Order F25-12

SIMON FRASER UNIVERSITY

Emily Kraft
Adjudicator

February 20, 2025

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Summary: An applicant made a request under the *Freedom of Information and Protection of Privacy Act* (FIPPA) to Simon Fraser University (SFU) for certain records containing his personal information. SFU withheld the information in dispute under ss. 13(1) (advice or recommendations), 15(1)(l) (harm to the security of a property or system), and 22(1) (unreasonable invasion of third-party personal privacy). The adjudicator found that SFU was authorized or required to withhold most of the information under ss. 13(1) or 22(1) and ordered SFU to disclose the information it was not authorized or required to withhold. The adjudicator also found that SFU had not properly exercised its discretion under s. 13(1) and ordered SFU to reconsider its decision to withhold the information to which s. 13(1) applied. It was not necessary to consider s. 15(1)(l).

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

INTRODUCTION

[1] An individual (applicant) requested that Simon Fraser University (SFU) provide him with information about himself contained in reports, performance reviews, and communications between named SFU employees over a 32-month period. SFU provided the applicant with the responsive records but withheld some information under ss. 13(1) (advice or recommendations), 15(1)(a) (harm to law enforcement), 15(1)(l) (harm to security of a property or system), 21(1) (harm to third-party business interests), and 22(1) (unreasonable invasion of third-party personal privacy) of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

[2] The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review SFU's decision to sever the information in dispute. During mediation by the OIPC, SFU reconsidered its severing decision and released additional information to the applicant, including all of the information withheld under s. 15(1)(a). Additionally, the applicant agreed that he would not dispute SFU's decision to refuse access to the information in dispute under s. 21(1). Therefore, ss. 15(1)(a) and 21(1) are not at issue in this inquiry. Mediation did not resolve the remaining issues in dispute, and they proceeded to inquiry.

[3] During the inquiry, the applicant said that he is not interested in the information withheld under s. 15(1)(l) on page 840 of the records.[1] Accordingly, I find that information is not in dispute in this inquiry.

[4] This order is issued concurrently with Order F25-13. Both orders deal with similar requests made by the applicant for access to records held by SFU.

PRELIMINARY MATTERS

Section 25(1)

[5] In his response submission, the applicant says that s. 25(1)(b) is a relevant issue in this inquiry. Section 25(1)(b) requires public bodies to proactively disclose information when disclosure is clearly in the public interest.

[6] Section 25(1)(b) was not listed as an issue in the investigator's fact report or notice of inquiry. Previous OIPC orders have consistently said that parties may only introduce new issues at the inquiry stage if they request and receive permission from the OIPC to do so.[2] The notice of inquiry, which was provided to both parties at the start of this inquiry, also states that parties may not add new issues into the inquiry without the OIPC's prior consent.[3]

[7] In this case, the applicant did not request permission from the OIPC to add s. 25(1)(b) as an issue or explain why he did not raise it at an earlier stage. Therefore, I decline to add s. 25(1)(b) as an issue in this inquiry.

Section 15(1)(a)

[8] As explained above, during mediation, SFU reconsidered its severing decision and disclosed all of the information it previously withheld under s. 15(1)(a). Accordingly, s. 15(1)(a) was not listed as an issue in the

[1] Applicant's email of January 29, 2025.
[2] For example, see Order F16-34, 2016 BCIPC 38 at para 9 and Order F11-28, 2011 BCIPC 34 at para 11.
[3] Notice of written inquiry, July 8, 2024.

investigator's fact report or notice of inquiry. Nonetheless, in his submission for this inquiry, the applicant makes lengthy arguments about the applicability of s. 15(1)(a) to the information in the records.[4] Although I have read and considered the parties' entire submissions, I will only comment on the portions relevant to the issues I must decide, as listed below.

ISSUES

[9] The issues that I must decide in this inquiry are as follows:

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

[10] Under s. 57(1) of FIPPA, SFU has the burden of proving that it is authorized under ss. 13(1) and 15(1)(l) to refuse to disclose the information in dispute. Under s. 57(2), the applicant has the burden of proving that disclosing any personal information in dispute would not be an unreasonable invasion of a third party's personal privacy under s. 22(1).[5] However, SFU has the initial burden of proving the information at issue qualifies as personal information under s. 22(1).[6]

DISCUSSION

Background

[11] The parties did not provide any background information about their dispute in their inquiry submissions. Based on my review of the records, I can see that the applicant is or was an employee of SFU and that his behaviour was the subject of several workplace complaints and concerns, including a bullying and harassment complaint against him, which were investigated by his supervisors.[7]

Records at issue

[12] The responsive records total 1045 pages and consist of various types of documents including emails and attachments, memos, disciplinary letters, and complaint forms. Most of the records have been disclosed in full or in part to the applicant.

