed. The complainant equates the Board's argument

---

[109] Complainant's submission dated July 29, 2024 at p. 5.
[110] Complainant's submission dated July 29, 2024 at p. 5.
[111] Board's submission dated August 21, 2024 at para. 6.
[112] Board's submission dated August 21, 2024 at para. 58.
[113] Complainant's submission dated September 5, 2024 at p. 3.

to a person who is challenging a speeding ticket saying to the traffic judge, "I have amended my behaviour and I no longer speed, so in light of this substantive change, there is no need to make a ruling on my speeding ticket."[114]

[123] The complainant also challenges the legality of the Board's amended policy which allows the Board to collect, use and disclose an applicant's personal information to the individuals or entities listed on the individual's application, including current or former employers. The complainant contends the amended policy gives the Board an unnecessary level of authority over an applicant's personal information and questions why the Board would need to engage in this level of scrutiny for a volunteer committee position.

Analysis and findings on remedies

[124] I can see the complainant has concerns about the appropriateness of the Board's new policy. However, the legality of the Board's new policy and whether it contravenes FIPPA is not an issue before me in this inquiry. The alleged contraventions of FIPPA in this inquiry are based on the Board's previous policy and practice regarding committee applications and appointments. The parties did not argue, and I was not provided with any evidence, that the complainant's personal information was collected, used or disclosed under the Board's new policy. Therefore, I make no determinations about that matter. I also note that the OIPC is often asked by public bodies to comment on whether a proposed policy complies with FIPPA.[115] Therefore, the parties have the option of contacting the OIPC to obtain information about whether the Board's new policy is in accordance with FIPPA.

[125] The complainant also argued the Board may be subject to a penalty for contravening FIPPA and says there are provisions in FIPPA that allows the Commissioner or their delegate to issue penalties and determine privacy offences and corporate liability. The complainant did not specify which specific provisions he has in mind, but based on my review of FIPPA, it would seem the complainant may be referring to ss. 65.4, 65.5 and 65.6(2) which are found in Part 5.1 of FIPPA.

[126] Those provisions make it an offence under FIPPA for an individual, service provider or a corporation to, among other things, wilfully use or disclose personal information contrary to FIPPA. However, the decision to lay charges and prosecute an individual, service provider or a corporation for an offence under FIPPA is made by the BC Crown Prosecution Service. Upon conviction, ss. 65.6(2) allows a court to issue a fine ranging from up to $50,000 to $500,000 depending on whether the offender is an individual, service provider or

[114] Complainant's submission dated September 5, 2024 at p. 6-7.
[115] See guidance document titled "Policy on Consultations with the OIPC" available on the OIPC website at: https://www.oipc.bc.ca/documents/guidance-documents/1365.

corporation. To be clear, the Commissioner is not responsible for charging or prosecuting an alleged offender under ss. 65.4 or 65.5, nor does the OIPC issue the monetary penalties available under s. 65.6(2). Instead, the OIPC's role is to inform the Attorney General of any cases that may warrant commencing a prosecution under FIPPA's offence provisions and to provide any relevant evidence.

[127] I understand the complainant believes the Board or the Chair acted inappropriately regarding the use and disclosure of his personal information. However, s. 65.4 requires an individual to *wilfully* use or disclose personal information in contravention of Part 3 of FIPPA. The word "wilfully" is not defined in FIPPA and there is no jurisprudence yet on what the word "wilfully" means under FIPPA's offence provisions. However, without proposing a fixed or precise definition, the BC Court of Appeal noted that the word "wilfully" appears in many statues and is usually defined as meaning "deliberately, intentionally or purposefully."[116] In the present case, there is insufficient evidence for me to conclude the Chair or the Board deliberately, intentionally or purposefully sought to contravene FIPPA. Therefore, based on the materials provided to me in this inquiry, I am not persuaded the facts of this case warrants a referral to the Attorney General to commence a prosecution for an offence under s. 65.4.

[128] Turning now to the parties' other arguments, the Board has asked me not to issue an order under 58(3) of FIPPA. However, it is not possible to grant the Board's request because s. 58(1) requires me to issue an order upon completing this inquiry. For the issues in this inquiry, the order that I can make is dictated by s. 58(3)(e) which reads:

> (3) If the inquiry is into any other matter, the commissioner may, by order, do one or more of the following:
>
> > (e) require a public body or service provider to stop collecting, using or disclosing personal information in contravention of this Act, or confirm a decision of a public body or service provider to collect, use or disclose personal information;

[129] I found the Board's use of the complainant's personal information was not authorized under s. 32(a) and its disclosure of the complainant's personal information was not authorized under s. 33(2)(d). Therefore, the only remedy available for these contraventions of FIPPA is an order under s. 58(3)(e) requiring the Board to stop its unauthorized and inappropriate use and disclosure of the complainant's personal information.

[130] I understand the complainant may find this remedy inadequate to address the unauthorized use and disclosure of his personal information and the time and

[116] *Duncan v. Lessing*, 2018 BCCA 9 at para. 86.

effort he has expended in defending his privacy rights under FIPPA. However, my authority to address a public body's contravention of FIPPA is limited to the remedies available under FIPPA. To be clear, I do not have the authority under s. 58(3) of FIPPA to grant the complainant's request to require the Board to discipline or terminate employees, order the Chair's resignation from the committee and the Board, or issue an apology letter.

[131] However, I recommend the Board consider whether some form of acknowledgment and apology would be appropriate in this case. I also recommend the Board develop or consider privacy training for its members and staff. The OIPC offers workshops and guidance documents to assist public bodies with ensuring their personnel understand their duties and responsibilities under FIPPA, which the Board may find useful. To be clear, the Board is not required to take any of these steps as they are only my suggestions to the Board on how it can restore confidence in its practices and policies and promote future compliance with FIPPA.

CONCLUSION

[132] For the reasons given above, I found the Board's use of the complainant's personal information was not authorized under s. 32(a) and its disclosure of the complainant's personal information was not authorized under s. 33(2)(d). Accordingly, under s. 58(3)(e) of FIPPA, I make the following order: I require the Board to stop using and disclosing the complainant's personal information in contravention of ss. 32(a) and 33(2)(d) of FIPPA.

January 8, 2025

ORIGINAL SIGNED BY

Lisa Siew, Adjudicator

OIPC File No.: F23-92696