Order F25-05

CITY OF PORT MOODY

Alexander Corley
Adjudicator

January 15, 2025

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Summary: An applicant requested records from the City of Port Moody (City) related to the City investigating the applicant's interactions with City staff. The City disclosed some responsive information but withheld the rest under s. 22(1) (unreasonable invasion of privacy) of the *Freedom of Information and Protection of Privacy Act*. The adjudicator determined that the City was required to withhold some, but not all, of the information in dispute under s. 22(1). The adjudicator ordered the City to release the information the City was not required to withhold.

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

INTRODUCTION

[1] Under the *Freedom of Information and Protection of Privacy Act* (FIPPA), an applicant requested records from the City of Port Moody (City) related to the applicant's interactions with the City.

[2] The City provided the applicant with records but withheld some information from them under s. 22(1) (unreasonable invasion of privacy) of FIPPA.[1] The applicant was not satisfied and requested that the Office of the Information and Privacy Commissioner (OIPC) review the City's decision to withhold information under s. 22(1).

[3] During the OIPC's mediation of the matter, the City disclosed to the applicant some of the information it had initially withheld.[2] In addition, the

[1] For the remainder of this order, references to sections of an enactment are references to FIPPA unless otherwise stated.
[2] Information originally withheld from pages 65, 68-69, 80, 82, 92, 99, 102, 105, 108, 121, and 124 of the records package provided to the applicant by the City.

applicant indicated they were no longer seeking some of the information they initially requested from the City.[3]

[4] Mediation by the OIPC did not resolve the remaining issues between the parties and the applicant requested that the matter proceed to this inquiry.

Preliminary matters

Which sections of FIPPA are in dispute?

[5] The Investigator's Fact Report says that s. 22(1) is the issue to be decided in this inquiry but the Notice of Inquiry says that ss. 12(1), 18.1, and 21 are also at issue. Neither the City's access decision nor its inquiry submissions rely on ss. 12(1), 18.1 or 21, and the records provided to the OIPC for purposes of this inquiry are not marked as being redacted pursuant to ss. 12(1), 18.1, or 21. I have learned that including these extra issues into the Notice of Inquiry was a typographical error on the part of the OIPC. Therefore, I conclude that ss. 12(1), 18.1, and 21 are not issues to be decided in this inquiry.

Matters outside FIPPA's scope

[6] The applicant's submission contains numerous allegations of misconduct by the City and City staff.

[7] I can see that these issues are very important to the applicant. However, the sole purpose of this inquiry is to decide whether the City is authorized or required to withhold the information in dispute under FIPPA. Therefore, while I have read everything submitted by both of the parties, I will only refer to the parties' submissions and evidence to the extent they are relevant to the FIPPA issues I must decide.[4]

Applicant alleges City possesses additional responsive records

[8] In their submission, the applicant alleges the City has additional responsive records in its custody or under its control beyond what is in dispute in this inquiry. This amounts to a complaint that the City failed to meet its duty under s. 6(1) to respond to the applicant's access request openly, accurately, and completely. I find this complaint is a new issue which was not included in the Investigator's Fact Report or Notice of Inquiry.

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[3] Information requested at items "I" and "II" of the access request.

[4] I accept that some information the applicant provides in this regard may be relevant to ss. 22(2)(a) (information subjecting a public body to public scrutiny) and 22(2)(c) (information relevant to a fair determination of an applicant's rights) and will address it below where I consider whether those sections may apply to any of the information in dispute.

[9] Past orders have consistently said that adding new issues into an inquiry requires the OIPC's prior permission.[5] The Notice of Inquiry provided to the parties and the OIPC's *Instructions for Written Inquiries* clearly explain the process for adding new issues into an inquiry. The applicant did not seek prior approval to add their s. 6(1) complaint to this inquiry and has not explained why they failed to do so.

[10] Given this, I am not persuaded that it is fair to add the applicant's s. 6(1) complaint to this inquiry at this late stage and I do not see any exceptional circumstances here which would warrant me doing so. Further, it is preferable that the OIPC have an opportunity to investigate and mediate a s. 6(1) complaint before deciding whether the complaint warrants being sent to inquiry. Therefore, I decline to add s. 6(1) as an issue in this inquiry.