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[4] The applicant confirmed that he received SFU's reconsidered records package with the information previously withheld under s. 15(1)(a) disclosed (see email dated October 25, 2024).
[5] Schedule 1 of FIPPA says that a "third party" in relation to a request for access to a record or for correction of personal information means any person, group of persons or organization other than the person who made the request, or a public body.
[6] Order 03-41, 2003 CanLII 49220 (BC IPC) at paras 9-11.
[7] See pp 788 and 815-822, which have been fully or partially disclosed to the applicant.

Section 13(1) – advice or recommendations

[13] Section 13(1) states that a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or minister. The purpose of s. 13(1) is to prevent the harm that would occur if a public body's deliberative process was exposed to excessive scrutiny.[8]

[14] "Recommendations" include material that relates to a suggested course of action that will ultimately be accepted or rejected by the person being advised.[9] "Advice" has a broader meaning than the term "recommendations." It includes opinions that involve exercising judgment and skill to weigh the significance of matters of fact on which a public body must make a decision for future action.[10] It also includes policy options prepared in the course of the decision-making process.[11]

[15] Previous OIPC orders have stated that s. 13(1) applies to information that would directly reveal advice or recommendations, as well as information that would enable an individual to draw accurate inferences about advice or recommendations.[12]

[16] The first step in the s. 13 analysis is to determine whether the information in dispute would reveal advice or recommendations developed by or for a public body or minister. If it would, then I must decide whether the information falls into any of the categories listed in s. 13(2) or whether it has been in existence for more than 10 years under s. 13(3). If ss. 13(2) or 13(3) apply to any of the information, that information cannot be withheld under s. 13(1).

Parties' submissions

[17] SFU says that the information withheld under s. 13(1) is advice or recommendations developed by or for SFU about a number of subject matters.

[18] The applicant says that SFU has applied s. 13(1) too broadly. He also says that any factual information withheld under s. 13(1) should be disclosed.

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[8] *Insurance Corporation of British Columbia v Automotive Retailers Association* 2013 BCSC 2025 at para 52. See also *John Doe v Ontario (Finance)*, 2014 SCC 36 [*John Doe*] at paras 43-45.
[9] *John Doe, ibid* at paras 23-24.
[10] *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 at para 113.
[11] *John Doe, supra* note 8 at para 35.
[12] Order F16-11, 2016 BCIPC 13 (CanLII) at para 21.

Analysis and findings

[19] I have reviewed the information in dispute, and I am satisfied that most of the information would clearly reveal advice or recommendations developed for SFU related to:

- Supply purchasing;[13]
- The development of a new training course;[14]
- Introducing a new procedure at work;[15] and
- The content of correspondence to the applicant and next steps to take regarding his workplace behaviour.[16]

[20] There is also some information that would enable a reader to accurately infer some of the above advice and recommendations.[17]

[21] However, I do not see, and SFU has not adequately explained, how the following information would reveal advice or recommendations under s. 13(1):

- Answers to factual questions;[18]
- Information about why an employee does not want to attend a work meeting;[19] and
- Information about what an employee anticipates other individuals will do or say and the reasons why they made a decision.[20]

[22] I find that s. 13(1) does not authorize SFU to withhold this latter information.

[23] Additionally, some of the information withheld under s. 13(1) has already been disclosed in other parts of the records.[21] Previous OIPC orders have found that s. 13(1) does not apply to information that has already been disclosed to an applicant, since disclosing this information would not "reveal" anything for the purposes of s. 13(1).[22] Consistent with these previous orders, I find that s. 13(1)

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[13] Records at pp 59, 60, and 91.
[14] Records at pp 62, 64, 65, 70, 72, 73, and 74.
[15] Records at pp 419-420. A duplicate of this record also appears in the records package at p 343. SFU withheld the information on p 343 under s. 22(1) only and did not indicate that it was also applying s. 13(1) to that information, but since it is a duplicate of the information on pp 419-420, I presume that it meant to do so.
[16] Records at p 212.
[17] Records at pp 58, 59, 60, and 91.
[18] Records at p 68.
[19] Records at pp 207 and 459 (duplicate).
[20] Records at p 724.
[21] The information that is withheld from the emails on pp 698 and 700 of the records is disclosed in duplicate copies of those emails that appear elsewhere in the records.
[22] Order F20-32, 2020 BCIPC 38 at para 36.

does not authorize SFU to withhold the information that has already been disclosed.

Sections 13(2) and (3)

[24] The next step in the s. 13(1) analysis is to consider whether any of the circumstances under ss. 13(2) and (3) apply to the information I found would reveal advice or recommendations. Subsections 13(2) and (3) identify certain types of records and information that a public body may not withhold under s. 13(1).

[25] The applicant says that s. 13(2)(a) likely applies to some of the information withheld under s. 13(1).

Section 13(2)(a) – factual material

[26] Section 13(2)(a) says that the head of a public body must not refuse to disclose any factual material under s. 13(2)(a). "Factual material" includes source materials accessed by experts or background facts that are not a necessary part of the advice or deliberative process. "Factual material" does not include factual information that is assembled from other sources and that is an integral part of the advice or recommendations.[23]

[27] Some of the information that I determined would reveal advice or recommendations if disclosed is factual in nature. However, this information is an integral part of the advice or recommendations provided. Therefore, I find it is not "factual material" under s. 13(2)(a).

Section 13(3)

[28] Under s. 13(3), a public body cannot withhold under s. 13(1) any information in a record that has been in existence for 10 or more years. The records in dispute here are not that old, so s. 13(3) does not apply.

Conclusion on s. 13(1)

[29] In conclusion, I find that s. 13(1) authorizes SFU to refuse to disclose most, but not all of the information withheld under that section.

Exercise of discretion under s. 13(1)

[30] Section 13(1) is a discretionary exemption to access under FIPPA and a public body must exercise that discretion in deciding whether to refuse access to information that it is authorized to withhold. A public body must only consider

[23] *Insurance Corporation of British Columbia v Automotive Retailers Association*, 2013 BCSC 2025 at paras 52-53.; *Provincial Health Services Authority v British Columbia (Information and Privacy Commissioner),* 2013 BCSC 2322 (CanLII) at para 93-94.

proper and relevant factors when making this determination.[24] Previous OIPC orders have stated that when exercising discretion to refuse access under s. 13(1), a public body should typically consider factors such as the age of the records, the public body's past practice in releasing similar records, and the nature and sensitivity of the records.[25]

[31] If a public body has failed to exercise its discretion, the Commissioner can require it to do so. The Commissioner can also order the public body to reconsider the exercise of discretion where "the decision was made in bad faith or for an improper purpose; the decision took into account irrelevant considerations; or the decision failed to take into account relevant considerations."[26] The onus is on the public body to establish that it exercised its discretion under s. 13(1) and that it did so under proper considerations.[27]

[32] SFU says in its inquiry submission that it "properly exercised its discretion under s. 13(1) to withhold the information [in dispute] and, in exercising its discretion, it took into account all relevant considerations."[28]

[33] SFU's submission does not convince me that it exercised its discretion and considered all relevant factors in deciding to refuse access to the information withheld under s. 13(1). SFU provided no evidence to support its submission that it properly exercised its discretion, nor did it identify what factors it considered in deciding to refuse access to the information withheld under s. 13(1). Therefore, it appears to me that SFU withheld any information that may be considered advice or recommendations without considering whether to exercise its discretion to release any of that information. In particular, while most of the information withheld under s. 13(1) would technically reveal advice or recommendations, it is not sensitive or controversial information. In my view, this is a relevant factor that SFU should have considered but did not.

[34] For the reasons above, I find it is appropriate to order SFU to reconsider its decision to refuse to disclose the information I found it is authorized to refuse to disclose under s. 13(1).

Section 22(1) – unreasonable invasion of third-party personal privacy

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

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[24] Order 02-50, 2002 CanLII 42486 (BC IPC) at para 144.
[25] Order F19-48, 2019 BCIPC 54 at para 29.
[26] *John Doe, supra* note 8 at para 52.
[27] Order F25-02, 2025 BCIPC 2 at para 66.
[28] SFU's initial submission at para 28.

Personal information

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

[37] FIPPA defines personal information as recorded information about an identifiable individual other than contact information.[29] Information is about an identifiable individual when it is reasonably capable of identifying the individual, either alone or when combined with other available sources of information.[30]

[38] Contact information is defined in FIPPA as information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual.[31]

[39] SFU is withholding the following information from the records under s. 22(1):

- Information that reveals the names, job titles, work email addresses, work addresses, and/or work phone numbers of SFU employees who made complaints or raised concerns about the applicant's workplace behaviour and/or the content or substance of their complaints or concerns.
- Information about SFU employees' vacation leaves.
- Comments made by named SFU employees about the applicant's performance of his job duties.
- Information provided by SFU employees describing their observations or opinions about certain workplace incidents involving the applicant. This information was provided in the context of investigations into those incidents that were conducted by the applicant's supervisors.
- Comments made by the applicant about another SFU employee's position, attitudes, and behaviour in the workplace.
- Information that reveals an SFU employee's medical condition.