Applicant's request to submit a sur-reply

[11] The applicant contacted the OIPC Registrar and requested permission to submit a sur-reply to the City's final submission. The applicant contends that it is necessary for me to consider their sur-reply because the City has raised new matters in its reply submission.

[12] The OIPC's *Instructions for Written Inquiries* set out the expectations for a written submission. In a FIPPA inquiry, the public body provides an initial submission, followed by the applicant, and then the public body can submit a final submission replying to what the applicant has said.

[13] Here, while I can see that the applicant is concerned that the City's reply submission raises new issues, I do not see that this is the case. Everything contained in the City's reply submission relates to how the City has applied s. 22(1) to the information in dispute, which is the issue to be decided in this inquiry. Moreover, the applicant's response submission raises numerous issues, thereby creating an opening for the City to fairly respond to the applicant's version of events by supplying its own.[6]

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[5] See, for example, Order F12-07, 2012 BCIPC 10 at para. 6 and Order F10-37, 2010 BCIPC 55 at para. 10.

[6] The applicant is concerned that the City may not have been able to provide a full-throated defense of its redactions until its reply submission because it was unaware of the applicant's specific position and arguments until after it received the applicant's response submission. Section 57(2) places the burden of demonstrating s. 22(1) does not apply to the information in dispute on the applicant, not the City. Given this, the City was within its rights to make a sparse initial submission and leave the applicant to fulfill the onus placed on them by FIPPA.

[14] For these reasons, I find that receiving a sur-reply from the applicant is not necessary for me to fairly decide whether s. 22(1) applies to the information in dispute.[7]

ISSUE

[15] The issue I must decide in this inquiry is whether the City is required, under s. 22(1), to refuse to disclose the information in dispute.

[16] Section 57(2) says the burden is on the applicant to prove that releasing the information in dispute would not be an unreasonable invasion of third-party personal privacy.[8]

DISCUSSION

Background[9]

[17] The applicant frequents the City's recreation facilities. Near the end of 2022, the applicant and a City employee each complained to the City that the other had acted improperly during their interactions.

[18] The information in dispute relates to the complaints lodged by the applicant and the employee and the City's investigation into, and resolution of, those complaints.

Records and information in dispute

[19] The responsive records total 126 pages with the information in dispute appearing on 21 of those pages.[10] From my review, I can see that the records consist of:

- emails, either internal to the City or between the City and the applicant;
- several versions of a report prepared by the City in response to the complaints made by the applicant and the employee and dated December 19, 2022 (Report);[11] and

[7] For clarity, the applicant's proposed sur-reply materials do not form part of the record before me and I have not reviewed them.
[8] However, the City bears the initial burden of demonstrating that the information withheld under s. 22(1) meets the definition of "personal information" under FIPPA: Order F23-49, 2023 BCIPC 57 at para. 5 and note 1, citing Order 03-41, 2003 CanLII 49220 (BC IPC) at paras. 9-11.
[9] The City provides little background information in its submission and I find that the background information in the applicant's submission is likely to be disputed by the City. Given this, I have only included basic information which I find is not disputed by either party in this section.
[10] Records at pp. 59-62, 71, 75, 77-78, 81, 83-90, 117-120.
[11] Records at pp. 83-90 and 117-120.

- two incident logs completed by City employees related to incidents where the employees were publicly criticized for how they performed their work duties (Incident Logs).[12]

Section 22(1) – unreasonable invasion of privacy

[20] Section 22(1) requires a public body to refuse to disclose information if disclosure would be an unreasonable invasion of a third party's personal privacy. As noted above, the City has withheld all the information in dispute under s. 22(1).

Personal information

[21] Since s. 22(1) only applies to personal information, the first step in the analysis is to determine whether the information in dispute is personal information.

[22] Under schedule 1 of FIPPA,

> "personal information" means recorded information about an identifiable individual other than contact information; [and]
>
> "contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual[.]