[40] I am satisfied that all of the information withheld under s. 22(1) is the personal information of several individuals. This information is clearly about people who are identified by name in the records or are otherwise identifiable. Most of the withheld information reveals details about complaints, observations, and opinions that individuals provided about the applicant's workplace behaviour. I note that in many instances, SFU withheld the names of those individuals;

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[29] Schedule 1 of FIPPA.
[30] Order F19-42, 2019 BCIPC 47 at para 15.
[31] Schedule 1 of FIPPA.

however, I find that the applicant could identify them based on the content of their complaints, observations, or opinions. This is because the information relates to specific incidents or interactions those individuals had with the applicant, so the applicant would likely be able to ascertain their identities.

[41] As outlined above, there are also some instances where SFU withheld individuals' names, job titles, work email addresses, work addresses, and work phone numbers from some of the emails in dispute. This type of information may be considered "contact information" depending on the context in which it appears.[32] In this case, I find the information is not contact information because disclosing it would reveal the identities of individuals who made complaints or raised concerns about the applicant's workplace behaviour.[33]

Not an unreasonable invasion of privacy – s. 22(4)

[42] Having found that the information in dispute qualifies as personal information, the next step is to consider s. 22(4), which sets out various circumstances in which disclosure of personal information is not an unreasonable invasion of personal privacy.

[43] SFU says that none of the s. 22(4) circumstances apply in this case.

[44] The applicant argues that s. 22(4)(e) applies.

[45] Section 22(4)(e) provides that disclosure of personal information is not an unreasonable invasion of an individual's personal privacy if the information is about the individual's position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister's staff. Past orders have found that the names and personal information of public body employees fall under s. 22(4)(e) when they relate to the employees' job duties in the normal course of work-related activities.[34] However, whether s. 22(4)(e) applies depends on the context in which the information appears.

[46] In this case, I find the personal information in dispute is not about anyone's positions, functions, or remuneration nor does it relate to anyone's job duties in the normal course of work-related activities. Rather, most of the information in dispute would reveal individuals' complaints about the applicant's behaviour, comments about the performance of his job duties, or opinions or

[32] Order F20-13, 2020 BCIPC 15 at para 42.
[33] For a similar finding, see Order F20-13, 2020 BCIPC 15 at para 42; Order F20-08, 2020 BCIPC 9 at para 52; and Order F19-15, 2019 BCIPC 17 at para 43.
[34] Order F19-27, 2019 BCIPC 29 at para 51.

observations about his behaviour arising from workplace investigations. Section 22(4)(e) does not apply to this kind of information.[35]

[47] I have considered the other factors listed in s. 22(4) and am satisfied that none apply.

Presumed unreasonable invasion of privacy – s. 22(3)

[48] The third step in the s. 22(1) analysis is to consider whether any of the presumptions in s. 22(3) apply to the personal information at issue. Section 22(3) lists circumstances in which disclosure of personal information is presumed to be an unreasonable invasion of personal privacy.

[49] SFU says that ss. 22(3)(a), (d), and (g) apply in this case.

Medical history, diagnoses, condition, treatment or evaluation – s. 22(3)(a)

[50] Section 22(3)(a) says that disclosure of personal information is presumed to be an unreasonable invasion of personal privacy if the information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation.

[51] SFU says that where the information in dispute is about an individual's workplace accommodations related to a medical, psychiatric or psychological condition or symptomology, that personal information is presumed to be an unreasonable invasion of personal privacy under s. 22(3)(a).

[52] There is a small amount of information in dispute that is about an individual's medical condition.[36] I find that s. 22(3)(a) applies to that information.

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

[53] Section 22(3)(d) says that disclosure of personal information is presumed to be an unreasonable invasion of personal privacy if the information relates to employment, occupational or education history.

[54] SFU submits that s. 22(3)(d) applies to the withheld personal information that relates to a workplace complaint.[37]

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[35] For a similar finding, see Order F20-13, 2020 BCIPC 15 at para 48; Order F08-04, 2008 CanLII 13322 at para 24; and Order F20-37, 2020 BCIPC 43 at para 95.
[36] Records at pp 874-875.
[37] SFU's initial submission at para 67.

[55] The applicant says that routine work-related communications and information about job duties do not constitute employment history under s. 22(3)(d).[38]

[56] Previous OIPC orders have found that, in the context of a workplace dispute, a complainant's allegations and evidence about what another individual said or did to the complainant in the workplace is the complainant's employment's history under s. 22(3)(d).[39] I agree with these orders and I find that the information in this case that reveals certain SFU employees' complaints and evidence against the applicant relates to those individuals' employment histories under s. 22(3)(d).