[23] Therefore, "contact information" is not "personal information" under FIPPA. Whether information is contact information is context dependent.[13]

[24] The City submits that all the information in dispute is "personal information" but does not explain in any detail how or why this is the case. The applicant's arguments primarily concern their view that releasing the information in dispute would not unreasonably invade anyone's privacy, as opposed to addressing whether the information in dispute is personal information.

[25] For the reasons that follow, I find that all the information in dispute is personal information. In the first place, most of the information relates to individuals who are identified by name in the records and is, therefore, clearly about identifiable individuals. This includes the Incident Logs, and I find that all the information contained in the Incident Logs is the personal information of the City employees who completed them as well as the personal information of other individuals who are mentioned in the Incident Logs.

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[12] Records at pp. 59-62.
[13] Order F20-13, 2020 BCIPC 15 at para. 42.

[26] There is some information in the records that is about unnamed people who are identified as witnesses or as individuals who did or said certain things in a certain context. In the circumstances of this case, given the context, I find that the unnamed people are known to the applicant. Moreover, I find that the withheld information about the unnamed people is detailed enough to allow the applicant to identify them based on the applicant's memory of certain events and the fact that the records reveal the applicant took more-or-less contemporaneous notes regarding those events. Therefore, I find that information about the unnamed people is their personal information.

[27] Some of the information in dispute relates to identifiable individuals describing events involving the applicant or giving their opinions about the applicant or the applicant's conduct. I find that this information is the applicant's own personal information as well as the personal information of the individuals expressing the opinions or describing the events.[14]

[28] Finally, I find that none of the information in dispute is contact information. While the City has withheld names and telephone numbers from the Incident Logs, I find that this information was included in the Incident Logs to allow for follow-up about the incidents, not to allow anyone to be contacted at a place of business.

Section 22(4) – not an unreasonable invasion

[29] Section 22(4) lists circumstances where disclosing personal information is not an unreasonable invasion of third-party personal privacy. If s. 22(4) applies to personal information, the City cannot withhold that information under s. 22(1).

[30] Neither party addressed s. 22(4). I have considered whether s. 22(4) may apply to the personal information in dispute and I find that it does not.[15]

Section 22(3) – presumed unreasonable invasion

[31] Section 22(3) lists circumstances where disclosing personal information is presumed to be an unreasonable invasion of third-party personal privacy. The City's submissions raise the possibility that ss. 22(3)(a), (b), and (d) each apply to some of the personal information in dispute. The applicant says that if any of the presumptions in s. 22(3) apply to the personal information in dispute, the presumptions are clearly rebutted in this case.

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[14] See Order F24-41, 2024 BCIPC 49 at para. 47 and the authorities cited therein.

[15] Specifically, I have considered whether any information in the Incident Logs may fall under s. 22(4)(e) which covers, in part, basic factual information about things said or done by public body employees in the normal course of their employment. However, I find that where the information in dispute relates to things said or done by the City's employees that information concerns events which went beyond the "normal course" of employment.

[32] I do not see that any of the other sub-sections of s. 22(3) may apply in this case, so I will only consider ss. 22(3)(a), (b), and (d), below.

Section 22(3)(a) – medical history information

[33] Under s. 22(3)(a), disclosing information related to a third party's medical, psychiatric, or psychological history, diagnosis, condition, treatment or evaluation is presumed to be an unreasonable invasion of that third party's personal privacy.

[34] The City's submissions refer to the Incident Logs as records of "workplace health and safety incidents" and thereby raise the possibility that the Incident Logs contain information protected by s. 22(3)(a). Having reviewed the Incident Logs, I do not see how any of the information they contain relates to the medical, psychiatric, or psychological health of third parties. Having reviewed the other information in dispute I make the same finding. Therefore, I find that s. 22(3)(a) does not apply to any of the personal information in dispute.

Section 22(3)(b) – information compiled as part of an investigation

[35] Under s. 22(3)(b), disclosing personal information is presumed to be an unreasonable invasion of personal privacy where the information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[36] The City submits that s. 22(3)(b) applies to most of the personal information in dispute because it was compiled during its investigation into whether the applicant breached the City's "Parks and Community Facilities Rules and Regulations Bylaw"[16] (Bylaw) during the applicant's interactions with City staff. The applicant questions whether some of the personal information in dispute was compiled by the City during the investigation as they believe the City already had that information before it started its investigation.

[37] I agree with prior orders which have held that breach of a municipal bylaw can be a violation of law for purposes of s. 22(3)(b).[17] Therefore, I accept that personal information compiled by the City during its investigation into whether the applicant breached the Bylaw may come within the scope of s. 22(3)(b).

[38] Examining the records, I find that most of the personal information in dispute is information that was gathered by the City during its investigation into the applicant's behaviour and interactions with City staff (whether gathered from

[16] City of Port Moody Bylaw 2021, No. 3321 (available at: https://www.portmoody.ca/common/Services/eDocs.ashx?docnumber=572436).
[17] See, for example, Order F21-40, 2021 BCIPC 48 at para. 59 citing, among others, Order 01-12, 2001 CanLII 21566 (BC IPC) at para. 17.

City staff or members of the public).[18] Some of this information is in internal e-mails sent and received by City staff during the investigation and some of the information is contained in various copies of the Report which was issued to the applicant on conclusion of the investigation. Further, I do not see how disclosing any of this personal information would be necessary to prosecute the alleged violation of the Bylaw or continue the investigation, which has concluded. Therefore, I find that releasing the information referenced in this paragraph is presumed to be an unreasonable invasion of privacy under s. 22(3)(b).

[39] However, I find that the remaining personal information in dispute was not compiled by the City during its investigation. It is clear to me that the Incident Logs were drafted before the investigation started and the information they contain was not compiled for purposes of the investigation. Considering the remaining personal information in dispute, I find that some of it is contained in e-mails which the applicant sent, apparently unprompted, to City staff. I do not see, and the City does not explain, how this personal information was compiled by the City for purposes of the investigation. I find that it was not.[19]

[40] There is also a comment in one of the City's internal e-mails about a one-time change to an employee's workplace availability which does not relate in any way to the investigation. Finally, some of the personal information in the Report is recommendations or "next steps" the City proposed to address the issues identified during the investigation. I do not see how any of the information described in the preceding two sentences was compiled by the City as part of the investigation into the alleged breach of the Bylaw and, therefore, I also find s. 22(3)(b) does not apply to it.[20]

[41] For all these reasons, I find that releasing most, but not all, of the personal information in dispute is presumed to be an unreasonable invasion of third-party personal privacy pursuant to s. 22(3)(b).

Section 22(3)(d) – employment history information

[42] Under s. 22(3)(d), disclosing a third party's employment, occupational, or educational history is presumed to be an unreasonable invasion of that third party's personal privacy. Because I have already found that releasing most of the personal information in dispute is presumed to be an unreasonable invasion of privacy under s. 22(3)(b) I will only consider whether s. 22(3)(d) applies to the information I found above falls outside s. 22(3)(b).

[43] Considering the Incident Logs, I find that all the personal information they contain is the employment history of the City employees who completed them. As

[18] Records at pp. 71, 77-78, 83-90, and 117-120.
[19] Records at pp. 75 and 81.
[20] Records at pp. 86, 90, and 120. Some of this information is also reproduced on p. 71.

noted above, the incidents documented in the Incident Logs relate to critical comments made by a member of the public about the capacity of those employees to perform their work duties.

[44] It is clear to me that the fact that a person was subject to criticism or ridicule about how they were performing in their job, felt it necessary to formally report that incident, took the time to document the incident, and liaised with individuals above them in the chain of command regarding the incident reveals something meaningful about a specific part of that person's history as an employee.

[45] Turning to the recommendations and "next steps" in the Report, I find that some of these are directed at a specific employee and concern that employee's workplace conduct. These recommendations and next steps judge or assess the employee's work behaviour and aim to prompt a change in that behaviour going forward. I find that all this information is the employment history of that employee for purposes of s. 22(3)(d).