[57] Some of the information in dispute consists of the applicant's allegations of inappropriate workplace attitudes and behaviour against another SFU employee.[40] Previous OIPC orders have found that s. 22(3)(d) applies to this kind of information.[41] Consistent with previous orders, I find that s. 22(3)(d) applies to that information.

[58] Additionally, some of the withheld information is about SFU employees' vacation leaves. Previous OIPC orders have found that s. 22(3)(d) applies to this kind of information.[42] I am satisfied that s. 22(3)(d) applies.

[59] However, I find that s. 22(3)(d) does not apply to the information that was provided by SFU employees to the applicant's supervisors in the context of their investigations into workplace incidents involving the applicant. This information only reveals what those individuals observed, said or did regarding workplace interactions with the applicant. Those individuals were not making complaints about the applicant nor were they the subjects of the investigations. It does not appear that SFU was evaluating or questioning the workplace conduct of those individuals. I find this information is not about those individuals' employment histories under s. 22(3)(d).[43]

Personal recommendations or evaluations, character references of personnel evaluations – s. 22(3)(g)

[60] Section 22(3)(g) says that disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if the

[38] Applicant's response submission at p 4.
[39] For example, see Order 01-53, 2001 CanLII 21607 (BC IPC) at para 38; Order F21-43, 2021 BCIPC 42 at para 42; and Order F23-56, 2023 BCIPC 65 at para 77.
[40] Records at p 871.
[41] For instance, Order 01-53, 2001 CanLII 21607 at para 37.
[42] Order F22-15, 2022 BCIPC 17 at para 66.
[43] For a similar finding, see Order F20-13, 2020 BCIPC 15 at para 55; Order F19-41, 2019 BCIPC 46 at para 62; Order F21-34, 2021 BCIPC 42 at para 43; and Order 01-53, 2001 CanLII 21607 at para 41.

information consists of personal recommendations or evaluations, character references or personnel evaluations about the third party. Previous OIPC orders establish that s. 22(3)(g) only applies to formal evaluations of an individual, such as a formal performance review, job reference, or an investigator's findings about an employee's behaviour in the context of a workplace investigation.[44]

[61] SFU says that s. 22(3)(g) applies to "complaints and opinions about the performance and behaviour of employees" as well as "evaluative comments."[45]

[62] I already found that s. 22(3)(d) applies to the information that would reveal individuals' complaints and concerns about the applicant's workplace behaviour, as well as the information that would reveal the applicant's allegations about the workplace behaviour of another individual. Accordingly, I find it is not necessary to consider whether s. 22(3)(g) also applies to that information.

[63] The remaining information relates to opinions and observations about the performance and behaviour of the *applicant*, not about any other individuals. The s. 22(3)(g) presumption only applies to information about third parties (i.e., individuals other than the applicant). On that basis, I find s. 22(3)(g) does not apply.

Relevant circumstances – s. 22(2)

[64] The last step in the s. 22(1) analysis is to determine whether disclosure of the disputed information would be an unreasonable invasion of an individual's personal privacy, considering all relevant circumstances including those listed in s. 22(2). It is at this step that any s. 22(3) presumptions may be rebutted.

[65] The parties raise ss. 22(2)(a) and 22(2)(f) as well as factors not listed in s. 22(2). In my view, s. 22(2)(h) is also relevant to consider.

Public scrutiny of a public body – s. 22(2)(a)

[66] Section 22(2)(a) says that a relevant circumstance to consider is whether the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny. The purpose of s. 22(2)(a) is to foster accountability of a public body, not individuals.[46] If it applies, s. 22(2)(a) weighs in favour of disclosure.

[67] The applicant says that there are public interest factors that support disclosure, such as accountability in public sector employment matters. He does not provide any further explanation.

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[44] Order F24-31, 2024 BCIPC 38 at para 97.
[45] SFU's initial submission at paras 70-71.
[46] Order F24-45, 2024 BCIPC 53 at para 56.

[68] The applicant has not persuaded me that disclosure of the personal information in dispute here would be desirable to subject the activities of the government of British Columbia or a public body to public scrutiny. I find that s. 22(2)(a) does not apply.

Supplied in confidence – s. 22(2)(f)

[69] Section 22(2)(f) says that a relevant circumstance to consider is whether the personal information has been supplied in confidence. If it applies, s. 22(2)(f) weighs in favour of withholding the information. In order for s. 22(2)(f) to apply, there must be evidence that an individual supplied the personal information and that they did so under an objectively reasonable expectation of confidentiality at the time the information was provided.[47]

[70] SFU says that s. 22(2)(f) applies to information about individuals' complaints or concerns.[48]

[71] I find that s. 22(2)(f) applies to the information that reveals individuals' complaints and concerns about the applicant's workplace behaviour. I also find that s. 22(2)(f) applies to the information provided by individuals about the applicant's behaviour in the context of workplace investigations into incidents involving the applicant. While SFU did not say whether it generally treats this kind of information as confidential or whether those individuals were given any assurances of confidentiality, previous OIPC orders have typically found that this kind of information is supplied in confidence.[49] Given the nature of the personal information in dispute here and the circumstances under which it was supplied, consistent with previous OIPC decisions, I find it is reasonable to conclude that these individuals expected their personal information, including their identities, to be treated confidentially.

[72] However, I am not persuaded that the remaining personal information in dispute was supplied in confidence. Specifically, I am not persuaded that the comments individuals made about the applicant's performance of his job duties were supplied in confidence.[50] These comments were not made in the context of a workplace complaint or investigation. There is no indication in the records that the comments were made in confidence and, as I find below, the comments are not sensitive in nature. I am not satisfied that these individuals had an objectively reasonable expectation of confidentiality at the time these comments were made, so I find s. 22(2)(f) does not apply.

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[47] Order F22-62, 2022 BCIPC 70 at para 47.
[48] SFU's initial submission at para 78.
[49] For instance, see Order F20-13, 2020 BCIPC 15 at para 70 and Order F24-83, 2024 BCIPC 95 at para 48.
[50] I am referring to the information on pp 231-232 and 343 (duplicate at p 419).

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

[73] Section 22(2)(h) says that a relevant circumstance to consider is whether disclosure of the information may unfairly damage the reputation of any person referred to in the record requested by the applicant. The parties did not address this factor; however, I find it is a relevant factor to consider.

[74] Some of the information in dispute consists of the applicant's allegations of inappropriate workplace attitudes and behaviour against another individual, including allegations that the individual engaged in bullying and harassing behaviour. In my view, disclosure of those allegations may damage the reputation of the individual, and that damage would be unfair because the records contain no detail about that individual's side of the story or the outcome of any processes that may have taken place to address the applicant's concerns.[51] This factor weighs in favour of withholding that information.

Sensitivity

[75] Sensitivity is not listed as a factor under s. 22(2), however, past orders have considered it as a relevant circumstance. For instance, where personal information is highly sensitive (e.g. medical or other intimate information), this factor weighs against disclosure.[52] However, where information is innocuous and not sensitive in nature, then this factor may weigh in favour of disclosure.[53]

[76] SFU says that the information in dispute is sensitive in nature because it is about "employment disputes, medical symptomology and accommodations, employee evaluations, and third party-confidential communications, concerns, and opinions."

[77] Some of the information in dispute reveals individuals' feelings about the applicant's workplace behaviour and attitude. I find this kind of information is sensitive.[54] This factor weighs in favour of withholding that information.

[78] I also find that some individuals' complaints about the applicant's workplace behaviour are sensitive in nature because they are about instances of bullying and harassment.[55] In my view, an individual's experience of being bullied or harassed is very personal, and disclosing information about how an individual was bullied or harassed can be humiliating to the individual who was bullied or harassed. Therefore, this kind of information should be treated as sensitive. I find

[51] For a similar finding, see Order F20-37, 2020 BCIPC 43 at para 132 and the cases cited therein.
[52] Order F21-64, 2021 BCIPC 75 at para 107.
[53] See for example Order F16-06, 2016 BCIPC 7 at para 38 and Order F17-13, 2017 BCIPC 14 at para 62.
[54] For a similar finding, see Order F23-56, 2023 BCIPC 65 at para 90.
[55] For a similar finding, see Order F23-101, 2023 BCIPC 117 at para 202.

that this factor weighs in favour of withholding the information that reveals complaints about bullying and harassment.

[79] However, I find that some of the personal information is not sensitive in nature. For instance, I find that the comments individuals made about the applicant's handling of his job duties are not sensitive in nature. As mentioned above, these comments were not made in the context of a workplace complaint or investigation. Although the comments are critical of the applicant, the focus of the information is on work-related matters and the information does not reveal any personal or intimate details about the individuals.[56] I find this factor weighs in favour of disclosing this information.

[80] Finally, SFU withheld a routine opening pleasantry in an email as well as a vague remark made by the applicant about an individual's work position.[57] This information is entirely non-sensitive. This factor weighs in favour of disclosing that information.