[46] However, some of the next steps and recommendations information in the Report concerns changes to the City's systems and administrative procedures. While I find this information reveals the identity of the individual responsible for overseeing those changes, I find it does not reveal anything about that individual's employment or occupational history. Therefore, I find s. 22(3)(d) does not apply to this information.[21]

[47] Finally, it is not clear to me how releasing the one-off statement about a named individual's workplace availability in an internal City e-mail, or the information the City has withheld from e-mails sent to the City by the applicant would reveal information protected by s. 22(3)(d) and I find it would not.[22] Therefore, I find s. 22(3)(d) does not apply to that information.

Section 22(2) – relevant circumstances

[48] Section 22(2) says that when a public body is deciding whether disclosing personal information would be an unreasonable invasion of third-party personal privacy, it must consider all relevant circumstances, including those listed in s. 22(2). Some circumstances weigh in favour of disclosure and some weigh against. Circumstances favouring disclosure may rebut s. 22(3) presumptions.

[49] The City says that some of the personal information I found above is subject to s. 22(3)(b) was supplied in confidence and therefore that s. 22(2)(f) weighs against disclosing that information to the applicant.

[21] Records at pp. 90 and 120.
[22] Records at pp. 71, 75 and 81.

[50] The applicant says that releasing all the personal information in dispute is necessary to subject the City to public scrutiny and to ensure a fair determination of the applicant's right to be treated in a procedurally fair manner by the City. Therefore, the applicant says that ss. 22(2)(a) and (c) weigh in favour of releasing the personal information in dispute.

[51] In addition to the circumstances raised by the parties, there are three other relevant circumstances to consider: the fact that some of the personal information in dispute is the applicant's own personal information; the sensitivity of some of the personal information; and the fact that some of the personal information is already known by the applicant.

Section 22(2)(a) – public scrutiny

[52] Section 22(2)(a) recognizes that if disclosing personal information would foster the accountability of public bodies this favours disclosure.[23]

[53] I take the applicant's over-arching contention in this inquiry to be that the City's investigation process is flawed and progressed mechanically toward a conclusion that was biased in favour of the City's interests and against the applicant's interests. The applicant says that releasing the personal information in dispute is necessary so that the applicant can expose the City's alleged failures and biases, thereby subjecting the City to public scrutiny.

[54] In response, the City says only that concerns about how the City conducted its investigation are outside the scope of this FIPPA inquiry.

[55] Having reviewed the personal information in dispute, I do not see that releasing any of it is desirable for the purpose of subjecting the City to public scrutiny. That is because I find that the personal information in dispute does not relate to the procedure the City followed in undertaking its investigation or reveal any impropriety on the part of the City or its staff. Rather, the lion's share of the information I am considering is, in essence, personal recollections of individual witnesses who provided their version of events to the City.

[56] The applicant may wish to access that information so they can, for example, attempt to demonstrate that the City relied on faulty evidence or that a witness may have had a personal reason for supplying a one-sided version of events to the City. However, at most, I find information of these kinds would only foster scrutiny of individual witnesses or City staff and not scrutiny of the City and its institutional processes. Section 22(2)(a) is not a tool for subjecting individual third parties to public scrutiny and I find s. 22(2)(a) does not apply here on that basis.

[23] Order F05-18, 2005 CanLII 24734 (BC IPC) at para. 49.

Section 22(2)(c) – fair determination of the applicant's rights

[57] Section 22(2)(c) applies to personal information that is relevant to a fair determination of an applicant's rights. Section 22(2)(c) applies where:

1. The right in question is a legal right drawn from the common law or statute, as opposed to a non-legal right based only on moral or ethical grounds;
2. The right is related to a proceeding which is either underway or is contemplated, not a proceeding that has already been completed;
3. The personal information sought by the applicant has some bearing on, or significance for, determination of the right in question; and
4. The personal information is necessary to prepare for the proceeding or to ensure a fair hearing.[24]

[58] The applicant says they are considering bringing a complaint against the City with the British Columbia Ombudsperson related to the alleged procedural failings the applicant says tainted the City's investigation. The applicant says receiving the personal information in dispute is necessary for them to prepare their complaint and submit it to the Ombudsperson.

[59] The City does not address whether s. 22(2)(c) applies to the personal information in dispute.

[60] I accept that the applicant's right to be treated in a procedurally fair manner while being investigated by the City is a legal right drawn from the common law. I also accept that the applicant is "contemplating" bringing a complaint before the Ombudsperson in the sense that the applicant is "intently considering" doing so.[25]

[61] Examining whether the personal information in dispute has a "bearing on" or "significance for" the determination of whether the applicant was treated fairly by the City, I find that most of it does. As noted, most of the personal information is contained in witness statements sourced by the City during an investigation related to the applicant's conduct or in the Incident Logs. I find that the City clearly relied on this information in conducting the investigation and drafting the Report and therefore that the substance of this information has a bearing on whether the City treated the applicant fairly throughout the investigation.

[62] Finally, considering whether receiving the personal information in dispute is necessary for the applicant to prepare their complaint and submit it to the

[24] Order F23-71, 2023 BCIPC 84 at para. 69, citing Order 01-07, 2001 CanLII 21561 (BC IPC).
[25] Order F23-71, *ibid* at para. 75, citing Order F16-36, 2016 BCIPC 40 at para. 50.

Ombudsperson, I find, for the following reasons, that it is necessary regarding the witness statements, but not regarding the Incident Logs.

[63] As discussed in more detail below, I find that much of the relevant personal information has already been provided to the applicant given they have received a copy of the Report. However, I find that the witness statements contain additional personal information related to the matter the City investigated but which is not reproduced in the Report. Therefore, I find the applicant does not already have access to some of the witness statement information the City relied on in undertaking and completing the investigation and that it is necessary for the applicant to access this additional personal information in order to properly present their complaint to the Ombudsperson.

[64] However, considering the Incident Logs, I find that releasing the personal information they contain to the applicant is not necessary because I do not see that the Incident Logs contain any additional relevant information beyond what has already been provided to the applicant in the Report.

[65] Therefore, I find that s. 22(2)(c) weighs in favour of releasing the personal information in the witness statements to the applicant but does not weigh in favour of releasing the other personal information in dispute.

Section 22(2)(f) – supplied in confidence

[66] Under s. 22(2)(f), if information was supplied to a public body in confidence, this favours withholding the information.

[67] The City says the personal information in the witness statements was supplied to it in confidence and s. 22(2)(f) applies. The applicant says the City has not provided sufficient evidence showing the witnesses had reasonable expectations of confidentiality when they gave their personal information to the City.

[68] I find that the City has not provided sufficient evidence or persuasive argument demonstrating that the witnesses would have had a reasonable expectation that the City would hold their personal information in confidence. Specifically, I find the events discussed with the City by the witnesses took place in public and that many individuals would have been aware that each witness was present for and witnessed them. Further, I do not see any indication in the records that the City told the witnesses that their testimony was being received in confidence. Moreover, the City's submissions regarding s. 22(2)(f) are restricted to a bare statement that the personal information in question was collected in confidence which is not supported by any evidence or further explanation.

[69] In these circumstances, I find that s. 22(2)(f) does not weigh against disclosing any of the personal information in dispute.

Applicant's own personal information

[70] Where an applicant is seeking release of their own personal information, this can weigh heavily in favour of disclosing that information to them. However, where the applicant's personal information is interwoven with the personal information of third parties this factor carries less weight.[26]

[71] The parties do not address whether the personal information in dispute is the applicant's own personal information or the relevance of this factor in the instant case. However, as noted above, I find that much of the personal information in dispute is the applicant's own personal information because it is third party descriptions of events involving the applicant or judgments and opinions regarding the applicant's behaviour and conduct and is therefore clearly about the applicant.

[72] However, I find that in each case this information is also the personal information of the third parties who supplied it to the City. Given this, I afford the factor discussed in this section only minor weight.

Applicant's prior knowledge

[73] An applicant's prior knowledge of personal information may weigh in favour of disclosing it. Here, the applicant speculates about what is contained in the Incident Logs, but speculation is not the same as knowledge and I find the applicant's speculative submissions to be irrelevant under s. 22(2).

[74] However, it is clear from the records and the applicant's submission that the applicant received a copy of the Report at the conclusion of the City's investigation. Much of the personal information in dispute is being withheld from copies of the Report which are included in the records. Some of these copies are superficially different from the copy of the Report provided to the applicant. However, I find that the changes between the copies do not impact the disputed personal information that has already been released to the applicant. I find the applicant's prior knowledge of the personal information in the Report weighs strongly in favour of disclosing the disputed information contained in the copies of the Report in the records to the applicant.