Applicant's personal information

[81] Previous OIPC decisions have recognized that if another individual's personal information is also the applicant's personal information, this is a factor that weighs in favour of disclosure.[58]

[82] Most of the personal information in dispute is simultaneously the personal information of the applicant. Therefore, I find that this factor weighs in favour of disclosure.

Applicant's knowledge

[83] Previous OIPC decisions have considered the applicant's knowledge of the disputed information as a relevant circumstance under s. 22(2).[59] However, in determining whether disclosure of the disputed information would be an unreasonable invasion of personal privacy, I must also consider the well-established principle that disclosure under FIPPA is disclosure to the world, not just to the applicant.[60] This principle is based on the fact that there are no restrictions in FIPPA prohibiting an applicant from disclosing the information publicly.

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[56] For a similar finding, see Order F23-13, 2023 BCIPC 15 at para 247.
[57] Records at pp 547, 610, and 625.
[58] Order F24-48, 2024 BCIPC 56 at para 146.
[59] Order F21-34, 2021 BCIPC 42 at para 73.
[60] Order F22-31, 2022 BCIPC 34 at para 80; Order F23-101, 2023 BCIPC 117 at para 171; and Order F21-34, 2021 BCIPC 42 at para 70.

[84] In this case, the applicant does not say in his inquiry submissions whether he already has knowledge of the information in dispute. However, based on my review of the records, I can see that he already knows some of the information in dispute.

[85] For instance, the applicant clearly already knows the allegations and comments he made about another SFU employee's position, attitudes, and behaviour in the workplace. The records also indicate that the applicant knows the information about an individual's medical condition that was withheld from the records. Finally, it appears that the applicant already knows the substance of some of the complaints made about his workplace behaviour, as well as the identity of one of the complainants, because I can see that his supervisors spoke to him about those matters during their investigations.

[86] However, the records do not establish that the applicant knows the complete details of the various complaints made about his workplace behaviour or the identities of all of the individuals who raised them. There is also no indication that the applicant knows the identities of the individuals who were questioned as witnesses by the applicant's supervisors during their investigations or the content of their statements to the applicant's supervisors.

[87] With respect to the information that the applicant already knows, I find that this factor weighs minimally in favour of disclosure of that information.[61] As explained above, disclosure under FIPPA is disclosure to the world, and there is no indication that the personal information in dispute is widely known. Accordingly, I give this factor minimal weight.

Information already disclosed

[88] Previous OIPC orders have sometimes found that where information has already been disclosed in the records at issue, this factor weighs in favour of disclosure.[62] For instance, in Order F21-08,[63] the public body in that case released information in some parts of the disputed records but withheld the same information elsewhere in the records. The adjudicator found that the already-released information was not highly sensitive and the presumptions under s. 22(3) did not apply to it. The adjudicator found that the nature of the information, combined with the fact that the public body had already disclosed it, was a relevant circumstance that weighed in favour of disclosure.

[89] In this case, SFU withheld an email from an SFU employee raising some concerns about the applicant's workplace behaviour on page 1004 of the records

[61] For a similar finding, see Order F23-83, 2023 BCIPC 99 at para 82 and Order F22-31, 2022 BCIPC 34 at paras 81-82.
[62] For instance, Order F19-38, 2019 BCIPC 43 at para 159.
[63] 2021 BCIPC 12 at paras 194-196.

but disclosed a duplicate copy of that same email elsewhere in the records. Although the information has already been disclosed, the presumption against disclosure under s. 22(3)(d) applies and the information was supplied in confidence under s. 22(2)(f). Accordingly, in this case, I find that this factor does not weigh in favour of disclosure.[64]

Summary and conclusion on s. 22(1)

[90] I found above that all of the information withheld under s. 22(1) is personal information and that no s. 22(4) factors apply.

[91] For the reasons that follow, I find that disclosing most of the personal information in dispute would be an unreasonable invasion of personal privacy.

[92] First, I find that s. 22(1) applies to the information that I found relates to individuals' employment history. Disclosure of this information is presumed to be an unreasonable invasion under s. 22(3)(d). Some of this information was supplied in confidence under s. 22(2)(f) and is sensitive in nature. Some of it may also unfairly damage the reputation of an individual under s. 22(2)(h). However, the applicant knows some of this information and some of it is simultaneously his own personal information. After weighing these factors, I find that the presumption under s. 22(3)(d) is not rebutted and SFU must refuse to disclose the information that relates to individuals' employment history.[65]

[93] I also find that s. 22(1) applies to the small amount of information in dispute that relates to an individual's medical condition. Disclosure of this information is presumed to be an unreasonable invasion of personal privacy under s. 22(3)(a). Although the applicant already knows this information, I am not persuaded that the applicant's knowledge is sufficient in this case to rebut the presumption under s. 22(3)(a).[66] SFU must refuse to disclose that information.