[75] I also find that the Report is based, in significant part, on the witness statements and reproduces information contained in those statements. Therefore, I find that where there is overlap between what is in the Report and what is contained in the witness statements, the fact the applicant already has a copy of the Report weighs strongly in favour of disclosing the overlapping information.

[26] Order F14-47, 2014 BCIPC 51 at para. 36.

[76] A small amount of the personal information in dispute is contained in e-mails which the applicant sent to the City. I find the applicant clearly already knows this information and that this weighs in favour of disclosing it to the applicant.

Sensitivity

[77] Sensitivity is often considered a relevant circumstance under s. 22(2). If information is sensitive, this favours withholding it.[27] If information is clearly not sensitive, this favours disclosure.[28] The parties do not address whether the information in dispute is sensitive.

[78] Having reviewed the information in dispute, I find that much of it is clearly non-sensitive. This includes most information in the witness statements and the Report because I find that information is purely factual and involves the witnesses relaying what they heard or saw in a public place without editorial addition. I also find that a statement regarding a one-time change to an employee's workplace availability is non-sensitive.

[79] However, I find that a small amount of information compiled by the City during its investigation reveals an employee's feelings related to their emotional safety in the workplace. I find this information is sensitive and that this weighs in favour of withholding it.

Conclusion – s. 22(1)

[80] I have found above that all the information in dispute is the personal information of third parties and some of this information is also the applicant's personal information. I have also found that none of the sub-sections of s. 22(4) apply to any of the personal information in dispute.

[81] Turning to s. 22(3), I have found that releasing much of the personal information in dispute is presumed to be an unreasonable invasion of third-party personal privacy pursuant to ss. 22(3)(b) or (d). The remaining personal information in dispute is not subject to any s. 22(3) presumptions.

[82] Examining s. 22(2) and all the relevant circumstances, I have found that the sensitivity of a small amount of the personal information in dispute weighs against disclosing that information.

[83] I have also found that the following circumstances weigh in favour of disclosing some of the personal information in dispute: the applicant's prior knowledge of some of the personal information; the fact that some of the personal information is the applicant's own personal information as well as the

[27] Order F19-15, 2019 BCIPC 17 at para. 99.
[28] Order F16-52, 2016 BCIPC 58 at para. 91.

personal information of third parties; the fact that some of the personal information is clearly non-sensitive; and, the fact that some of the personal information may be relevant to a fair determination of the applicant's rights under s. 22(2)(c).

[84] Taking all of this together, I find that the s. 22(3)(b) and (d) presumptions are rebutted in this case regarding most information contained in the witness statements and the copies of the Report. I find that, in all the circumstances, releasing this information to the applicant will not unreasonably invade the personal privacy of third parties. I also find that releasing the personal information contained in e-mails sent to the City by the applicant and the workplace availability information contained in one of the City's internal e-mails would not unreasonably invade anyone's personal privacy. Therefore, the City is not required to withhold the personal information discussed in this paragraph.

[85] However, I do not find that the s. 22(3)(d) presumption is rebutted regarding the personal information in the Incident Logs. I also do not find that the s. 22(3)(b) presumption is rebutted regarding sensitive personal information about a City employee's emotional safety in the workplace. Therefore, I find that the City must withhold the personal information discussed in this paragraph under s. 22(1).

CONCLUSION

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

1. Subject to item 2 below, the City is required to withhold some, but not all, of the information in dispute under s. 22(1).

2. The City is not required to withhold the information I have highlighted on pages 71, 75, 77-78, 81, 83-90, and 117-120 of the copy of the records provided to the City alongside this order. The City must disclose the highlighted information to the applicant.

3. The City must concurrently copy the OIPC Registrar of Inquiries on its cover letter to the applicant, together with a copy of the pages described at item 2, above.

[87] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by February 27, 2025.

January 15, 2025

ORIGINAL SIGNED BY

Alexander Corley, Adjudicator

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