[94] Finally, I find that s. 22(1) applies to the information that individuals supplied in confidence to the applicant's supervisors during workplace investigations. Section 22(2)(f) applies to this information. Although this information is simultaneously the personal information of the applicant because it is about him, I find that is not sufficient to outweigh the fact that it was supplied under an objectively reasonable expectation of confidentiality. SFU must refuse to disclose this information.

[95] However, for the following reasons, I find that s. 22(1) does not apply to the remaining personal information in dispute.

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[64] For a similar finding, see Order F23-83, 2023 BCIPC 99 at para 85.
[65] For a similar finding, see Order F21-34, 2021 BCIPC 42 at para 86 and Order F23-56, 2023 BCIPC 65 at paras 95 and 103-104.
[66] For a similar finding, see Order F20-13, 2020 BCIPC 15 at para 79.

[96] I found above that some of the remaining information is about the applicant and is not sensitive in nature.[67] There are no s. 22(3) presumptions that apply to this information and no s. 22(2) factors that weigh against disclosure. I find that disclosure of this information would not be an unreasonable invasion of anyone's personal privacy. SFU is not authorized or required to withhold this information under s. 22(1).

[97] Finally, the small amount of remaining information is either information that the applicant already knows or is entirely non-sensitive. No presumptions under s. 22(3) apply and no factors under s. 22(2) weigh against disclosure. I find disclosure of this information would not be an unreasonable invasion of personal privacy and SFU is not authorized or required to withhold it under s. 22(1).

Severance – s. 4(2)

[98] Section 4(2) says that the right of access to a record does not extend to information excepted from disclosure under s. 22(1), but if that information can reasonably be severed from a record, then the applicant has the right of access to the remainder of the record.

[99] The applicant says that SFU applied s. 22(1) in a blanket fashion and has a duty to sever the information to which s. 22(1) applies and disclose the remainder.

[100] I acknowledge that SFU withheld, in some cases, entire pages of records under s. 22(1). However, for the reasons provided above, most of that information has been properly withheld under s. 22(1). In my view, severing the information that is excepted from disclosure would leave information without any surrounding context or meaning. Therefore, I find it would not be reasonable under s. 4(2) to sever the s. 22(1) information and disclose the balance of the withheld information because the result would be meaningless, disconnected snippets of information.[68]

Section 15(1)(l) - harm to the security of a property or system

[101] Some of the information that SFU withheld under s. 22(1) was also withheld under s. 15(1)(l). Given that I have already found that SFU must withhold that information under s. 22(1), I will not consider whether s. 15(1)(l) also applies to that information.

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[67] I am referring to the information withheld on pp 231-232 and 343 (duplicate at p 419).
[68] For a similar finding, see Order F23-92, 2023 BCIPC 108 at para 79 and the cases cited therein.

[102] The only remaining information withheld under s. 15(1)(l) is the information on page 840 of the records, which is not in dispute in this inquiry because the applicant has no interest in obtaining access to that information. Accordingly, I do not need to consider the application of s. 15(1)(l) to any of the withheld information.

CONCLUSION

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

1. Subject to item 2 below, I confirm SFU's decision to withhold the information in dispute under s. 13(1).

2. SFU is not authorized under s. 13(1) to withhold the information I have highlighted in green on the copy of pages 68, 698, 700, and 724 of the records provided to SFU with this order. I require SFU to give the applicant access to this information.

3. SFU is required to reconsider its decision to refuse access to the information I found it is authorized to withhold under s. 13(1). SFU is required to exercise and consider, on proper grounds and considering all relevant factors, whether it should release this information even though it is covered by the discretionary exception. It must deliver its reconsideration decision, along with the reasons and factors it considered for that decision, and any additional information SFU decides to disclose, to the applicant.

4. Subject to item 4 below, SFU is required to withhold the information in dispute under s. 22(1).

5. SFU is not required under s. 22(1) to withhold the information I have highlighted in green on the copy of pages 231, 232, 343, 419, 547, 610, and 625 of the records provided to SFU with this order. I require SFU to give the applicant access to this information.

6. SFU must provide the OIPC registrar of inquiries a copy of its cover letter and the accompanying information sent to the applicant in compliance with items 2, 3, and 5 above.

[104] Pursuant to s. 59(1) of FIPPA, the public body is required to comply with this order by **April 3, 2025**.

February 20, 2025

ORIGINAL SIGNED BY

Emily Kraft, Adjudicator

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